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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

L.I.F.E., LLC  
v.  
Howard M. Benedict III

Opposition No. 91183324  
to application Serial No. 77219627  
filed on June 29, 2007

Christine McLeod of Beusse Wolter Sanks Mora & Maire PA for  
L.I.F.E., LLC.

Howard M. Benedict III, pro se.

Before Walters, Grendel and Holtzman, Administrative  
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Howard M. Benedict III ("applicant") has filed an  
application seeking registration of the mark **LIFE IS LOVE**  
(in standard character form) for goods identified in the  
application as "shirts; hats; sweaters; jackets; pants;  
belts; sandals."<sup>1</sup>

<sup>1</sup> Application Serial No. 77219324, filed on June 29, 2007. The  
application is based on applicant's allegation of a bona fide

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L.I.F.E., LLC ("opposer") has opposed registration of applicant's mark, alleging Trademark Act Section 2(d), 15 U.S.C. §1052(d), as its ground for opposition. Specifically, opposer has alleged, inter alia, that applicant's mark, as applied to applicant's goods, so resembles opposer's mark **L.I.F.E. LOVE IS FOR EVERYONE**, previously-registered on the Principal Register (in standard character form) for goods which include Class 25 "caps, hats, jackets, shirts,"<sup>2</sup> as to be likely to cause confusion, to cause mistake, or to deceive.<sup>3</sup>

In his answer to the notice of opposition, applicant admitted (in pertinent part) that opposer is the owner of its pleaded '578 registration. Applicant denied the allegations in the notice of opposition pertaining to opposer's likelihood of confusion claim.

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intention to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

<sup>2</sup> Registration No. 3336578, issued November 13, 2007. In addition to the Class 25 clothing goods identified in this registration, the registration covers various Class 14 jewelry items and Class 16 printed materials.

<sup>3</sup> Opposer also has pleaded (and made of record) two other registrations of a words-and-design mark incorporating the words L.I.F.E. LOVE IS FOR EVERYONE (Reg. Nos. 3077644 and 3150059), which cover goods in several classes. Opposer also alleged prior common-law rights in the marks L.I.F.E. LOVE IS FOR EVERYONE, and L.I.F.E., both for goods including clothing. In this case, we are basing our analysis and decision on opposer's Reg. No. 3336578 set forth above. We need not and do not reach opposer's likelihood of confusion claim based on these other registrations and common-law marks.

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The evidence of record includes the pleadings and, by rule, the file of applicant's application involved in this proceeding. See Trademark Rule 2.122(b)(1), 37 U.S.C. §2.122(b)(1). At trial, opposer submitted its August 19, 2009 notice of reliance on, inter alia, a printout from the Office's TARR electronic database for its pleaded registration, which shows that the registration is in force and is owned by opposer. See Trademark Rule 2.122(d)(1), 37 C.F.R. §2.122(d)(1). Applicant submitted no evidence at trial. Opposer filed a brief on the case; applicant did not.

For the reasons discussed below, we **sustain** the opposition.

To prevail in this opposition proceeding, opposer must establish (1) its standing to oppose, and (2) at least one statutory ground of opposition to registration of the mark. See *Saul Zaentz Co. v. Bumb*, 95 USPQ2d 1723 (TTAB 2010).

Because opposer has properly made its pleaded registration of record, and because opposer has established that its pleaded Section 2(d) claim is not frivolous, we find that opposer has a real interest in the outcome of this proceeding and thus a reasonable basis for believing that it would be damaged by issuance to applicant of the registration applicant seeks. Accordingly, we find that opposer has established its standing to oppose registration

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of applicant's mark. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650 (TTAB 2002).

Because opposer's pleaded registration is of record, Section 2(d) priority is not an issue in this case as to the marks and goods covered by that registration. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We begin with the second *du Pont* factor, under which we determine the similarity or dissimilarity of the parties' goods. We find that applicant's goods as identified in the application are identical to the goods identified in

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opposer's registration as to "shirts," "hats," and "jackets." We find that the second *du Pont* factor weighs heavily in favor of a finding of likelihood of confusion.

Under the third *du Pont* factor (similarity or dissimilarity of trade channels and purchasers), we find that because applicant's goods as identified in the application are identical to the goods identified in opposer's registration, the trade channels and classes of purchasers for the respective goods likewise are identical. See *In re Smith & Mehaffey*, 31 USPQ2d 1531 (TTAB 1994). The third *du Pont* factor accordingly weighs in favor of a finding of likelihood of confusion.

Under the fourth *du Pont* factor (conditions of purchase), we find that the clothing items at issue here would include relatively inexpensive items which would be purchased by ordinary consumers with only a normal degree of care. The fourth *du Pont* factor weighs in favor of a finding of likelihood of confusion.

We turn finally to the first *du Pont* factor, under which we determine the similarity or dissimilarity of the applicant's mark and opposer's mark when viewed in their entirety in terms of appearance, sound, connotation and commercial impression. *Palm Bay Imports, Inc., supra*.

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Applicant's mark is LIFE IS LOVE (in standard character form). Opposer's '578 registered mark is the mark L.I.F.E. LOVE IS FOR EVERYONE (in standard character form).

In terms of appearance, we find that the two marks are dissimilar to the extent that opposer's mark has five words while applicant's mark has three, with opposer's mark including the words FOR EVERYONE at the end of the mark. The marks also are dissimilar in appearance to the extent that the letters in the word "LIFE" in opposer's mark are followed by periods. However, the L.I.F.E. in opposer's mark would be seen as a variant of the word "life," such that both marks begin with the word "life." Also, the marks look similar to the extent that they start with or consist of the same three words, i.e., "life," "is" and "love," albeit in a different order (with the "is" preceding the word "love" in applicant's mark and following the word "love" in opposer's mark).

In terms of sound, we find that the marks are dissimilar to the extent that opposer's mark has more syllables than applicant's mark, due to the words FOR EVERYONE in opposer's mark. The marks also might sound dissimilar if and to the extent that the letters of the word "life" in opposer's mark could be pronounced separately in view of the periods following each letter. However, L.I.F.E. also might be pronounced "life," and to that extent

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the marks begin with the identical-sounding word. As was the case with the mark's appearance, the marks would sound similar to the extent that they begin with or consist of the same three words, i.e., "life," "is" and "love," albeit in a different order.

In terms of connotation, the specific meanings of the marks when considered in their entireties are not the same. Nevertheless, we find that the marks have similar meanings to the extent that they both would be seen as suggesting the close connection or relationship between the concepts of "life" and "love."

In terms of commercial impression, we find that the periods following the letters in the word L.I.F.E. in opposer's mark give the impression that L.I.F.E. is an acronym for the remaining words in the mark, i.e., "love is for everyone"; applicant's mark does not create that impression of being an acronym. However, even as an acronym, L.I.F.E. could be perceived in the mark to mean or refer to the word "life." To that extent, the marks create similar commercial impressions because they both are short slogans which suggest a close relationship between the concepts of "life" and "love."

We note that similarity is not an absolute matter but instead is a matter of degree, and where the parties' goods are identical, as they are in this case, the degree of

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similarity between the marks necessary to support a finding of likelihood of confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). While there are differences between the marks, we find that the similarities between the marks as a whole are more significant, and outweigh the differences. We also note that opposer's mark is an arbitrary, strong mark and thus entitled to a broader scope of protection. See *Palm Bay Imports Inc., supra*, 73 USPQ2d 1689 at 1692.

In view of the similarities between the marks, and because the parties' goods, trade channels and purchasers are identical, and the goods would include inexpensive goods that would be purchased by ordinary consumers using only a normal degree of care, we conclude that a likelihood of confusion exists. To the extent that any doubt might exist as to this conclusion, we resolve such doubt against applicant, as we must. See *Century 21 Real Estate Corp., supra*; *Ava Enterprises Inc. v. Audio Boss USA Inc.*, 77 USPQ2d 1783 (TTAB 2006); and *Baseball America Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844 (TTAB 2004).

In summary, because opposer has established its standing and its Section 2(d) ground of opposition, opposer prevails in this opposition proceeding.

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Decision: The opposition is sustained.