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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Telefonos de Mexico, S.A.B. de C.V.
v.
Andres Gutierrez Estrada

Opposition No. 91183487
to Application Serial No. 77270292
filed on 9/2/2007

and

Opposition No. 91183509
to Application Serial No. 77270301
filed on 9/2/2007

Julie B. Seyler of Abelman Frayne & Schwab for Telefonos de Mexico, S.A.B. de C.V.

Andres Gutierrez Estrada Pro Se.

Before Hairston, Walsh and Ritchie, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

In these consolidated opposition proceedings, Telefonos de Mexico, S.A.B. de C.V. (opposer) has opposed two applications filed by Andres Gutierrez Estrada (Applicant), an individual resident of Mexico, to register the mark AUDITORIO TELMEX on the Principal Register. Both

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applications include a translation of AUDITORIO as "AUDITORIUM" and a disclaimer of AUDITORIO. Applicant bases both applications on his statement of his bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b). Applicant filed both opposed applications on September 2, 2007.

In the first opposed application (Serial No. 77270292), Applicant states his bona fide intention to use the AUDITORIO TELMEX mark in connection with "arena services, namely, providing facilities for sports, concerts, conventions and exhibitions" in International Class 43.

In the second opposed application (Serial No. 77270301), Applicant states his bona fide intention to use the AUDITORIO TELMEX mark in connection with "entertainment in the nature of ballet performances; entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; entertainment, namely, live performances by a musical band; entertainment, namely, live performances by musical bands; entertainment, namely, live performances by rock groups; live performances featuring prerecorded vocal and instrumental performances viewed on a big screen; performance hall rental services; planning arrangement of showing movies, shows, plays or musical performances; presentation of live show performances; presentation of

musical performance; booking of seats for shows and booking of theatre tickets; rental of portable theatre seating; entertainment in the nature of visual and audio performances, and musical, variety, news and comedy shows; providing facilities for movies, shows, plays, music or educational training; entertainment in the nature of dance performances" in International Class 41.

Thus, the only difference between the two opposed applications and the two proceedings is the class of services at issue. Where appropriate, we will address each class specifically.

Grounds

As grounds for both oppositions, opposer alleges priority and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on its common law use of its TELMEX mark in the United States in connection with certain telecommunications and other services discussed below.

In the notices of opposition, opposer also refers to certain applications it has filed in the United States to register the TELMEX mark and variations on that mark. However, opposer's applications have not matured to registration. Therefore, opposer's applications cannot serve as the basis for establishing priority in these proceedings.

Although opposer also attempted to assert dilution as an additional ground in its notices of opposition, opposer did not maintain that ground in its brief. Therefore, we regard the dilution ground as abandoned, and we have not considered it.

In its brief opposer appears to assert the international fame and renown of its mark as a distinct ground for the oppositions. However, opposer asserted no such ground in either of its notices of opposition. Accordingly, we have given no consideration to this ground which opposer did not plead.

Applicant has denied the essential allegations in the notices of opposition.

Opposer has submitted evidence and a brief. Applicant submitted neither evidence nor a brief.

We sustain the oppositions as to both applications.

The Record

By rule the record first consists of the application files related to both opposed applications and the pleadings. Trademark Rule 2.122, 37 C.F.R. § 2.122. In addition, opposer has submitted the testimony of Peter Rivera, with exhibits, and notices of reliance on: certain admissions and responses to interrogatories from Applicant; USPTO records regarding certain registrations and applications; and certain printed publications.

Opposer submitted limited portions of the testimony of Mr. Rivera under a claim of confidentiality. We will refer to the confidential material only to the extent to which opposer referred to that material in its brief, which opposer submitted without any claim of confidentiality.

Standing

Because opposer has pleaded and established use of its TELMEX mark in the United States in connection with telephone calling card services, as discussed below, prior to the filing date of both opposed applications, September 2, 2007, opposer has established its standing as to both classes of services and both proceedings. *See generally Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987).

Priority

Again, because opposer has pleaded and established use of its TELMEX mark in the United States in connection with telephone calling card services prior to the filing date of both opposed applications, September 2, 2007, opposer has established its priority as to both classes of services and both proceedings. *Miller Brewing Co. v. Anheuser-Busch Inc.*, 27 USPQ2d 1711, 1714 (TTAB 1993).

Findings of Fact

Opposer

Peter Rivera provided testimony regarding opposer and its activities. Mr. Rivera is the regional sales director for the northeastern United States for Telmex USA, LLC, a wholly owned subsidiary and related company of opposer. Telmex USA is the company through which opposer operates and uses the TELMEX mark in the United States. Rivera at 4-5. Telmex USA's use of the TELMEX mark in the United States inures to the benefit of its parent, opposer. Trademark Act Section 5, 15 U.S.C. § 1055.

Opposer is a major telecommunication company based in Mexico. Rivera at 8. Opposer began rendering its services in Mexico in 1947 and soon after became government owned. *Id.* Up until the 1990s, when it was privatized, opposer was virtually the only provider of telephone service in Mexico and opposer has maintained its market dominance since it was privatized. *Id.*

Opposer has used the TELMEX mark in connection with its telecommunications services in Mexico since 1947. Opposer has used and is using the TELMEX mark throughout all of Mexico, on billboards, in the streets, on pay phones, on repair vans, in printed media, on the Internet and otherwise. *Id.* at 44. In view of opposer's widespread and

extensive use of the TELMEX mark in Mexico for six decades, it is unlikely that any resident of Mexico could escape from noticing and knowing about the TELMEX mark.

Opposer also provides telecommunications services in several countries in Central and South America. *Id.* at 42-43.

Opposer sponsors a large arena under the AUDITORIO TELMEX mark in Guadalajara, Mexico. Events, such as the 2008 Latin American MTV Music Awards have been televised from this arena; the MTV telecast was available worldwide, including in the United States, over the Internet. *Id.* at 64. AUDITORIO TELMEX is ranked as one of the top five entertainment concert arenas in the world. *Id.* Major artists, including The Doors, Placido Domingo, Bob Dylan, Rod Stewart, Ricky Martin and others have performed at the arena. The arena is located adjacent to the Universidad de Guadalajara (the University of Guadalajara). *Id.* The TELMEX mark is displayed throughout the arena, and the AUDITORIO TELMEX mark is used prominently and consistently in the advertising and promotion of events which take place in the arena.

Opposer began selling telephone calling cards under the TELMEX mark in the United States in 2000 and currently sells approximately 6,000,000 per year in the United States. *Id.* at 26. Opposer sells the cards in various denominations;

the cards enable the holder to place calls to Mexico. *Id.* at 13. Opposer sells the cards throughout the United States through various retail outlets. *Id.* at 14-15. The cards themselves display artwork and promotions for sports and entertainment events opposer sponsors, such as auto racing, tennis and soccer. *Id.* at 15-16. The calling cards themselves and items related to sponsored events, such as model race cars and soccer jerseys, all bearing the TELMEX mark, are offered for sale on eBay. *Id.* at 18.

Opposer has used its TELMEX mark in connection with the sponsorship of specific race cars in the Rolex Grand Am Sports Car Racing Series, and the series culminates with a race in the United States in Daytona, Florida. *Id.* at 24. Although opposer provided evidence that it began its racing team in 2002, opposer did not provide testimony or other evidence to establish that it used its TELMEX mark in connection with the sponsorship of racing events in the United States prior to September 2, 2007. *Id.* at 24-25, and Exh. 7.

Opposer also provides voice, data, video and Internet services in the United States under the TELMEX mark through its U.S. subsidiary, but opposer did not provide testimony or other evidence to establish that it began to offer those services in the United States under the TELMEX mark before September 2, 2007. *Id.* at 9.

Applicant

Applicant, an individual, has resided in Zapopan, Jalisco, Mexico since 1980. Applicant's Responses to Opposer's Second Set of Interrogatories. Zapopan is roughly 10 miles from the AUDITORIO TELMEX arena in Guadalajara and the University of Guadalajara. Applicant's Notice of Reliance, filed September 16, 2009, including a Reference Map.

Although Applicant did not submit any evidence or a brief, opposer filed notices of reliance on Applicant's responses to opposer's requests for admissions and opposer's interrogatories. Applicant's responses display a pattern of evasion. To be blunt, the responses are disingenuous and lacking in credibility.

In spite of the fact that Applicant has lived in Mexico for nearly 30 years, at least, and opposer's use of the TELMEX mark throughout Mexico has been ubiquitous for that entire period, Applicant essentially denies any prior knowledge of opposer's use of TELMEX.

In spite of the fact that Applicant lives within 10 miles of the AUDITORIO TELMEX arena and the fact that the arena is one of the top arenas in the world, Applicant essentially denies any prior knowledge of opposer's use of the AUDITORIO TELMEX mark in connection with that arena.

Finally, in spite of all of these facts, when asked why he chose the AUDITORIO TELMEX mark for use in connection with the arena and entertainment services, Applicant stated, "Because AUDITORIO TELMEX sounds good for the services upon which it will be used. Is (sic) an easy listening phrase." Applicant's Responses to Opposer's First Set of Interrogatories.

For the record, we will review here some of Applicant's other responses which lead us to conclude that Applicant has been evasive and disingenuous in the prosecution of his applications and in these proceedings.

In an interrogatory opposer asked Applicant to "State when and how Applicant first learned of Opposer's MARKS." Applicant stated, "When the Opposer filed its notice of opposition (April 9, 2008)." Applicant's Responses to Opposer's First Set of Interrogatories.

In responding to requests for admissions Applicant denies that "... Applicant had actual knowledge of Opposer's use of TELMEX prior to the adoption of the trademark AUDITORIO TELMEX." Applicant's Responses to Opposer's First Request for Admissions.

Likewise, when asked in an interrogatory to, "State whether Applicant has actual knowledge of Opposer's use of the trademark TELMEX." Applicant stated, "The Applicant has actual knowledge of Opposer's use of the trademark TELMEX

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based on Opposer's notice of opposition." Applicant's Responses to Opposer's First Set of Interrogatories.

Also, when Applicant was asked to admit "... that Opposer has long prior rights to the trademark TELMEX," Applicant responded as follows: "The Applicant has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable the Applicant to admit or deny this request." Applicant's Responses to Opposer's First Request for Admissions. Applicant employs this same response repeatedly rather than providing a forthright response to other requests.

Furthermore, Applicant states that he became aware of the University of Guadalajara in 1995, but that he did not become aware of AUDITORIO TELMEX until, "... the Opposer sent his first request for admissions to Applicant." Applicant's Responses to Opposer's Second Request for Admissions. Opposer sent its first request for admissions to Applicant on July 21, 2008; the request included voluminous attachments showing that the AUDITORIO TELMEX arena had been open prior to that date and that numerous noteworthy artists had performed at the arena, for example, Liza Minnelli, The Moscow Classical Ballet, Hilary Duff, Kenny G, Ricky Martin, and Placido Domingo. Opposer's First Request for Admissions.

In responding to another requested admission, namely that "... Applicant had actual knowledge of Opposer's use of AUDITORIO TELMEX prior to the adoption of the AUDITORIO TELMEX mark..." Applicant stated, "**Objection:** The Opposer's Notice of Opposition talked about the existence of Application No. 78/166543 ONLY for TELMEX. The Opposer's Notice of Opposition talked about the existence of Application No. 78/763577 ONLY for TELMEX MEXICO EN LINEA. The opposer claimed its rights solely for those marks." Responses to Opposer's First Request for Admissions. Here too Applicant offers this same response to opposer's numerous subsequent requests that Applicant admit that the various documents attached to the requests related to events taking place at the AUDITORIO TELMEX arena and that Applicant admit that those documents showed use of the AUDITORIO TELMEX mark. *Id.*

Finally, in its second set of interrogatories opposer asked: "State whether Applicant has ever used phone service in Mexico, including home phone, public phone, or cell phone use, and the beginning and ending dates of such use." In response, Applicant stated, "Cell phone only, since June 15, 2005." Applicant's Responses to Opposer's Second Set of Interrogatories. And, when asked whether he had ever used a phone booth, pay phone, or other public phone, Applicant stated that he had not. *Id.*

If there is a plausible explanation for these implausible responses, Applicant could have provided the explanation by submitting evidence at trial, but Applicant did not do so.

Likelihood of Confusion

In likelihood of confusion cases, we must consider the facts in view of the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003) and *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In a particular case, one factor may play a dominant role. *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567.

The Marks

To determine whether the marks are confusingly similar, we must consider the appearance, sound, connotation and commercial impression of each mark. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

While we must consider the marks in their entireties, it is entirely appropriate to accord greater importance to the more distinctive elements in the marks. As the Court of Appeals for the Federal Circuit observed, "... in articulating reasons for reaching a conclusion on the issue of confusion,

there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable." *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

For purposes of this comparison, we compare Applicant's AUDITORIO TELMEX mark with opposer's TELMEX mark, the mark as to which opposer has shown both use and priority in the United States. Opposer argues that these two marks are similar and we agree.

Applicant has disclaimed AUDITORIO which is at least highly descriptive of his services. Thus, opposer's TELMEX mark is identical to the dominant and only distinctive element in Applicant's mark, TELMEX, a coined term.

The respective marks are similar in appearance and sound. Under the circumstances, the presence of the descriptive term, AUDITORIO, does little, if anything, to diminish the similarities.

More importantly, the common element, TELMEX, is dominant in projecting both the connotation and commercial impression of both marks. Again, as we discuss further immediately below, TELMEX, is a coined term which is inherently distinctive, and to the extent that it projects

either a connotation or commercial impression, the connotation and commercial impression is identical in both respective marks.

Accordingly, we conclude that the Applicant's AUDITORIO TELMEX mark and opposer's TELMEX mark are highly similar overall.

Fame/Strength of Opposer's Mark

Opposer asserts that its TELMEX mark is famous, at least in Mexico and internationally, and apparently also in the United States. Above, we rejected opposer's argument that the asserted international fame or renown of the TELMEX mark might serve as an additional ground for the oppositions because opposer had failed to plead such a claim in its notices of opposition.

Nonetheless, the fame/renown of opposer's TELMEX and AUDITORIO TELMEX marks in Mexico, in particular, are relevant to the issue of bad faith in the likelihood-of-confusion analysis, and we will discuss the fame/renown of the marks in that context below.

As to the fame of the TELMEX mark in the United States, if opposer were able to show that its TELMEX mark is famous in the United States, fame might play a dominant role in the likelihood-of-confusion analysis because famous marks enjoy a broad scope of protection. *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed.

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Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992).

However, opposer's evidence is insufficient to establish that the TELMEX mark is famous in the United States. We have information regarding the sales of opposer's calling cards in the United States, though we have no information regarding its U.S. competitors in the calling card business in the United States to place that evidence in context. Even without that information, the numbers alone suggest that opposer does not have significant market share. Furthermore, opposer's other evidence is not sufficient to show fame for the TELMEX mark in the United States.

Under one notice of reliance opposer provided five articles which appeared in U.S. publications which mention the AUDITORIO TELMEX arena. These articles do not address the TELMEX mark, and in any event, they are insufficient in quality and quantity to establish the fame of either the TELMEX or AUDITORIO TELMEX marks in the United States.

Under another notice of reliance opposer also provided 39 articles from various U.S. newspapers and similar sources where TELMEX is mentioned. For the most part, the mentions of TELMEX are in the context of business or financial reporting, the exploits of Carlos Slim Helu, the former

chairman of Telmex, and reports of results of the Copa Telmex tennis tournament in Argentina. We find these articles too, whether taken alone or along with other evidence, insufficient to show that the TELMEX mark is famous in the United States.

However, we hasten to add that the record does establish that TELMEX is a strong, inherently distinctive mark. As we noted, TELMEX is a coined term. Even Applicant effectively conceded that TELMEX is strong in his response to opposer's interrogatory asking whether Applicant had knowledge that any other person (other than opposer or Applicant) has the right to use TELMEX. Applicant said "No." Applicant Responses to Opposer's First Set of Interrogatories.

Thus, we have no evidence that anyone other than opposer has ever used TELMEX for any purpose and we conclude that TELMEX is a strong, inherently distinctive mark in the United States.

The Services

The services of Applicant and opposer need not be identical to find a likelihood of confusion under Section 2(d). They need only be related in such a way that the circumstances surrounding their marketing would result in relevant purchasers mistakenly believing that the goods originate from or are associated with the same source. On-

Line Careline Inc. v. America Online Inc., 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000).

Furthermore, in comparing the services we must consider the services as identified in the application. See *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.").

For purposes of this comparison, we consider that opposer's services are limited to telephone calling card services, the only services as to which opposer established priority in the United States. As to Applicant, we consider the services identified in each of the opposed applications, that is, "arena services, namely, providing facilities for sports, concerts, conventions and exhibitions" in International Class 43, and "entertainment in the nature of ballet performances; entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; entertainment, namely, live performances by a musical band; entertainment,

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namely, live performances by musical bands; entertainment, namely, live performances by rock groups; live performances featuring prerecorded vocal and instrumental performances viewed on a big screen; performance hall rental services; planning arrangement of showing movies, shows, plays or musical performances; presentation of live show performances; presentation of musical performance; booking of seats for shows and booking of theatre tickets; rental of portable theatre seating; entertainment in the nature of visual and audio performances, and musical, variety, news and comedy shows; providing facilities for movies, shows, plays, music or educational training; entertainment in the nature of dance performances" in International Class 41.

Opposer submitted nineteen third-party registrations which cover both opposer's and Applicant's services to show that the respective services are related. However, none of those registrations are based on use in commerce; all issued under Trademark Act Section 66, 15 U.S.C. § 1141, as extensions of protection to the United States based on an international registration. Accordingly, they lack probative value, and we have not considered them. *In re 1st USA Realty Professionals Inc.*, 84 USPQ2d 1581, 1583 (TTAB 2007) ("To the extent that the registrations are based on Section 44 or Section 66 of the Trademark Act, applicant's objection is well-taken. Because these registrations are

not based on use in commerce they have no probative value in showing the relatedness of the services....").

However, as we stated, opposer has provided evidence that its telephone calling cards display promotions for events and activities opposer sponsors, including sporting and other entertainment events. Consequently, these promotions create an association between opposer's telecommunications services and entertainment services.

Opposer also provided evidence that it offers a wide range of telecommunications services, beyond telephone calling card services, in the United States, including voice, data, video and Internet services, all under the TELMEX mark. This evidence shows an association of the TELMEX with a broad range of telecommunications services, including Internet services.

In addition, opposer provided evidence that events, such as the 2008 Latin American MTV Music Awards, have been televised from opposer's AUDITORIO TELMEX arena into the United States over the Internet. Consequently, this evidence points to an association between arena services and entertainment services, on the one hand, and the telecommunications services associated with the TELMEX mark, on the other hand.

In the broader context, this evidence shows that relevant consumers when confronted with the use of the same

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or similar marks in conjunction with both types of services, arena and entertainment services and telecommunications services would be likely to believe that the services are associated with the same source.

We note that the Board has previously stated, "It is common knowledge, and a fact of which we can take judicial notice, that the licensing of commercial trademarks on 'collateral' products [services] has become a part of everyday life. See *Turner Entertainment Co. v. Nelson*, 38 USPQ2d 1942, 1945-1946 (TTAB 1996) and cases cited therein." *DC Comics v. Pan American Grain Mfg. Co.*, 77 USPQ2d 1220, 1225 (TTAB 2005).

Finally, we conclude that this evidence is sufficient to show that both arena and entertainment services are related to telephone calling card services. In the absence of further evidence, we decline to go any further than concluding that the respective services are sufficiently related. That is, in the absence of further evidence that other providers of telecommunications services, including telephone calling card services, sponsor or otherwise associate the marks used in connection with telecommunications services also with arena and entertainment services, we decline to go further.

Bad Faith

The Board has recognized that we may consider bad faith in the likelihood-of-confusion analysis under the thirteenth *du Pont* factor. *L.C. Licensing Inc. v. Berman*, 86 USPQ2d 1883, 1890 (TTAB 2008). In this case, though we would find a likelihood of confusion even without consideration of bad faith, we find a significant degree of bad faith in Applicant's adoption of the AUDITORIO TELMEX mark. If this were a close case, the bad faith which is present here would be more than sufficient to tip the balance and dictate a finding of likelihood of confusion. *Roger & Gallet S.A. v. Venice Trading Co. Inc.*, 1 USPQ2d 1829, 1832 (TTAB 1987) ("Where there is evidence of an applicant's intent to adopt a mark that suggests to purchasers a successful mark already in use by another, the Board may, and ought to, take into account that intent when resolving the issue of likelihood of confusion when that issue is not free from doubt. See *Monsanto Co. v. CIBA-GEIGY Corp.*, 191 USPQ 173 (TTAB 1976) (and cases cited there).").

As we noted above, opposer has used the TELMEX mark for over sixty years in Mexico in connection with its telecommunications services; that use has been pervasive throughout Mexico. The TELMEX mark is inherently distinctive, and apparently unique.

Applicant has resided in Mexico for nearly thirty years, at least. In fact, since 1980 Applicant has lived within 10 miles of the location of the AUDITORIO TELMEX arena, which opposer sponsors - an arena where many high-profile entertainment events take place. These facts lead to the inescapable conclusion that Applicant filed his applications with the full knowledge of opposer's TELMEX and AUDITORIO TELMEX marks. Applicant's claims to the contrary are not credible in the least. *Roger & Gallet S.A. v. Venice Trading Co. Inc.*, 1 USPQ2d at 1832.

Furthermore, Applicant's evasive and disingenuous responses to opposer's discovery requests, detailed above, provide evidence of Applicant's continuing bad faith subsequent to his adoption of the mark. It shows not only bad faith but a general lack of respect for the application and opposition process.

Accordingly, we have no hesitation in concluding that Applicant acted in bad faith in the adoption of the AUDITORIO TELMEX mark and throughout the prosecution of his applications and these proceedings. *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992) ("We note, in this regard, that a party which knowingly adopts a mark similar to one used by another for the same or closely related goods or services does so at its peril and any doubt on the question of likelihood of confusion must be resolved

against the junior user. See, e.g., *First International Services Corp. v. Chuckles Inc.*, 5 USPQ2d 1628, 1633 (TTAB 1988) and *Roger & Gallet S.A. v. Venice Trading Co. Inc.*, 1 USPQ2d 1829, 1832 (TTAB 1987).").

Conclusion

Finally, after considering all competent evidence bearing on the *du Pont* factors in this case, we conclude that there is a likelihood of confusion between opposer's TELMEX mark when used in connection with telephone calling card services and Applicant's AUDITORIO TELMEX mark when used in connection with both the arena services Applicant identifies in his International Class 43 application and the entertainment services Applicant identifies in his International Class 41 application. In concluding so we note, in particular, that the marks are highly similar, that opposer's mark is inherently distinctive, that the services of the parties are related, and that Applicant has acted in bad faith.

Decision: We sustain the oppositions as to both applications.