

ESTTA Tracking number: **ESTTA666474**

Filing date: **04/14/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220956
Party	Defendant Sanjay Agarwal
Correspondence Address	SANJAY AGARWAL AEGIS VISION LIMITED BOUNDARY HOUSE LONDON W7 2QE, UNITED KINGDOM
Submission	Opposition/Response to Motion
Filer's Name	Sanjay Agarwal
Filer's e-mail	zlatinzlatev@yahoo.com
Signature	/Sanjay Agarwal/
Date	04/14/2015
Attachments	response three.pdf(186256 bytes)

Sanjay Agarwal
Aegis Vision Limited
Boundary House,
Boston Road,
London W7 2QE
United Kingdom

14 April 2015

Response to the notice of opposition

Opposition Number: 91220956
US Serial Number: 79153014
Register: Principal
Mark Type: Trademark

I. Introduction

The trademark Uunique (reproduced as ) was registered on 8 December 2009 in the United Kingdom and soon after that in the European Union. Since its registration it has been used actively in the commercial activities in Aegis Vision Limited, including advertising campaigns, public presentations, direct sales via special website (www.uunique.uk.com) and other internet retailers. For this period of time there were no disputes with any other legal entities with regard to any possible conflicts related to usage of the applied-for trademark. Our trademark Uunique is part of our corporate identity and we believe that its registration in the applied-for jurisdiction will be in best interest in our potential customers therein.

We consider that there is no likelihood of confusion with regard to the applied-for registration trademark Uunique and the opposer's marks. 'Likelihood of confusion' is caused only by similarity to previously registered mark. There is a likelihood of confusion only if the respective marks and goods or services are sufficiently similar. Evaluation of similarity of marks depends on the degree of similarity of the three main criteria, taken in context. In order to assess the degree of similarity between the marks concerned, the degree of visual, aural, or conceptual similarity between them must be determined and, where appropriate, evaluation of the importance to be attached to those different elements should be done, taking account of the category of goods or services in question and the circumstances in which they are marketed. In such respect none of the opposer's previous registrations satisfies the requirement of similarity simultaneously with regard to the respective marks and goods or services that are offered. The products that are offered are not similar to those described in the application of the applicant company. Therefore we consider that in none of the above cases there is similarity of the marks and simultaneous similarity of the nature of the goods. Conceptual similarity by itself is not of tantamount to confusion. Where the earlier mark consists of an image with little imaginative content that in itself does not bear significant meaning beyond the words that are used, the mere fact that the two marks are conceptually similar is not in itself sufficient to give rise to a likelihood of confusion.

II. Similarity of the Marks

The only common element of the applied-for marks and the opposer's marks is the word 'unique'. This hypothetically can only lead to association of these marks, but the other elements that distinguish them prevent any similarity. The mere association of two marks does not necessarily lead to similarity of the marks and therefore cannot in any cases cause 'confusion'. The mere 'association' of two marks by virtue of their 'analogous semantic content' is insufficient ground for concluding that there is 'similarity' or even 'confusion' between them. 'Likelihood of association' is not an alternative to 'likelihood of confusion' but a subcategory of it. 'Association' of marks is not therefore an infringement or a bar to registration in the absence of confusion. The fact that some of the marks that are enlisted in the opposition contain the word 'unique' does not in itself lead to confusion. Even though the marks contain the word 'unique', the opposer does not prove that this leads at least to association of the marks. The availability of common word in two marks is not considered to be hindering condition for their registration as it is not leading to association of the marks or to further consequences like similarity. This can be best demonstrated by the fact that so many marks having the word 'unique' have already been registered in the United States and no grounds for specific treatment of the mark Unique can be substantiated on this ground.

The opposer allegations of likelihood of confusion are not proved in any of its elements. The connotation of the applied-for mark is opposite to the one that can be implied from the other marks: the presence of the first letter 'U' in the mark specifies the uniqueness of the consumers rather than the uniqueness of the products. Therefore there is even no semantic similarity between the applied-for mark and the marks in the opposition. Without any similarity of the marks no conclusion about likelihood of confusion can be drawn.

Furthermore, comparison of marks should be made from the standpoint of the average relevant consumer. Global appreciation of marks must be based on the overall impression given by them, bearing in mind their distinctive and dominant components. We think that the perception of marks in the mind of the average consumer of the relevant goods or services plays a decisive role in the global appreciation of the likelihood of confusion, since the average consumer normally perceives a mark as a whole and does not proceed to analyse its various elements. The applied-for mark in that respect has no similar elements in its global appreciation with the other marks enlisted in the opposition. Its graphical and semantic perception is generally different than those of the other marks where even without knowledge of their additional elements like the relatedness of goods, imply different visual perception.

By the doctrine of the impression conveyed, where it is necessary to determine the similarity of an earlier mark and a later mark that comprises the earlier mark together with another integer such as the company name or house mark of the proprietor of the later sign, one should consider the overall impression conveyed by each of the latter two signs in order to ascertain whether the component shared by the two marks characterizes the latter composite mark to the extent that the other components are largely secondary to its overall impression. Once this comparison is made, no likelihood of confusion will be said to exist where that common component merely contributes to the overall impression of the later sign, regardless of whether the common component still has an independent distinctive role in the composite sign. In this case the earlier mark (and thus the common component of both parties' marks) was the word UNIQUE. The doctrine dictates that, when UNIQUE is not the dominant element of the latter sign (UNIQUE PHOTO, UNIQUE TOTS etc.) the composite sign could not be said to be confusingly similar to the earlier mark.

The trademark 'UNIQUE' contains one single adjective which meaning can only be related to the products that are sold. Being an adjective, its function is just to provide additional meaning to the noun

to which it is used. As in the trademark there is no noun, the nearest possible object to which this word can be associated are the products sold under the trademark. In all other marks the word 'unique' appears just as an adjective whose function is to provide additional meaning to the noun which is bearing the main semantic burden and therefore defines the general connotation of the mark. In both cases the distinctive and dominant component will be the noun and the adjective should be merely supplementing the main meaning. The applied-for trademark contains the words "UUnique" which stands for "You are unique" and in that respect the adjective is related to the qualities of the recipient of the mark rather than the products that are offered.

Therefore we consider that the applied-for trademark is not similar to any of the previously registered marks as there is no similarity in its appearance, sound, connotation, and commercial impression. With regard to such conclusion we are asking that the opposition should be dismissed.

III. Relatedness of the Goods

The opposer states that the goods and services that are offered under its trademarks. However no evidence in this respect is provided. Our goods neither move in similar trade channels, nor they are legally identical or closely related to registrants' goods and therefore there is no likelihood of confusion as to the source of goods. There is no registrant that offers similar aggregation of goods that we offer under the applied-for trade mark. Moreover, there is not even a single product overlap with some of the opposer's marks. Therefore it cannot be concluded that the products are either moving in similar trade channels or there is any single element of identity between the applied-for mark and the opposer's marks. The fact that all products are in international class 9 does not in any case mean that the products are identical. The opposer does not substantiate its claim about similarity of the products but merely mentions that its products are in international class 9 too. If it is assumed that in all cases where the products are merely within one international class there is similarity of the marks, this would lead to significant restriction of the principles of the free trade and market economy and would allow for registration of only one trademark per class. On the contrary, the requirement for identical or closely related to goods is applied only in cases where (i) there is similarity in the marks and (ii) the aggregation of goods is identical. For none of the enlisted previously registered marks these conditions, even if taken separately, are met.

Our understanding is that likelihood of confusion should be appreciated globally, taking all relevant factors into account. The likelihood of confusion should depend on numerous elements and, in particular, on the recognition of the trade mark on the market, of the association which can be made with the used or registered sign, of the degree of similarity between the trade mark and the sign and between the relevant goods or services. The likelihood of confusion must therefore be appreciated globally, taking into account all factors relevant to the circumstances of each case. In that respect our trademark has been registered in various jurisdictions, including European Union and the United Kingdom, where we are well-known on the market with our products sold under the applied-for trade mark. Our products are also sold in Japan, Middle East, South Africa and Australia, where we are using UUnique trademark. In addition to that our trademark is not unknown to the consumers in the United States as well. The trademark UUnique was represented at CES 2015 organised by our US distributor Brightstar in Las Vegas – one of the biggest consumer electronic shows in the world. The applied-for trademark was also advertised in few leading American newspapers, including New York Times.

Commercial Impression is one of the four factors (along with appearance, sound and meaning that were discussed above) considered when comparing trademarks for similarities. Once a consumer has had an

opportunity to encounter the trademark with its goods or services in the market place and it has observed the appearance of the mark, perhaps heard the sound of the mark, and considered the meaning of the mark, it now has developed a “commercial impression” of the mark along with the goods or services. This main image or idea that has developed is considered to be the commercial impression or consumer impression and it should weigh as part of the likelihood of confusion analysis. In that respect UUnique trademark is significantly distinctive compared to the trademarks that the opposer represents.

We think that the distinctiveness of the mark should be construed in its regular meaning. When considering the distinctive character of the earlier mark for the purposes of assessing the degree of protection against a similar mark to which it is entitled, we believe that the standard of distinctiveness is that employed in determining whether a trade mark has the capacity to identify the goods or services for which it is registered as coming from a single origin. For the purpose of registration, the criterion is one of whether an applied-for sign has the necessary degree of distinctiveness to enable it to identify goods or services as coming from a single origin, not that of how much surplus distinctiveness there exists over the minimal level at which a sign becomes sufficiently distinctive to be registered. Every trade mark that is the basis upon which opposition or infringement proceedings are brought is a mark which has already satisfied, at the point of registration, these criteria of distinctiveness.

However, everything that indicates distinctiveness for registration purposes is now to be taken into account again: inherent characteristics such as the presence or absence of descriptors; market share; length and geographical spread of use; the amount of money spent in promoting the mark; the proportion of the relevant consuming public that identifies it as a trade mark; and so on. In that respect the goods that are intended to be sold under the applied-for mark are in no aspect identical to any of the opposer’s ones. Any single product and the aggregation of all goods attaches different character of the goods that are to be offered under the applied-for mark. Therefore UUnique trademark should be subject to registration as requested as it in no aspect represents any form of similarity with the products related to the opposer’s trademarks.

IV. Conclusion

From the overall visual and semantic appearance of the applied-for registration mark there is no similarity to any of the opposer’s marks. Moreover, none of the opposer’s goods are identical to those that are to be offered under the applied-for mark. Therefore we consider that the opposition should be quashed as there is no likelihood of confusion with the applied-for trademark. The trademark Uunique was registered about 5 years ago in the United Kingdom and European Union and since then it has become part of the corporate identity of Aegis Vision Limited as it is invariably and actively used in its all commercial activities and it is widely associated with the products that it sells.

By: /Sanjay Agarwal/
Sanjay Agarwal