

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Blaire Allison Kitrosser

v.

Promo Ink

Cancellation No. 92046606
against Registration No. 2923986

David H.E. Bursik for Blaire Allison Kitrosser.

Donna Bogatin, *pro se* for Promo Ink.

Before Walters, Bucher and Ritchie, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Blaire Allison Kitrosser has filed a petition to cancel
Registration No. 2923986 owned by Promo Ink for the mark
METRO INVITES (*in standard character format*) for services
recited as "entertainment services, namely, planning and
conducting parties and special events for businesses and
individuals in a variety of locations including bars,
restaurants, shops, and the like" in International Class
41.¹

¹ Registration No. 2923986 issued on February 1, 2005. No
claim is made to the word "Invites" apart from the mark as shown.

The United States Patent and Trademark Office rejected petitioner's application to register her mark, **METRO EVENT PLANNERS** (*in standard character format*),² based upon the respondent's aforementioned **METRO INVITES** trademark registration. Hence, petitioner asserted that, if indeed there is a likelihood of confusion between these marks, inasmuch as petitioner used her **METRO EVENT PLANNERS** mark prior to the respondent's date of first use, this priority of use warrants the cancellation of the **METRO INVITES** trademark registration in accordance with 15 U.S.C. § 1052(d). However, the relevant paragraph (No. 5) of petitioner's allegations does not actually allege a likelihood of confusion:

5. Petitioner filed an application for registration of the **METRO EVENT PLANNERS** mark as Serial Number 78595725. The Trademark Office issued an office action refusing the registration of the **METRO EVENT PLANNERS** mark on the grounds of a likelihood of confusion with the Registrant's **METRO INVITES** mark.

Alternatively, petitioner argues that because neither petitioner nor respondent believes that there is any likelihood of confusion between these marks, that

² Application Serial No. 78595725 was filed on March 26, 2005 based upon petitioner's claims of first use anywhere and first use in commerce at least as early as July 1999. No claim is made to the words "Event Planners" apart from the mark as shown.

petitioner is willing "to convert this proceeding to a concurrent use proceeding to pursue the simultaneous and concurrent registration of these marks."

Standing

Blaire Allison Kitrosser has allegedly been involved in special event planning services continuously since July 1999. She has shown that her application has been refused registration in the U.S. Patent and Trademark Office on the basis of Promo Ink's existing registration. Accordingly, we find that the citation of Promo Ink's registration as a bar to the registration of Ms. Kitrosser's mark is sufficient to establish standing. *See Jewelers Vigilance Committee, Inc. v. Ullenberg Corp.*, 823 F.2d 490, 493, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987). In fact, the entire record herein supports the proposition that Ms. Kitrosser has pleaded and demonstrated facts sufficient to show a personal interest in the outcome of the case, and hence her standing. *See Cervceria Modelo S.A. de C.V. v. R.B. Marco & Sons, Inc.*, 55 USPQ2d 1298, 1300 (TTAB 2000).

Priority

Based upon Ms. Kitrosser's uncontested declaration, we find that petitioner has priority of use over respondent.

That leaves as the sole issue herein a determination of likelihood of confusion.

Likelihood of Confusion

Our 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. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Having taken the position herein that there really is no likelihood of confusion, petitioner has made no showing or arguments as to the various relevant *du Pont* factors. Nonetheless, in light of the posture of this case, we will construe the petition for cancellation as having made a claim of both priority and likelihood of confusion. While the respondent's principal filed a *pro se* answer denying the essential allegations of the petition for cancellation, respondent did not file any evidence at trial and did not file a final brief.

The services and trade channels

Inasmuch as both petitioner and respondent are involved in special event planning services, the services must be deemed to be identical, and moreover, we must presume they will move through all the same channels of trade to the same classes of consumers. These critical *du Pont* factors favor the position of petitioner that there is a likelihood of confusion herein.

The Marks

This *du Pont* factor focuses on the similarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

As to appearance, it is significant that the leading and dominant word in each of these marks is the identical term, "Metro." As to connotation, in the absence of any indication in this record to the contrary, we must presume that the **METRO** formative comprises a relatively-strong source indicator in the area of special event planning services. It is certainly relevant that the ending portions of both marks, "Invites" and "Event Planners," are disclaimed and these terms are at least highly suggestive in

connection with the parties' recited services. As such, "Metro" is the dominant portion of each mark.

Accordingly, when these marks are considered in their entireties, we find that they convey substantially similar commercial impressions.

Conclusion

Balancing the relevant likelihood of confusion factors herein, we find a likelihood of confusion inasmuch as the marks are confusingly similar while the services are identical.

As to the alternative request by petitioner in its brief to convert this proceeding to a concurrent use proceeding, there is certainly no indication of whether there is any geographical separation between the services of the parties.³ Of course, our instant decision adverse to respondent in the cancellation proceeding would not preclude respondent from filing a new application seeking concurrent registration with petitioner, as appropriate. *See, e.g., Chichi's, Inc. v. Chi-Chi's, Inc.*, 222 USPQ 831, 832 (Comm'r 1984).

³ Petitioner recently filed (on January 12, 2009) with the Trademark Trial and Appeal Board a paper entitled "Notice Of Intention To Convert To Concurrent Use Proceeding." However, in view of our decision herein, petitioner need not amend its pending application to one seeking concurrent use.

Decision: Accordingly, we grant the petition for cancellation, and this registration will be cancelled in due course.