

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

Mailed: March 30, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Bunn-O-Matic Corporation

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Serial No. 77137482

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Melissa A. Vallone of Barnes & Thornburg for Bunn-O-Matic Corporation.

Dezmona J. Mizelle-Howard, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

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Before Walters, Bucher and Kuhlke, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Bunn-O-Matic Corporation has filed an application to register the standard character mark TITAN on the Principal Register for "large volume beverage brewing and dispensing equipment, namely, heated coffee and tea brewers and servers," in International Class 11.<sup>1</sup>

The examining attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C.

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<sup>1</sup> Serial No. 77137482, filed March 22, 2007, based on an allegation of a bona fide intention to use the mark in commerce.

1052(d), on the ground that applicant's mark so resembles the standard character mark TITAN, previously registered for "cooking and cooling equipment, namely, electric and gas ranges; salamanders; electric broilers; cheesemelters; electric deep fryers; electric and gas ovens; refrigeration and cooling units, namely, food and beverage chilling units; freezers; food steamers; smokers; gas grills; and electric griddles," in International Class 11,"<sup>2</sup> that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We reverse the refusal to register.

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. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

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<sup>2</sup> Registration No. 2970202, issued January 2, 2004, and is owned by Jade Range, LLC.

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Considering, first, the marks, there is no question that the standard character TITAN marks are identical. Applicant does not contend otherwise. However, applicant does attempt to distinguish the marks by arguing that the connotations of the marks in connection with the respective goods are different. Applicant submitted a definition of "Titan" as, in part, "one that is gigantic in size or power" (*Merriam-Webster Online Dictionary*). Applicant argues that its advertising emphasized the large size of its brewers and servers and, thus, its use of TITAN is a "double-entendre" relating to this size (see Response of September 4, 2008); and that registrant's ranges are normal in size and registrant's advertising does not emphasize size such that no double entendre exists. Applicant's argument is not well-taken. To the extent that TITAN has a particular meaning, it is likely to pertain equally to both applicant's and registrant's identified goods.

Applicant contends that TITAN is a weak mark that is used frequently across a wide range of goods and services, noting its submission of an excerpt from the website [www.411Locate.com](http://www.411Locate.com) showing use of the term TITAN in over 1800 company names, and its submission of numerous third-party registrations that include TITAN in the mark, although the goods and services are not listed. While this evidence does not establish the strength or weakness of registrant's mark in connection with its identified goods, it does suggest that the term "titan" is not arbitrary and that it is at least suggestive of large size or strength. Regardless, the marks are identical.

Therefore, we conclude that, because the marks are the same in terms of sound, appearance, connotation and commercial impression, this *DuPont* factor weighs against applicant.

Turning to consider the goods, because the marks at issue are identical, the extent to which the applicant's and registrant's goods must be similar or related to support a finding of likelihood of confusion is lessened. See *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001). It is only necessary that there be a viable relationship between the two to support a finding of likelihood of confusion. See *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983).

In making our determination under the second *du Pont* factor, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein; and *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002).

Applicant concedes that both its goods and registrant's goods would be found in a commercial food service or restaurant setting and that these goods would also be sold by the same types of commercial food service distributors (see Response of December 20, 2007). Applicant contends, however, that the goods are different, serve different purposes, and are not complementary. Applicant submitted evidence establishing that the respective goods are expensive, that they are likely to be purchased by knowledgeable professional buyers, and they would require commercial installation. Applicant also submitted evidence establishing that at least some distributors of the respective products sell everything from table linens to ovens.

The examining attorney submitted evidence from third-party registrations that include coffee brewers and/or grills, ranges, ovens and convection ovens. The only evidence of specifically-denoted commercial products of this type is third-party registrations owned by the same registrant for coffee brewers, grills, convection ovens and galley equipment for aircraft. The examining attorney also submitted evidence from several internet websites for these goods made for household use. She also submitted evidence from the websites of several commercial food service distributors showing that they sell a wide variety of

equipment including the goods identified herein. However, it would appear from this evidence, that these goods are identified by various brands that are different from the name of the distributor.

The identified goods are not explicitly limited to such goods for commercial use. However, the nature of applicant's goods, i.e., "large volume" brewers and servers, indicates the commercial, rather than domestic, nature of the products and we construe the identification of goods as being so limited. Similarly, registrant's identified goods include items, such as salamanders, that serve only commercial uses, we do not construe registrant's identified goods, such as ranges, grills, and steamers, to be logically limited to such goods for commercial use only and find that the identification also encompassed goods for household use.

Thus, while registrant's identified goods are broader, encompassing such goods made for commercial and domestic uses, they overlap in use with applicant's goods only in the commercial venue. In the commercial venue, applicant has established that the respective goods are expensive and are likely to be purchased carefully by knowledgeable buyers. We agree with applicant that the examining attorney's evidence of sales of some of the respective goods through the same commercial distributors is not determinative, as it

appears that these distributors sell a wide variety of goods under various trademarks.

Unlike the circumstances in *In re Toshiba Medical Systems Corp.*, 91 USPQ2d 1266 (TTAB 2009) where the respective medical devices served the same purpose to the extent that they were both medical diagnostic equipment with imaging functions, the goods here do not serve the same purpose. We agree with applicant that the evidence submitted by the examining attorney is insufficient for us to conclude that applicant's commercial coffee and tea brewers and servers and registrant's commercial cooking and cooling equipment are sufficiently similar or related that confusion is likely, in particular, given the care of the purchasing decision and sophistication of the purchasers in the overlapping channel of trade.

In conclusion, although the marks are identical, the record does not establish a relationship between the respectively identified goods, and thus, we cannot conclude that confusion as to source is likely.

*Decision:* The refusal under Section 2(d) of the Act is reversed.