

From: Cordova, Raul

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Subject: U.S. TRADEMARK APPLICATION NO. 77718071 - TRUE LOVE COLORS
- COLRS-026T - EXAMINER BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77718071

MARK: TRUE LOVE COLORS



CORRESPONDENT ADDRESS:

KIT M. STETINA
STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE STE 250
ALISO VIEJO, CA 92656-2681

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

TTAB INFORMATION:

<http://www.uspto.gov/web/offices/dcom/ttab/index.html>

APPLICANT: True Colors International

CORRESPONDENT'S REFERENCE/DOCKET NO:

COLRS-026T

CORRESPONDENT E-MAIL ADDRESS:

EXAMINING ATTORNEY'S APPEAL BRIEF

The applicant has appealed the trademark examining attorney's refusal to register the trademark TRUE LOVE COLORS on the ground that it likely to be confused with TRUE LOVE (Reg. Nos. 3,574,133 and 3,574,134,) under Trademark Act Section 2(d), 15 U.S.C. §1052(d).

FACTS

On April 20, 2009, applicant filed for the service mark TRUE LOVE COLORS for "dating services and counseling services, namely, offering advice regarding personal relationships" in what was later amended Class 45. On July 8, 2009, the Office issued an action refusing registration under Trademark Act Section 2(d) because of a likelihood of confusion with TRUE LOVE for "personal coaching services in the fields of dating,

compatibility, social relationships, personal improvement, self-development and self awareness” in Reg. No. 3574133 and TRUE LOVE for “computer dating services; dating services; providing information in the field of self-improvement; video dating services” in Reg. No. 3574134, both owned by TRUEBEGINNINGS, a Texas LLC. Applicant traversed the refusal, and on February 12, 2010, the likelihood of confusion refusal was made final. This appeal ensued.

ISSUE

Whether there is a likelihood of confusion under Trademark Act Section 2(d) between applicant’s mark TRUE LOVE COLORS for “dating services and counseling services, namely, offering advice regarding personal relationships” in Class 45, and registrant’s marks TRUE LOVE for “personal coaching services in the fields of dating, compatibility, social relationships, personal improvement, self-development and self awareness” in Class 45 as shown in Reg. No. 3574133 and the mark TRUE LOVE for “computer dating services; dating services; providing information in the field of self-improvement; video dating services” in Reg. No. 3574134

ARGUMENT

Section 2(d) of the Trademark Act bars registration where a mark so resembles a registered mark, that it is likely, when applied to the services, to cause confusion, or to cause mistake or to deceive. TMEP §1207.01. The Court in *In re E. I. DuPont de*

Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to consider in determining whether there is a likelihood of confusion. Among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression and the similarity of the services. The overriding concern is to prevent buyer confusion as to the source of the services. *Miss Universe, Inc. v. Miss Teen U.S.A., Inc.*, 209 USPQ 698 (N.D. Ga. 1980). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

Due the nature of relatedness of the applicant's and registrant's services, there has not been a substantial discussion considering the nature of the relevant services; nevertheless, it bears repeating that in a likelihood of confusion analysis, the comparison of the parties' services is based on services as they are identified in the application and registration, without limitations or restrictions that are not reflected therein. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1595 (TTAB 1999); see TMEP §1207.01(a)(iii).

In this case, the identification set forth in the cited registrations uses broad wording to describe registrant's services and does not contain any limitations as to nature, type, channels of trade or classes of purchasers. Therefore, it is presumed that the registration encompasses services of the type described, including those in applicant's more specific identification, that services move in all normal channels of trade, and that they are

available to all potential customers. *See In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638-39 (TTAB 2009); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); TMEP §1207.01(a)(iii). That is, applicant's services "dating services and counseling services, namely, offering advice regarding personal relationships" and registrant's services "personal coaching services in the fields of dating, compatibility, social relationships, personal improvement, self-development and self awareness" and "computer dating services; dating services; providing information in the field of self-improvement; video dating services" overlap semantically and in the eyes of the consumer. To use one example from the recitations, there is very little differentiating applicant's services "counseling services, namely, offering advice regarding personal relationships" and registrant's services "personal coaching services in the fields of dating" and thus they must be presumed identical and directly competing.

Turning to the issue of mark comparison, applicant's mark TRUE LOVE COLORS, and registrant's marks, TRUE LOVE, have similarities that overwhelm the differences. In the three marks, the salient, if only element, TRUE LOVE, is the identical. The different elements consist of separable matter added to applicant's mark. The addition of a different element do not serve to establish a different commercial impression in light the strength of the first, if only salient element, TRUE LOVE.

TRUE LOVE may be seen as suggestive in the applicant's and registrant's field. That is, dating counselors hope to entice customers by the suggested end result of the terminology; however, the applicant has not established that the term itself is weak in the

field. There does not seem to be actual proof of any conditioning that would allow one to infer that customers of applicant and registrant can distinguish the source of each other's services through the use of the mark. Applicant incorrectly asserts that the Office concludes that "TRUE" is "the most important part of the mark..."; in fact, the Final Office action goes at great length to establish the unitary nature of TRUE LOVE through a series of Internet attachments. Merely stressing the fact that a salient and perhaps the most prominent portion of applicant's mark, TRUE LOVE COLORS, is TRUE LOVE, which is **identical** to registrant's mark, does not mean that the COLORS part is ignored; what it means simply is that for purposes of likelihood of confusion, it is this element of the entire mark that estops applicant from registrability.

Applicant goes at great length to state that its mark is part of a TRUE COLORS family of marks. Whether one would perceive applicant's mark as part of a family of marks due the formatting in the wording is an open question since TRUE LOVE is a unitary and unbreakable phrase. Nevertheless, if there is a likelihood of confusion, being part of a family of marks would not prevent such confusion. The Trademark Trial and Appeal Board has found that a family-of-marks argument is "not available to an applicant seeking to overcome a likelihood-of-confusion refusal." *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645-46 (TTAB 2009). Specifically, an applicant's ownership of other similar marks has little relevance in this context because the focus of a likelihood-of-confusion analysis in an *ex parte* case is on the mark applicant seeks to register, rather than other marks applicant has used or registered. *In re Cynosure, Inc.*, 90 USPQ2d at 1645-46; *In re Ald, Inc.*, 148 USPQ 520, 521 (TTAB 1965); TMEP §1207.01(d)(xi).

Applicant also states that a “meticulous comparison as expressed in careful weighed analysis in legal briefs” should not trump “the ordinary shoppers’s cursory observation.” Applicant later states that “grammatical differences” should be taken into account in distinguishing the marks. Applicant states that the component TRUE LOVE consists of adjectives whereas that is not the case for registrant’s mark. It is unclear how a “cursory observation” on the part of the consumers would allow them to distinguish the grammatical syntax between the marks: that the TRUE LOVE in applicant’s mark consists of adjectives and that the TRUE LOVE in registrant’s mark does not consist of adjectives. However, it does appear that applicant is perhaps a tad too meticulous in its observations. How one is supposed to determine what the noun portion of the mark is in TRUE LOVE COLORS? Could TRUE LOVE be seen as “noun phrase” portion and COLORS as the adjective similar in style to COCA COLA LIGHT? Ultimately, as applicant correctly asserts, consumers would render judgment on the comparison of the marks on their own personal observations. In this sense, most everybody is familiar with the terminology TRUE LOVE and it is this element that would capture the imagination of the consumers and not the odd dissection of that applicant argues.

CONCLUSION

For the foregoing reasons, the refusal to register on the basis of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), for the reason that applicant’s mark TRUE LOVE COLORS for “dating services and counseling services, namely, offering advice regarding

personal relationships” in Class 45, so resembles registrant’s marks TRUE LOVE for “personal coaching services in the fields of dating, compatibility, social relationships, personal improvement, self-development and self awareness” in Class 45 as shown in Reg. No. 3574133 and the mark TRUE LOVE for “computer dating services; dating services; providing information in the field of self-improvement; video dating services” in Reg. No. 3574134 should be affirmed.

Respectfully submitted,

/RaulCordova/
Law Office 114
571-272-9448
Rightfax 571-273-9448

K. Margaret Le
Managing Attorney
Law Office 114