

This Opinion is not a
Precedent of the TTAB

Mailed: November 15, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Q'Sai Co., Ltd.
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Serial No. 79157321
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Randolph E. Digges, III of Rankin Hill & Clark LLP,
for Q'Sai Co., Ltd.

Jonathan R. Falk, Law Office 111,
Robert L. Lorenzo, Managing Attorney.
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Before Zervas, Ritchie, and Shaw,
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Q'Sai Co., Ltd. ("Applicant") seeks registration on the Principal Register of the mark Q'SAI,¹ in standard character format, for "non-alcoholic fruit extracts used in the preparation of beverages; non-alcoholic fruit juice beverages; non-carbonated, non-alcoholic frozen flavored beverages; syrups for making non-alcoholic beverages; beauty beverages, namely, fruit juices for energy supply; concentrated fruit juice;

¹ Application Serial No. 79157321 was filed on August 11, 2014, under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), claiming priority from International Registration No. 1050819, registered May 14, 2010. The application contains a translation statement: The wording "Q'SAI" has no meaning in a foreign language.

concentrates for making fruit juices; fruit drinks and fruit juices; fruit drinks and juices; fruit juice; fruit juice concentrates; fruit juices; fruit juices and fruit drinks; apple juice; grape juice; non-alcoholic beverages containing fruit juices; syrups for making whey-based beverages; whey beverages; prepared entrees consisting of fruit drinks and fruit juices, fruit-based beverages, non-alcoholic beverages containing fruit juices, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, vegetable juices, vegetable-fruit juices and smoothies being fruit beverages with fruit predominating; vegetable juice beverage; vegetable juices being beverages; vegetable-fruit juices,” in International Class 32.

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that when applied to the identified goods, it so resembles the previously registered mark

sai

(hereinafter “SAI”),² also in standard character format, for “mineral supplements; beverages containing platinum for use as a mineral supplement; mineral supplements in the nature of beverages adapted for medical use; liquid mineral supplements,” in International Class 5 and “soft drinks, namely, non-carbonated soft drinks; beauty beverages, namely, energy drinks containing mineral supplements,” in International Class 32, as to be likely to cause confusion, mistake, or to deceive.

² Registration No. 4822907 issued September 29, 2015. The registration contains a translation statement: The wording “SAI” has no meaning in a foreign language.

When the refusal was made final, Applicant filed this appeal, which is fully briefed. For the reasons discussed below, we reverse the refusal to register.

Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). We first consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In comparing the marks, we are mindful that the test is not whether they can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd mem.*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *See Inter IKEA Sys. V.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014); *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The mark in the cited registration is SAI. Applicant's mark is Q'SAI. Although the mark in the cited registration is incorporated-in-full in Applicant's mark, Applicant argues that the marks look different, would be pronounced differently, and that they are very different in commercial impression. Regarding the appearance of the marks, our precedent dictates, that "it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered." *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). We find that here, the letter "Q" and apostrophe in Applicant's mark are prominent and cannot be discounted. Thus the appearances of the marks are distinct.

Regarding the pronunciation, our case law dictates that there is no correct pronunciation of a trademark. *StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1651 (Fed. Cir. 2014) ("There is no correct pronunciation of a trademark that is not a recognized word.") (citing *In re Belgrade Shoe Co.*, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969)); *In re Allegiance Staffing*, 115 USPQ2d 1319, 1325 (TTAB 2015) (no correct pronunciation of mark that is coined term). We agree with Applicant, nonetheless, that the letter "Q" in Applicant's mark differentiates the sound of Applicant's mark from the cited mark, at the very least adding an additional syllable.

Regarding commercial impression, Applicant asserts that there is a dictionary definition of the term "SAI." We take judicial notice of the following English language definition: "a dagger with two sharp prongs curving outward from the hilt, originating

in Okinawa and sometimes used in pairs in martial arts. Origin: Japanese.”³ Applicant further submitted the declaration of Shinji Yamashita, Applicant’s General Manager of Human Resources and General Affairs Department, dated October 19, 2016. Mr. Yamashita gave the following testimony regarding the origin of Applicant’s mark:

Applicant’s Q’SAI mark is an arbitrary, fanciful and distinctive term, which was derived from Applicant’s fifty year history. In October of 1965, Hasegawa Tsuneo founded a confectionary company in Japan. The confectionary company later became involved with the production of frozen vegetables and changed its name to Kyushu Shizen Yasai Co., Ltd. The “Kyu” portion of “Kyushu” sounds like the letter “Q” when spoken aloud. And the word “Yasai” (which means “vegetable”) in the Japanese language) provides the impetus for the “SAI” part of the applied for mark. In 1982, the company started production and sales of a kale-based dietary/food/nutritional supplement in Japan. The product was marketed in Japan using the mark [Japanese character] (which is Japanese lettering for Q’SAI.⁴

The letter “Q” in applicant’s mark has no meaning when added to the term “SAI,” nor does the term “Q’SAI” as a whole have any meaning. Thus, Applicant’s mark is a coined term, whereas the mark in the cited registration has a meaning in English. The marks thus have substantially different commercial impressions. *See In re General Electric Co*, 304 F.2d 688, 134 USPQ 190, 192 (CCPA 1962). Based on the differences in sight, sound, meaning and commercial impressions, we find that the marks are substantially dissimilar.

Because we find that the dissimilarity of the marks makes it unlikely for confusion to result from Applicant’s use of its mark, we need not discuss the other *du Pont*

³ <https://en.oxforddictionaries.com>.

⁴ Attached to Applicant’s October 20, 2015 Response to Office Action, at 6-7.

factors. *See Kellogg Co. v. Pack'Em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single *du Pont* factor may not be dispositive.”) There is no likelihood of confusion.

Decision: The refusal to register Applicant’s mark is reversed.