

**THIS OPINION IS NOT A
PRECEDENT OF
THE T.T.A.B.**

Mailed: December 8, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Eaton Corp.

Serial No. 85030456

Daniel S. Kalka, Esq. for Eaton Corp.

William T. Verhosek, Trademark Examining Attorney, Law
Office 114 (K. Margaret Le, Managing Attorney).

Before Quinn, Zervas and Cataldo,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

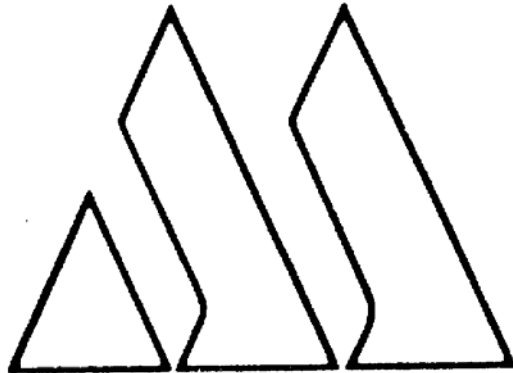
Applicant, Eaton Corp., seeks registration on the
Principal Register for the standard character mark MLOCKER
for "land vehicle differential" in International Class 12.¹

Registration has been finally refused pursuant to
Trademark Act §2(d), 15 U.S.C. §1052(d), on the ground that

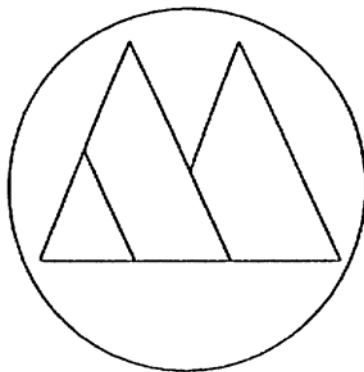
¹ Application Serial No. 85030456 was filed May 5, 2010 based
upon applicant's assertion of its bona fide intent to use the
mark in commerce.

Ser. No. 85030456

applicant's mark so resembles the marks shown below in
Registration No. 2327919,²



and Registration No. 2327940,³



both owned by the same entity and reciting a wide variety
of automotive goods including "differential carrier
assemblies, differentials and parts thereof" in
International Class 12, as to be likely, if used on or in
connection with the identified goods, to cause confusion,
to cause mistake, or to deceive. Applicant and the

² Issued on March 14, 2000. Section 8 affidavit accepted;
Section 15 affidavit acknowledged. Renewed.

³ Issued on March 14, 2000. Section 8 affidavit accepted;
Section 15 affidavit acknowledged. Renewed.

examining attorney have filed main briefs on the issue under appeal, and applicant filed a reply brief.

Likelihood of Confusion

Our determination under Trademark Act §2(d) is based upon 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 Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., 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).

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 [or services] 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 cases cited therein.

We review the relevant *du Pont* factors as they apply to this case.

The Goods and Trade Channels

Turning to our consideration of the recited goods, we observe that the "land vehicle differential" in the application and the "differential carrier assemblies, differentials and parts thereof" in the cited registrations appear on the face of their identifications to be closely related, if not legally identical. Specifically, registrant's "differentials and parts thereof" encompass applicant's more narrowly identified "land vehicle differential." Further, registrant's "differential carrier assemblies" encompass land vehicle differential carrier assemblies and thus are related to applicant's "land vehicle differential." We note in addition that applicant does not dispute that its goods are related to those of registrant.

Because the goods are identical and/or closely related and there are no restrictions as to their channels of trade or classes of purchasers, we must assume that the goods are, or will be, sold in all the normal channels of trade to all the usual purchasers for such goods, and that the channels of trade and the purchasers for applicant's and registrant's goods would be the same. *See Interstate*

Brands Corp. v. McKee Foods Corp., 53 USPQ2d 1910 (TTAB 2000). For that reason, we are not persuaded by applicant's argument that its goods will travel in narrowly defined channels of trade.⁴

Sophistication of Consumers

Applicant further argues that the involved goods would be purchased solely by sophisticated consumers. i.e., "extremely knowledgeable mechanics who know the products, their specifications and installation of such products."⁵ Even assuming the identification inherently conveys this meaning, there is nothing in the record to support a finding that the goods and purchasing process are of such a nature that purchasers could distinguish marks that are found to be highly similar for legally identical or closely related goods. See, e.g., *Electronic Design & Sales, Inc. v. Electronic Data Sys. Corp.*, 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992) (record confirms that opposer's services are expensive and are purchased only by experienced

⁴ We note that applicant submitted a link to its Internet website with its brief in support of its position that its goods travel in narrow channels of trade. The examining attorney is correct that to the extent this link is intended to serve as evidence, it is untimely. Trademark Rule 2.142(d). Moreover and as discussed above, we look to the identification of goods in the subject application for any recited limitations to the channels of trade therefor. See *Interstate Brands Corp. v. McKee Foods Corp.*, *supra*.

⁵ Applicant's brief, p. 5.

corporate officials after significant study and contractual negotiation and that the evaluation process used in selecting applicant's products requires significant knowledge and scrutiny). As is frequently stated, even if consumers are knowledgeable in a particular field that does not necessarily mean that they are immune from source confusion. *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988).

The Marks

We turn then to the *du Pont* factor to which the applicant and examining attorney have devoted most of their arguments, namely, the similarities or dissimilarities between applicant's mark and those of registrant. In coming to our determination, we must compare the marks in their entireties as to appearance, sound, connotation and commercial impression. *See Palm Bay Imports, supra*. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the goods offered under the respective marks is likely to result. In making our determination, we bear in mind that, "[w]hen marks would appear on virtually identical ... [goods or] services, the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." *See Century 21*

Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992), cert. denied, 506 U.S. 1034 (1994). See also *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443, 449 (TTAB 1980).

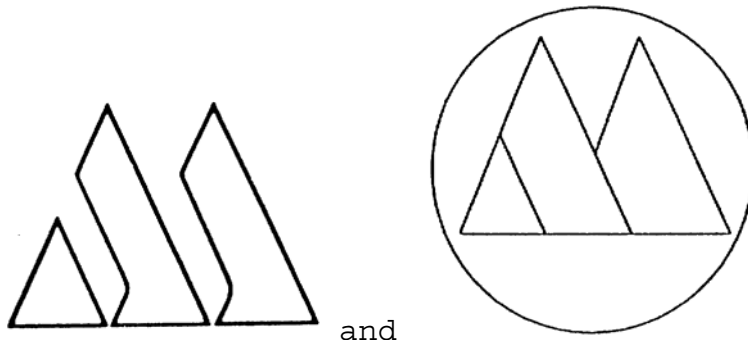
The examining attorney argues that "applicant's mark in standard characters, MLOCKER, is legally identical to registrant's stylized marks, M and M with circle design.⁶ In support of his position, the examining attorney made of record with his Office actions copies of third-party registrations and prior registrations owned by applicant for goods similar to those in the involved application in which the term LOCKER is disclaimed; and printouts from Internet webpages in which the term LOCKER is used to describe a feature or characteristic of differentials. As a result, the examining attorney argues "the applicant's addition of the generic term LOCKER is of minor significance when looking at the overall commercial impression. The dominant portion of applicant's and registrant's marks is the letter M."⁷

We observe, however, that even if we view registrant's marks as consisting solely of a stylized letter M, these

⁶ Examining attorney's brief, unnumbered page 4.

⁷ Id. at 8.

marks differ sharply from applicant's MLOCKER mark in appearance and sound. Notwithstanding the weakness of the term in connection with the goods, LOCKER contributes to both the visual and aural impression created by applicant's MLOCKER mark. Furthermore, the marks in the cited registrations consist of highly stylized letter designs, as shown below:



and thus include characteristics of both design and word marks. As stated by our principal reviewing court:

There is no general rule as to whether letters or design will dominate in composite marks ... the spoken or vocalized element of a design mark, taken without the design, need not of itself serve to distinguish the goods. The nature of stylized letter marks is that they partake of both visual and oral indicia, and both must be weighed in the context in which they occur. ... "It must be remembered that [registrant's] trademark consists of highly stylized letters and is therefore in the gray region between pure design marks which cannot be vocalized and word marks which are clearly intended to be." In Georgia-Pacific the court observed that even if the letter portion of a design mark could be vocalized, that was not dispositive of whether there would be likelihood of confusion. A design

is viewed, not spoken, and a stylized letter design can not be treated simply as a word mark.

In re Electrolyte Laboratories Inc., 913 F.2d 930, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) quoting *Georgia-Pacific Corp. v. Great Plains Bag Co.*, 614 F.2d 757, 760, 204 USPQ 697, 699 (CCPA 1980).

In this case, the degree of stylization in registrant's marks in which the letter M is comprised solely of various geometric shapes, is so high that they are more akin to design marks rather than simply stylized displays of the letter "M" as the examining attorney argues. See *In re TSI Brands Inc.*, 67 USPQ2d 1657 (TTAB 2002). Considering the marks in their entireties we find that registrant's marks are so highly stylized that they project the image of design marks and the letter takes on its significance only by reference to registrant's trade name Mohawk Manufacturing & Supply Co., Inc. Id. at 1663. In contrast, the significance of applicant's mark is focused on the letters MLOCKER in standard characters, notwithstanding the weakness of LOCKER in relation to the goods. Thus, we find that the marks are not so similar in sound, appearance, connotation or commercial impression, that, merely because such marks share the letter M, confusion as to origin or association is likely. Id.

In view thereof, even considering the relatedness of the goods, we believe that applicant's MLOCKER mark is not so similar to registrant's marks that the contemporaneous use of the respective marks in connection with legally identical or closely related goods is likely to cause confusion.

Based upon the foregoing, we find that the dissimilarities between applicant's mark and the marks in the cited registrations outweigh the similarities. Thus, the first *du Pont* factor regarding the dissimilarity of the marks strongly favors applicant. Moreover, we find this factor is determinative and, despite the legal identity of the goods, we conclude that the marks are sufficiently dissimilar that confusion is not likely between applicant's mark and the marks in the cited registrations.

Decision: The refusal to register is reversed.