

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: February 9, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Fivepals, LLC*  
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Serial No. 85924540  
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Robert W. Clarida of Reitler Kailas & Rosenblatt, LLC,  
for Fivepals, LLC.

Laurie A. Mayes, Trademark Examining Attorney, Law Office 101,  
Ronald R. Sussman, Managing Attorney.

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Before Bergsman, Lykos and Adlin,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Fivepals, LLC (“Applicant”) seeks registration on the Principal Register of the  
mark ALICE (in standard characters) for

Mobile communication downloadable software platform  
allowing hotel customers to remotely access and reserve  
hotel services through smartphones, and allowing hotels  
to track and analyze customer preferences and  
characteristics, in International Class 9.<sup>1</sup>

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<sup>1</sup> Application Serial No. 85924540 was filed on March 22, 2013, based upon Applicant’s  
allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the  
Trademark Act.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the registered mark KATIE ALICE (standard characters) for, inter alia, the services set forth below, as to be likely to cause confusion.

Hotel reservation services; restaurant reservation services; hotel restaurant reservation services; on-line booking of restaurant places (seats), including hotel restaurant places (seats); information about restaurants provided on-line from a computer data base or from the Internet; restaurant menus, including hotel restaurant menus; provided on-line from a computer data base or from the Internet; telephone booking services in respect of restaurants and hotel restaurants; information, advice and consultancy services in respect of the above; providing information via a global computer network in relation to the aforesaid services, in International Class 43.<sup>2</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal resumed. 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 issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the

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<sup>2</sup> Registration No. 4516830, issued April 22, 2014. The registration issued under the provisions of Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a).

similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

*A. The similarity or dissimilarity and nature of the goods and services.*

Applicant describes its products as follows:

**Access of the services provided by a hotel through our mobile platform**

ALICE makes it easy for hotel guests to better manage their stay and make the most of their trip.<sup>3</sup>

Thus, Applicant’s mark is intended for use in connection with a mobile application through which hotel customers make reservations for hotel services while the Registrant’s mark is registered for making online reservations at hotel restaurants and providing online information about hotel services. These services are essentially the same and, for our purposes, legally identical.<sup>4</sup>

Under this *du Pont* factor, the Trademark Examining Attorney need not prove, and we need not find, similarity as to each and every product and service listed in the description of goods and services. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods or services in a particular class in the application. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB

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<sup>3</sup> Applicant’s specimen of use attached to Applicant’s February 20, 2014 Response.

<sup>4</sup> Applicant, in its brief, did not deny that the goods and services are related.

2014); *General Mills Inc. v. Fage Dairy Processing Industry SA*, 100 USPQ2d 1584, 1588 n.1 (TTAB 2011), *judgment set aside on other grounds*, 2014 WL 343267 (TTAB Jan. 22, 2014); *Apple Computer v. TVNET.Net, Inc.*, 90 USPQ2d 1393, 1397 (TTAB 2007).

*B. Established, likely-to-continue channels of trade.*

Because the goods described in the application and the services described in the cited registration are in part legally identical, we must presume that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011).

*C. The similarity or dissimilarity of the marks.*

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 357, 177 USPQ at 567. In a particular case, “two marks may be found to be confusingly similar if there are sufficient similarities in terms of sound *or* visual appearance *or* connotation.” *Kabushiki Kaisha Hattori Seiko v. Satellite Int’l, Ltd.*, 29 USPQ2d

1317, 1318 (TTAB 1991), *aff'd mem.*, 979 F.2d 216 (Fed. Cir. 1992) (citation omitted). *See also Eveready Battery Co. v. Green Planet Inc.*, 91 USPQ2d 1511, 1519 (TTAB 2009) (citing *Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”)).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs. Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1721. *See also 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.*, 972 F.2d 1353 (Fed. Cir. 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Based on the goods and services, the average customer is an ordinary consumer.

The marks ALICE and KATIE ALICE are similar in that they share the name “Alice.” However, when considered in their entirety, we find that ALICE and KATIE ALICE are more dissimilar than they are similar because they are two distinct names. Potential purchasers are likely to differentiate between “Alice” and

“Katie Alice,” a personal name composed of two given names. (e.g., Mary Anne, Sarah Jane, Peggy Sue, etc.).

The Trademark Examining Attorney argues that “it appears that the applicant merely deleted the other female name, ‘Katie,’ from the registered mark.”<sup>5</sup> We disagree. As indicated above, KATIE ALICE is a double given name and, as such, it is a unitary mark which consumers will not dissect into its component parts. Because KATIE ALICE and ALICE are distinct names, the marks create different commercial impressions.

To the extent that consumers will focus on one part of Registrant’s mark, they will focus on the name Katie because consumers generally notice and remember the first part of the mark. *See Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word); *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”).

In view of the foregoing, we find that the marks are different in appearance, sound, connotation and commercial impression.

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<sup>5</sup> 10 TTABVUE 6.

*D. Balancing the factors.*

Despite the in part legal identity of the goods and services and the presumption that the goods and services move in the same channels of trade, because the marks are dissimilar, we find that Applicant's mark ALICE for "mobile communication downloadable software platform allowing hotel customers to remotely access and reserve hotel services through smartphones, and allowing hotels to track and analyze customer preferences and characteristics" is not likely to cause confusion with the mark KATIE ALICE for, *inter alia*, for "hotel reservation services; restaurant reservation services; hotel restaurant reservation services; on-line booking of restaurant places (seats), including hotel restaurant places (seats); information about restaurants provided on-line from a computer data base or from the Internet; restaurant menus, including hotel restaurant menus; provided on-line from a computer data base or from the Internet; telephone booking services in respect of restaurants and hotel restaurants; information, advice and consultancy services in respect of the above; providing information via a global computer network in relation to the aforesaid services." *See Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (a single factor or element in the confusion analysis may, from case to case, play a dominant role).

**Decision:** The refusal to register Applicant's mark ALICE is reversed.