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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86047553
Applicant	Belron Hungary Kft. - Zug Branch
Applied for Mark	AUTORESTORE
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of:	
Applicant:	Belron Hungary Kft - Zug Branch
Mark:	AUTORESTORE (and Design)
Trademark Application Serial No.	86/047,553
Filing Date:	August 26, 2013
Examining Attorney:	Hai-Ly Lam

Commissioner of Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

APPLICANT'S REPLY BRIEF (37 CFR § 2.142(b))

I. INTRODUCTION

Applicant, Belron Hungary Kft – Zug Branch, appealed the Examining Attorney's refusal to register Serial Number 86/047,553 for the AUTORESTORE (and Design) mark:

in connection with Class 37 services for "automobile dent, scratch and chip repair" ("the Mark"). In response to the Examining Attorney's Appeal Brief mailed November 18, 2014 (the "Examining Attorney's Brief"), Applicant reasserts its position that the Examining Attorney has failed to prove that a likelihood of confusion exists with BowTie, Inc.'s ("BowTie") U.S.

Registration No. 3,623,001 for the AUTO RESTORER mark registered in connection with Class 37 services for "providing online information and news in the field of vehicle repair, maintenance, rebuilding, customization, detailing and cleaning" (the "Cited Mark"). Applicant also maintains that a disclaimer of the wording "auto restore" apart from the Mark as shown is not warranted. Applicant submits this Reply Brief in support of its right to obtain a registration for the Mark.

II. EXAMINING ATTORNEY OBJECTION TO APPLICANT'S EVIDENCE

Applicant respectfully requests that the Board take judicial notice of the dictionary definitions and screenshots found in Exhibits A-C of the Applicant's Appeal Brief and objected to by the Examining Attorney. "The Board may take judicial notice of definitions from printed dictionaries, even if they are not made of record by the applicant or examining attorney prior to appeal." TBMP §§ 710.01(c) (citing *In re Dodd International, Inc.*, 222 USPQ 268 (TTAB 1983); *In re Canron, Inc.*, 219 USPQ 820 (TTAB 1983); TBMP §1208.04). Applicant submits that the Exhibits showing screenshots of the dictionaries relied on and the specific entries are adequate for the Board to determine the reliability of the evidence.

III. DISCUSSION

A. SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

In the Examining Attorney's Brief, the Examining Attorney argued that there is a likelihood of confusion between the Mark and the Cited Mark because of three factors, similarity of the marks, similarity of the services, and similarity of the trade channels. In support of her argument, the Examining Attorney relied on several cases, third party registrations, and third party websites.

i. The Marks and Services are Not Substantially Similar

In support of her argument that there is a likelihood of confusion, the Examining Attorney cited to multiple cases where the Board's decision weighed heavily on the confusing similarity between the goods or services. However, these cases are distinguishable from the present case involving the Mark and the Cited Mark.

The Examining Attorney cited *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, where the Board found that COMMCASH, used in connection with "banking services," was confusingly similar to COMMUNICASH, used in connection with "banking services." 228 USPQ 689, 690-91 (TTAB 1986), aff'd sub nom. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n,* 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987). The Board in *Canadian Imperial* explained, "[s]ince we find that "COMMCASH" and "COMMUNICASH" are similar in appearance, sound and meaning and since the marks are used in connection with *identical banking services* which are presumed to be banking services rendered to all ordinary bank customers, we conclude that source confusion is likely." *Id.* (emphasis added). Accordingly, the identity of services was a critical factor in the decision reached by the Board in *Canadian Imperial*. In the present case, however, the Cited Mark and the Mark are used in connection with distinctly different services. Therefore, the reasoning of the *Canadian Imperial* decision weighs in favor of a conclusion that there is no likelihood of confusion between the Cited Mark and the Mark.

The Examining Attorney also cited *In re Pellerin Milnor Corp.*, in which the board found the mark "MILTRON" for a "microprocessor for controlling and programming the operation of a commercial laundry washing and drying machine and sold as part thereof" to be confusingly similar to the stylized mark "MILLTRONICS" for "electronic control devices for automatically

regulating or controlling the operation of machinery." 221 USPQ 558, 560 (TTAB 1983). In determining that the marks were confusingly similar the Board stated that, "it seems clear that applicant's goods are encompassed with the identification of goods in the cited registration." *Id.* At 559. As in *Canadian Imperial*, an identity of services was a critical factor in the decision reached by the Board in *In re Pellerin Milnor Corp.* In the present case, the Mark's services, "automobile dent, scratch and chip repair" are not encompassed in the Cited Mark's services, "providing online information and news in the field of vehicle repair, maintenance, rebuilding, customization, detailing and cleaning." The Cited Mark and the Mark are used in connection with distinctly different services. Therefore, the reasoning of the *In re Pellerin Milnor Corp.* decision also weighs in favor of a conclusion that there is no likelihood of confusion between the Cited Mark and the Mark.

The Examining Attorney also relied on third-party registrations and websites in support of her position that the services associated with the Cited Mark are closely related to the services associated with the Mark. The Examining Attorney cited to thirteen third-party registrations in support of the argument that the Cited Mark and the Mark's services are "of a kind that may emanate from a single source under a single mark." However, a close analysis of all thirteen third-party registrations shows that in every case cited by the Examining Attorney, the automobile repair services and the information and news services have the same date of first use for both services. In the present case, the Cited Mark has been in use with information and news services since 1999. The Cited Mark is not and has never been used in connection with in person repair services, which are the essence of the services associated with the Mark. In addition, none of the third-party registrations cited by the Examining Attorney show that a business providing only information and news services is likely to be perceived by consumers as also providing, or

as likely to start providing, in person repair services. Rather, every third-party registration cited by the Examining Attorney shows that when vehicle repair services are offered, the source of such services sometimes offers information and news services to attract customers and to advertise their repair services.

The websites cited by the Examining Attorney also are not probative of the relatedness of the services. The websites cited by the Examining Attorney are for repair businesses advertising their services, not businesses exclusively providing information and news services through a website. "The connection between the specific [services] at issue here too attenuated. This [third-party] evidence falls far short of showing that the circumstances surrounding the marketing of the respective [services] would result in relevant purchasers mistakenly believing that the [services] originate from the same source when the same mark is used on both types of [services]." *In re Princeton Tectonics Inc.*, 95 USPQ2d 1509, 1511 (TTAB 2010) (finding no likelihood of confusion between the standard character mark EPIC for "personal headlamps" and the standard character mark EPIC for "electric lighting fixtures").

Further, the fact that Applicant's services and the services of the owner of the Cited Mark broadly relate to the same genus, automobiles, does not make them substantially similar services for purposes of the likelihood of confusion analysis. *See, e.g., In re White Rock Distilleries, Inc.*, 92 USPQ2d 1282, 1285 (TTAB 2009) (not all alcoholic beverages are related); *Information Resources, Inc. v. X*Press Information Services*, 6 USPQ2d 1034, 1037, 1039 (TTAB 1988) (not all computer products are related); *In re August Storck KG*, 218 USPQ 823, 825 (TTAB 1983) (not all food products are related).

ii. The Channels of Trade are Not the Same

The Examining Attorney further argues that a lack of restriction as the nature, type, channels of trade, or classes of purchases creates a presumption that these services "travel in the same channels of trade to the same class of purchasers." However, this presumption can be overcome, and in this case is overcome, by the differences in the descriptions of services for the Cited Mark and the Mark. See *In re HerbalScience Group LLC*, 96 USPQ2d 1321, 1324 (TTAB 2010). The descriptions of services show that the two marks are marketed and sold to different relevant persons. The Applicant is primarily in the business of minor automobile repairs in person. The relevant consumers likely to purchase the services the Applicant offers in connection with its AUTORESTORE and Design mark will consist of typical automobile owners who use their cars for transportation and not the automobile enthusiasts and restorers to whom the information and news services offered under the Cited Mark are directed.

For all of the reasons set forth herein and in Applicant's Appeal Brief, Applicant respectfully requests that the §2(d) refusal be reversed.

B. DISCLAIMER

For the reasons set forth in Applicant's Appeal Brief, Applicant respectfully submits that the word "autorestore" as used in the Mark is suggestive and not descriptive. The word "autorestore" does not convey an immediate idea of the ingredients, qualities or characteristics of Applicant's "automobile dent, scratch and chip repair" services. Accordingly, Applicant respectfully requests that the Application move forward to registration without a disclaimer of the terms "auto" and "restore."

IV. CONCLUSION

Based upon the foregoing remarks, evidence and discussion, Applicant respectfully submits that the Examining Attorney's refusal should be reversed.

Respectfully submitted,

/thomasawalsh/

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Date: December 8, 2014

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INDEX OF CITED CASES

1. *In re Dodd International, Inc.*, 222 USPQ 268 (TTAB 1983)
2. *In re Canron, Inc.*, 219 USPQ 820 (TTAB 1983)
3. *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), aff'd sub nom. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n,* 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987)
4. *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983)
5. *In re Princeton Tectonics Inc.*, 95 USPQ2d 1509, 1511 (TTAB 2010)
6. *In re White Rock Distilleries, Inc.*, 92 USPQ2d 1282, 1285 (TTAB 2009)
7. *Information Resources, Inc. v. X*Press Information Services*, 6 USPQ2d 1034, 1037, 1039 (TTAB 1988)
8. *In re August Storck KG*, 218 USPQ 823, 825 (TTAB 1983)
9. *In re HerbalScience Group LLC*, 96 USPQ2d 1321, 1324 (TTAB 2010)

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