

This Opinion is not a
Precedent of the TTAB

Mailed: July 6, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Touratech AG

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Serial No. 86288721

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Matthew Shaheen of Tarolli Sundheim Covell & Tummino LLP,
for Touratech AG.

Bridgett G. Smith, Trademark Examining Attorney, Law Office 115,
John Lincoski, Managing Attorney.

—
Before Wellington, Ritchie and Kuczma,
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Touratech AG (“Applicant”) seeks registration on the Principal Register of the
mark **DriRide** (in standard characters) for:

Motorcycle parts and accessories for travel, rallies and sports, namely, fuel tanks, shock absorbers, suspension springs and suspension struts, exhaust pipes for motorcycles, exhaust silencers for engines, clutches, brakes and brake cables, handlebars, hand guards, mudguards, splash guards, spoilers, bodywork for motorcycles, namely moldings and windshield screens, seats, luggage racks and luggage carriers, map holders, road-book holders, crash bars, sump guards, windshields, motorcycle bags and cases, namely saddle bags, saddle cases, motorcycle

panniers in the nature of aluminum storage boxes, tank bags and tail bags in International Class 12; and

Arranging and conducting motorcycle travel tours for others; motorcycle rental in International Class 39.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052 (d), based on a likelihood of confusion with the following two registered marks:

Registration No. 1044225²

Owner: Neese Industries, Incorporated

Mark:



Goods: outer clothing-namely, wind-resistant and water repellent jackets and trousers in International Class 25.

Registration No. 4516899³

Owner: McLeod Accessories Pty. Ltd.

Mark: DRIRIDER (in standard characters)

Goods: Clothing for motorcyclists, namely, jackets, pants, coats, gloves; motorcyclists footwear, namely, boots;

¹ Application Serial No. 86288721 was filed on May 22, 2014, based upon Applicant's allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051. The application also contains goods in International Class 16 which were not subject to the refusal to register.

² Registration No. 1044225 issued on July 20, 1976; renewed; mark amended as shown above on February 10, 1998. The word "Dry" is disclaimed.

³ Registration No. 4516899 issued on April 22, 2014, under Section 44(e), 15 U.S.C. § 1126(e).

underwear, t-shirts, long-sleeve t-shirts, jeans, long johns, long-sleeve tops; motorcyclists headgear, namely, balaclavas; wet-weather clothing, footwear, headgear for motorcyclists, namely, wet-weather jackets, raincoats, motorcycle rainsuits, rain trousers, wet-weather boots, rain boots, balaclavas designed for use in wet weather in International Class 25.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

I. Likelihood of Confusion

Our determination under § 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *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.”). Additionally, we consider the channels of trade and the sophistication of the purchasers. “Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010).

A. Similarity of Marks as to appearance/sound/meaning/commercial impression

We consider the first *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re Viterra Inc.*, 101 USPQ2d at 1908; *du Pont*, 177 USPQ at 567.

For purposes of our *du Pont* analysis, we focus on Registration No. 4516899 (DRIRIDER) which we find to be the most relevant of the cited registrations in terms of the marks themselves and the relatedness of the goods. Accordingly, if we find a likelihood of confusion as to this cited registration, we need not find it as to Registration No. 1044225. On the other hand, if we do not reach that conclusion, neither would we find it as to Registration No. 1044225. *See In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

The marks are extremely similar visually; Applicant has essentially adopted the registered mark dropping the last letter -R. Applicant's mark DriRide is also similar in sound to Registrant's DRIRIDER mark. The only difference between Applicant's mark and the cited mark is the addition of the letter "R" found at the end of the cited mark. This similarity in the overall sound of the marks is significant as similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *See RE/MAX of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980) (REMACS and RE/MAX indistinguishable in sound); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469, 471 (TTAB 1975) (FINGER•MAGIC and RINGA•MAJIGS are substantially similar phonetically); *In re Chesebrough-Pond's Inc.*, 161 USPQ 310, 311 (TTAB 1969) (CRÈME LE HOT and O-LI-HOT look alike and sound very much

alike). Moreover, the addition of the letter “R” at the end of the cited mark merely changes the verb “ride” in Applicant’s mark to “rider” meaning “[o]ne that rides...”.⁴ In the context of the involved goods and services, the marks have extremely similar, if not identical, meanings inasmuch as they are suggestive of protection from the elements while riding motorcycles. Applicant’s motorcycle accessories, *e.g.*, hand guards, mudguards, splash guards, spoilers, bodywork for motorcycles, namely moldings and windshield screens, may provide a “dry ride” for motorcyclists; likewise, Registrant’s goods are specifically described as providing protection against inclement weather, *i.e.*, “wet-weather clothing, footwear, headgear for motorcyclists, namely, wet-weather jackets, raincoats, motorcycle rainsuits, rain trousers, wet-weather boots, rain boots, balaclavas designed for use in wet weather.”

We find that Applicant’s mark DriRide is extremely similar to the registered mark DRIRIDER in sight, sound, connotation and commercial impression. Moreover, Applicant admits that the marks are similar.⁵ This *du Pont* factor thus strongly favors a likelihood of confusion.

⁴ <http://www.thefreedictionary.com/rider>. American Heritage® Dictionary of the English Language, Fifth Edition. Copyright © 2011 by Houghton Mifflin Harcourt Publishing Company. Accessed June 1, 2016. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

⁵ Applicant’s Brief p. 5 (4 TTABVUE 6).

B. Similarity of goods and services and channels of trade

We turn next to the *du Pont* factor involving the similarity or dissimilarity of Applicant's goods and services, "motorcycle parts and accessories for travel, rallies and sports"⁶ and "arranging and conducting motorcycle travel tours for others; motorcycle rental," in relation to the goods in the cited registration for DRIRIDER for "clothing for motorcyclists."⁷ Applicant contends that its goods and services are "dissimilar in nature" to Registrant's goods.⁸ However, Applicant admits that its products and services, and Registrant's goods (clothing, boots, jackets, etc.) which are "worn by motorcyclists," are connected "in their relation to motorcycling in general."⁹

To support the relatedness of the goods and services identified above, the Trademark Examining Attorney submitted copies of webpages showing goods similar to those in the application and cited Registration No. 4516899, *i.e.*, motorcycle parts and motorcycle clothing offered for sale in conjunction with one another in the same

⁶ Namely, fuel tanks, shock absorbers, suspension springs and suspension struts, exhaust pipes for motorcycles, exhaust silencers for engines, clutches, brakes and brake cables, handlebars, hand guards, mudguards, splash guards, spoilers, bodywork for motorcycles, namely moldings and windshield screens, seats, luggage racks and luggage carriers, map holders, road-book holders, crash bars, sump guards, windshields, motorcycle bags and cases, namely saddle bags, saddle cases, motorcycle panniers in the nature of aluminum storage boxes, tank bags and tail bags.

⁷ Namely, jackets, pants, coats, gloves; motorcyclists footwear, namely, boots; underwear, t-shirts, long-sleeve t-shirts, jeans, long johns, long-sleeve tops; motorcyclists headgear, namely, balaclavas; wet-weather clothing, footwear, headgear for motorcyclists, namely, wet-weather jackets, raincoats, motorcycle rainsuits, rain trousers, wet-weather boots, rain boots, balaclavas designed for use in wet weather.

⁸ Applicant's Brief p. 6 (4 TTABVUE 7).

⁹ Applicant's Brief p. 6 (4 TTABVUE 7).

channel of trade.¹⁰ In addition, she submitted a copy of third-party Registration No. 2151644, which covers aftermarket motorcycle products similar to Applicant’s products¹¹ and clothing items¹² similar to those covered in cited Registration No. 4516899:

Registration No.	Mark	Goods/Services
2151644	MUZZY	<p>Class 12: aftermarket products for motorcycles, namely, exhaust systems comprising manifolds, exhaust pipes, tail pipes and mufflers; brake lines, clutch lines; swing arm lugs; race stands; steering brackets; fork springs; structural parts; and cams</p> <p>Class 25: clothing, namely, hats and shirts sold at motorcycle racetracks and through catalogs circulated to motorcycle dealerships</p>

This evidence shows that the goods in cited Registration No. 4516899 and Applicant’s goods are offered by the same sources and travel in the same trade channels and indicate that they are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re*


¹⁰ Examining Attorney’s Appeal Brief (6 TTABVUE 9) citing 9/16/2014 Office Action, pp. 6-26 and 4/6/2015 Office Action, pp. 56-73.

¹¹ *See* 9/6/2015 Final Office Action: Registration No. 2151644 MUZZY pp. 7-8.

¹² While the clothing covered in cited Registration No. 4516899 is “clothing for motorcyclists” including “t-shirts, long-sleeve t-shirts” and the clothing items listed in this third-party registration include “shirts” “sold at motorcycle racetracks and through catalogs circulated to motorcycle dealerships,” we deem the clothing products to be identical in part and otherwise closely related.

Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).

With respect to Applicant’s motorcycle rental and tour services and Registrant’s motorcycle-specific clothing,¹³ the Trademark Examining Attorney submitted copies of the following two third-party registrations¹⁴:

Registration No.	Mark	Goods/Services
3996475		<p>Class 25: tops; t-shirts, shirts, jackets, headwear, hats, bandanas, caps, gloves, belts</p> <p>Class 39: ..., leasing and rental of motorcycles, arranging of travel tours; ... providing information in the field of the vehicle and motorcycle industries</p>
4598330	THE ROADERY	<p>Class 25: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Footwear; Gloves; Headwear; Leather jackets; Scarfs; Sweatshirts; Wearable garments and clothing, namely, shirts</p> <p>Class 39: ...; Arranging travel tours; ...; Motorcycle rental; Travel tour conducting; Travel</p>

¹³ As noted, the clothing covered in cited Registration No. 4516899 is “clothing for motorcyclists” and the clothing items listed in the third-party registrations are not so restricted. However, in view of the inclusion of similar goods such as gloves, jackets and shirts in both the cited Registration and the third-party registrations, and the inclusion of the identical motorcycle rental services in the third-party registrations, we deem the clothing products to be identical in part and otherwise closely related.

¹⁴ See 9/16/2014 Office Action: Registration No. 3996475 EAGLERIDER MOTORCYCLES USA and Design pp. 27-29 and Registration No. 4598330 THE ROADERY pp. 39-41.

		tour guide services; Travel tour operating and organising
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Again, this evidence supports that Applicant’s goods and services and the goods in Registration No. 4516899, namely motorcycle parts and motorcycle rentals, and clothing for motorcyclists, are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d at 1919; *In re Albert Trostel & Sons Co.*, 29 USPQ2d at 1785-86; *In re Mucky Duck Mustard Co.*, 6 USPQ2d at 1470 n.6.

Attempting to distinguish the trade channels, Applicant argues that the websites submitted by the Trademark Examining Attorney evidence a clear line of demarcation between the area of the site where a purchaser can find clothing, the area where parts and accessories are located, and the area where tours and rental services are handled. Thus, according to Applicant, consumers visiting those web sites are required to make a conscious decision as to which section and which products or services they view. Applicant concludes that while this may not be dispositive in and of itself, this fact, taken in view of the level of sophistication of the consumer of these types of goods and services, amounts to proof that confusion is not likely.¹⁵

It is well-settled that the goods and services of the parties need not be identical or competitive, or even offered through the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods and services of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be

¹⁵ Applicant’s Brief p. 6 (4 TTABVUE 7).

encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *In re Accelerate s.a.l.*, 101 USPQ2d 2047, 2050 (TTAB 2012).

Applicant acknowledges that the evidence of record shows that the goods and services are sold through the same online retailers.¹⁶ While all of the products and services are not necessarily displayed on the same web pages, they can be found by clicking on identified descriptive links to other sections of the same website. Additionally, some of the home pages feature images of desired products, such as motorcycle parts and clothing, with direct links to such products all on the same page. Thus, potential consumers can view and purchase those products through online motorcycle stores featuring motorcycle equipment and motorcycle clothing.

In view of the foregoing, we find that Applicant's goods and services are related to the goods in cited Registration No. 4516899 and travel in the same trade channels, supporting a likelihood of confusion under the second and third *du Pont* factors.

C. Sophistication of Purchasers

Applicant argues without support that purchasers of motorcycle parts and accessories possess brand sophistication, are not casual shoppers subject to impulse purchases and are highly discerning in their purchases. Because motorcyclists are

¹⁶ Applicant's Brief p. 6 (4 TTABVUE 7).

avid enthusiasts that are notoriously keen on aesthetics, according to Applicant, the products not only have to fit, they also have to be pleasing to the purchaser's taste and match the "look" they are going for. As a result Applicant says, the purchase requires careful research, study and familiarization. For these reasons, Applicant argues that purchasers of its goods are sophisticated.¹⁷

Although there is no evidence to suggest any special degree of sophistication among purchasers of Applicant's goods and services, given the nature of the goods and services, it is clear that purchasers of its goods and services are knowledgeable about motorcycles. Here, the respective goods and services are sufficiently related and sold under such similar marks that even sophisticated purchasers could be led to the mistaken belief that they originated from the same source. It is well-settled that even careful or sophisticated purchasers who are knowledgeable as to the goods and services are not necessarily knowledgeable in the field of trademarks or immune to source confusion arising from the use of confusingly similar marks on or in connection with goods and services. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993); *In re Davey Products Pty Ltd.*, 92 USPQ2d 1198, 1204 (TTAB 2009); *In re Cynosure Inc.*, 90 USPQ2d 1644, 1647 (TTAB 2009), *citing Wm. K. Stamets Co. v. The Metal Products Co.*, 176 USPQ 92, 93 (TTAB 1972) (even technically trained purchasers who are extremely familiar with expensive machinery may be confused when similar marks are used with respect to the same goods). Thus,

¹⁷ Applicant's Brief p. 6 (4 TTABVUE 7).

sophisticated purchasers can be confused by very similar marks such as the marks involved in this case.

Therefore, the *du Pont* factor relating to the purchasers to whom sales are made, *i.e.*, “impulse” versus careful, sophisticated purchasing, is neutral.

D. Conclusion

Based on the similarities between Applicant’s mark DriRide and the mark DRIRIDER in cited Registration No. 4516899 which is registered for related goods that travel in the same trade channels as Applicant’s goods and services, there is a likelihood of confusion.

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