

This Opinion Is Not A
Precedent Of The TTAB

Mailed: October 4, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re B&M Noble Co.

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Serial No. 86338620

Mark B. Garred of Stetina Brunda Garred & Brucker,
for B&M Noble Co.

Nicole Nguyen, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

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Before Ritchie, Greenbaum, and Adlin,
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

B&M Noble Co. (“Applicant”) filed an application to register the mark DUCHATEAU DOORS, in standard character form, on the Principal Register, for goods ultimately identified as “wooden doors excluding garage doors, namely, wooden interior doors and wooden entry doors; wood door frames; non-metal decorative moldings and decorative trim for use in building construction; wood moldings; doors of wood clad in aluminum,” in International Class 19.¹ The application disclaims the

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¹ Application Serial No. 86338620, filed on July 16, 2014 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use in commerce. As discussed *infra*, this identification is as offered by Applicant with its Request for Remand, and accepted by the Examining Attorney.

exclusive right to use the term “DOORS” apart from the mark as shown, and includes the following translation statement:

Translation: The English translation of “DUCHATEAU” in the mark is “CASTLE.”

The Trademark Examining Attorney refused registration of the 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 previously-registered mark CHATEAU, registered on the Principal Register in standard character format for “non-metal garage doors,” in International Class 19,² that when used on or in connection with Applicant’s goods, it is likely to cause confusion or mistake or to deceive.

Upon final refusal of registration, Applicant filed a timely appeal. After filing its appeal brief, Applicant filed a Request for Remand and Amendment, through which Applicant requested a voluntary amendment to its identification in an attempt to overcome the Section 2(d) refusal. The request was granted, and jurisdiction was restored to the Examining Attorney for consideration of the amendment. TBMP § 1205.01 (June 2016). The Examining Attorney issued a Denial of Request for Reconsideration, finding that the amendment was acceptable, but that it did not overcome the Section 2(d) refusal. Thus, the appeal resumed.

Both Applicant and the Examining Attorney filed briefs. After careful consideration of the arguments and evidence of record, we affirm the refusal.

² Registration No. 3891713, issued December 21, 2010.

Likelihood of Confusion

We base our determination under Section 2(d) on an analysis of all of the probative evidence of record bearing on a 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 Company, 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 similarities between the goods. *See Federated Foods, Inc. v. Fort Howard 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.”). We consider each of the factors as to which Applicant or the Examining Attorney presented arguments or evidence.

The Marks

We 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 the marks 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 so 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.*,

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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. *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).

The mark in the cited registration is CHATEAU, in standard character format. The Examining Attorney has submitted a translation of this term as “castle.”³ *See Brown Shoe Co., Inc. v. Robbins*, 90 USPQ2d 1752 (TTAB 2009) (Board considered meaning of Spanish terms to both Spanish and non-Spanish speakers). Applicant’s mark is “DUCHATEAU DOORS,” also in standard character format, and disclaiming the descriptive term “doors.” The term “DUCHATEAU” in Applicant’s mark is also translated as “castle.” We find the inherently distinctive term “DUCHATEAU” to be the dominant term in Applicant’s mark. *Id.*; *See also In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (“[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety. Indeed, this type of analysis appears to be unavoidable.”). Furthermore, as our precedent dictates, with a shared first term, this is “most likely to be impressed upon the mind of a purchaser and remembered.” *Presto Products, Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988); *see also Palm Bay Imports*, 73

³ Wordreference.com. Attached to October 3, 2014 Office Action, at 4.

USPQ2d at 1692. We thus find the marks as a whole to convey essentially identical meanings. They are also similar in sight, sound and overall commercial impression.

This first *du Pont* factor weighs in favor of finding a likelihood of confusion.

The Goods and Channels of Trade

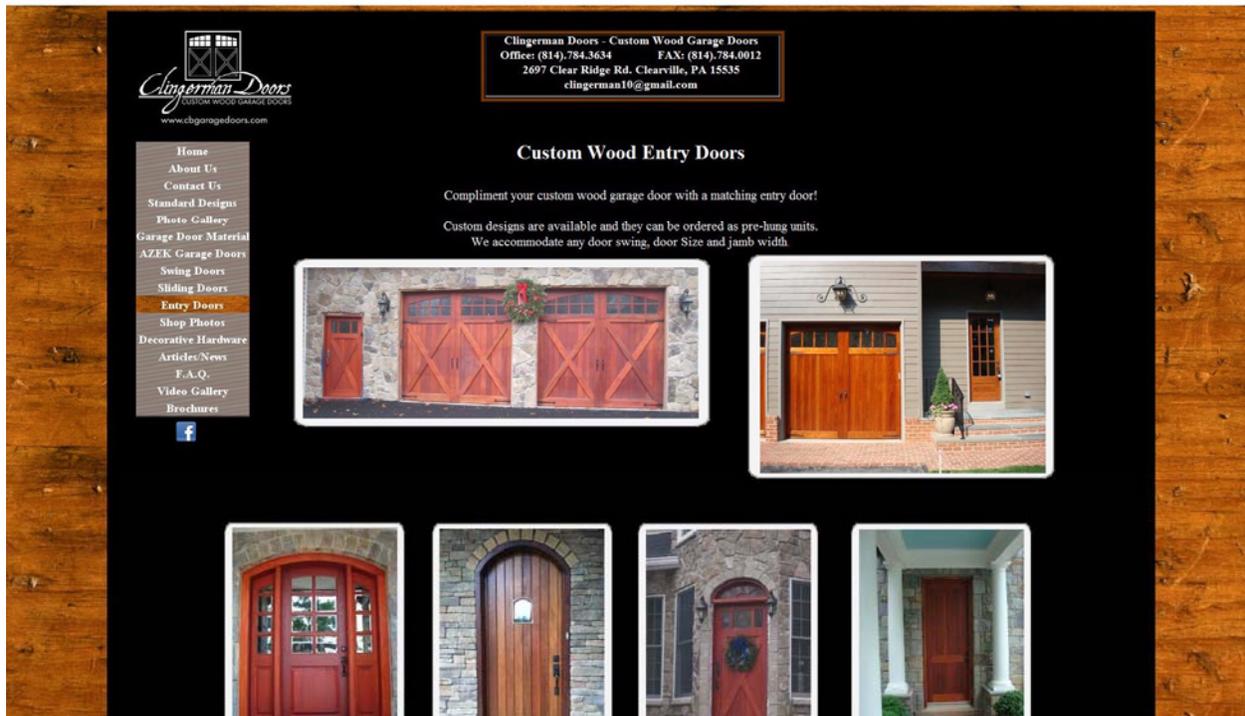
Goods need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the goods are related in some manner or that circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used or intended to be used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991).

The identification of goods in the cited registration is “non-metal garage doors.” Applicant’s identification of goods is “wooden doors excluding garage doors, namely, wooden interior doors and wooden entry doors; wood door frames; non-metal decorative moldings and decorative trim for use in building construction; wood moldings; doors of wood clad in aluminum.” Applicant asserts that the goods cannot be related since it specifically excluded garage doors from its identification. However, the Examining Attorney submitted into the record evidence of numerous companies that offer both wooden garage doors and wooden interior and entry doors under the same mark on their websites. These include, among others, Pella (pella.com); Nick’s Building Supply, Inc. (nicksbuilding.com); The Great Northern Door Company

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(greatnortherndoor.com); Clingerman Doors (woodgaragedoor.com); Designer Doors (designerdoers.com); Clopay (clopaydoor.com); and Real Carriage Door Co. (Realcarriagedoors.com). One website specifically notes the complementary nature of the goods, stating: “Compliment [sic] your custom wood garage door with a matching entry door!”⁴:

<http://www.woodgaragedoor.com/entrydoors.html> 10/03/2014 11:54:59 AM



Applicant also asserts that the goods must not be related since during prosecution of the cited registration, Registrant argued in response to an office action that its “non-metal garage doors” are not related to interior doors. In particular, Registrant referred to them as “different products,” differentiating “entry doors and doors used inside the home” with its garage doors, as well as claiming that “there would be no

⁴ Clingerman Doors; Woodgaragedoor.com; Attached to October 3, 2014 Office Action, at 29.

cross-marketing.”⁵ Although Registrant argued against a refusal on this basis, this is not an *inter partes* proceeding, and we not bound by statements made in that proceeding, nor by the results thereof. *See In re Cordua Restaurants, Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (“The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement”); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 1174, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) (“Even if all of the third-party registrations should have been refused registration . . . , such errors do not bind the USPTO to improperly register Applicant’s marks.”) (citation omitted); *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”). Rather, we find that the evidence here clearly indicates that the goods at issue in this proceeding are related and complementary.

With regard to the channels of trade, in the absence of specific limitations in the cited registration, we must presume that Registrant’s goods will travel in all normal and usual channels of trade and methods of distribution. *Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983); *see also In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because there are no limitations as to channels of trade or classes of purchasers in either the application or the cited registration, it is presumed that the services in the registration and the application

⁵ Attached to April 1, 2015 Response to Office Action, at 11-12.

move in all channels of trade normal for those services, and that the services are available to all classes of purchasers for the listed services). Since there are no limitations on the channels of trade in Applicant's identification of goods either, we must make the same presumption with regard to Applicant's goods. In other words, there is nothing that prevents Applicant's wooden interior and entry doors from being sold in some of the same channels of trade and to the same classes of consumers as Registrant's wooden (non-metal) garage doors, and vice versa. Indeed, as indicated above, various websites offer both types of goods together.

Accordingly, these *du Pont* factors, too, favor finding a likelihood of confusion.

Consumer Sophistication and Degree of Purchaser Care

Applicant urges us to consider the consumer sophistication and degree of purchaser care likely to be exercised for the various types of doors at issue in this proceeding. Although some of the possible clients for both Applicant and Registrant are licensed contractors, it is also evident that some vendors market their wooden interior, entry and garage doors directly to homeowners. For example, Clopay states on its website, "Give us a sketch of your dream door and we'll custom manufacture and install it exclusively for you."⁶ We must make our determination based on the least sophisticated consumer. *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014) (affirming that TTAB properly considered all potential investors for recited services, which included sophisticated investors, but that precedent requires consumer care for likelihood-of-

⁶ Clopaydoors.com; Attached to April 23, 2015, Final Office Action, at 6.

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confusion decision to be based “on the least sophisticated potential purchasers”); *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004). We find this factor to be neutral.

Conclusion

Considering all of the evidence and arguments of record as it pertains to the relevant *du Pont* factors, we find that the marks are similar in sight, sound, connotation, and commercial impression; the goods are complementary and related, and would travel through the same and similar channels of trade to the same classes of purchasers, including to some relatively unsophisticated consumers. Accordingly, we find a likelihood of confusion between Applicant’s mark DUCHATEAU DOORS and the mark in the cited registration, CHATEAU, for the identified goods.

Decision: The refusal to register is affirmed under Section 2(d).