

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Denver Beer Company, LLC

Serial No. 86515920

H. Michael Drumm of Drumm Law LLC,
for Denver Beer Company, LLC.

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Before Ritchie, Goodman, and Heasley,
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Denver Beer Company, LLC (“Applicant”) seeks registration on the Principal Register of the mark PRINCESS YUM YUM RASPBERRY ALE,¹ in standard characters, for “beer,” in International Class 32. The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when applied to the

¹ Application Serial No. 86515920 was filed on January 27, 2015, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1052(a), claiming dates of first use and first use in commerce on January 20, 2015, and disclaiming exclusive rights to the term “RASPBERRY ALE” apart from the mark as shown.

identified goods, so resembles the previously registered mark, YUMMYUM,² in standard character format, for “beer,” in International 32, as to be likely to cause confusion, mistake, or to deceive.

When the refusal was made final, Applicant filed a request for reconsideration and appealed. When the request for reconsideration was denied, the appeal was resumed. For the reasons discussed below, we reverse the refusal to register.

I. Applicable Law

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) (“*du Pont*”). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (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 Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). We consider the *du Pont* factors for which arguments or evidence were presented. The other factors we treat as neutral.

We consider first the relatedness of the goods. There is no dispute that both the cited registration and the application identify “beer,” so the goods are identical. We must thus presume that the channels of trade and classes of purchasers for these goods are the same. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed.

² Registration No. 4629963 issued October 28, 2014.

Cir. 2012). (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion). Applicant does not dispute the identity of the goods and the channels of trade.

We next 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). The mark in the cited registration is YUMYUM, while Applicant's mark is PRINCESS YUM YUM RASPBERRY ALE. The differences in sight and sound are apparent, in that Applicant's mark consists of five terms, while the mark in the cited registration consists of only two.

In addition to the differences in sight and sound, Applicant argues that the marks are different in connotation and commercial impression. Applicant submitted a definition of the term "Yum Yum" as follows:

Yum-Yum: used to express pleasurable satisfaction especially in the taste of food.³

As Applicant notes, "Yum Yum" is suggestive of tasty food or beverages, such as beer, so the mark in the cited registration, YUMYUM, gives the commercial impression of a tasty beer.

³ Merriam-Webster.com, August 20, 2015 Response to Office Action at 9. "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 (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, 1377 (TTAB 2006)." *Bond v. Taylor*, 119 USPQ2d 1049, 1056n. 14 (TTAB 2016).

Applicant's mark, by contrast, is the entire term PRINCESS YUM YUM RASPBERRY ALE. Although "RASPBERRY ALE" is descriptive and disclaimed, it cannot be excluded in our analysis. *See 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 entireties."). The dominant term, "PRINCESS YUM YUM," gives the commercial impression of referring to a person or character.

Applicant submitted evidence that Princess Yum Yum is a character in an animated movie, *The Thief and the Cobbler* (also known as *Arabian Knight*).⁴ Applicant's evidence does not give any indication as to the extent of consumer exposure to the particular character Princess Yum Yum. Nevertheless, it is apparent that consumers, whether or not they associate the term with a particular character, will view it as referring to an individual person or character. *See In re Nieves & Nieves LLC*, 113 USPQ2d 1629, 1635 (TTAB 2015) ("The evidence is sufficient to establish that the mark PRINCESS KATE is a close approximation of the identity of Kate Middleton, because the American media uses the term PRINCESS KATE to identify Kate Middleton and therefore, the American public is exposed to media reports identifying Kate Middleton as Princess Kate, regardless of whether Kate Middleton uses that moniker herself."); *see also In re Hilton Hotels Corp.*, 166 USPQ 216, 217

⁴ August 20, 2015 Response to Office Action, at 8-12.

(TTAB 1970) (“In our opinion, the designation ‘LADY HILTON’ suggests a person or lady of nobility, whether fictitious or otherwise, and would not be considered by purchasers as possessing merely a surname significance.”) In the latter case, the Board found no likelihood of confusion, despite identical goods, between the marks LADY HILTON and HENRY OF THE HILTON, due to the differences in sight and sound as well as the commercial impression created by the term “LADY” preceding the shared term “HILTON.”

Here, too, we find that in addition to differences in sight and sound, the commercial impression between the marks as a whole is distinctly different.

II. Conclusion

In conclusion, considering all of the arguments and evidence of record as they pertain to the relevant *du Pont* factors, we find that although the goods and channels of trades are identical, this is outweighed by the differences in the marks as a whole, with regard to the differences in sight and sound, and particularly with regard to the differences in their commercial impressions. Although we have considered all arguments and evidence, one factor may, from time to time, play a dominant role. *See Kellogg Co. v. Pack-Em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single *du Pont* factor may not be dispositive.”).

Decision: The refusal to register is reversed.