

This Opinion is Not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Boston Juicery, LLC

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Serial No. 86877537

Aaron Y. Silverstein of Saunders & Silverstein LLP,
for Boston Juicery, LLC.

Tarah Hardy Ludlow,¹ Trademark Examining Attorney, Law Office 110,
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Before Lykos, Greenbaum and Heasley,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Boston Juicery, LLC (“Applicant”) seeks to register on the Principal Register the standard character mark SQUEEZE JUICE COMPANY (JUICE COMPANY disclaimed) for “Fruit juices; Vegetable juices; Smoothies” in International Class 32

¹ At the appeal stage, the Office reassigned the application to the undersigned Trademark Examining Attorney. Prosecution of the application was handled by Trademark Examining Attorney Sara N. Benjamin.

and “Juice bar services; Smoothie bar services; Cafe services” in International Class 43.²

Registration was refused as to both classes under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s applied-for mark so resembles the registered mark on the Principal Register displayed below



for “bar services; juice bar services” in International Class 43,³ that it is likely to cause confusion or mistake or to deceive.⁴

² Application Serial No. 86877537, filed January 15, 2016 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark in commerce.

³ Registration No. 4734340, registered May 12, 2015. The description of the mark is as follows: “The mark consists of the word ‘Squeeze’ presented with letters spaced in a slight downward arch with the ‘e’s formed by stacking three bars, above the word is a design of a goblet with a quarter of fruit with three drops of liquid coming from the fruit filling the goblet below.” Color is not claimed as a feature of the mark.

⁴ Initially, registration was refused under Section 2(d) based on three additional cited registrations, each owned by different entities: Registration No. 2230928 for the word mark JUICE SQUEEZE for “fruit juice flavored sparkling water” in International Class 32;

Registration No. 4331441 for the composite mark SQUEEZE RITA & TEQUILAS 

for “Restaurant services, namely, providing of food and beverages for consumption on and off the premises” in International Class 43; and Registration No. 4726293 for the word mark SQUEEZE JUICE WORKS for various goods and services, including “Fruit juices; Herbal juices; Vegetable juices.” The Section 2(d) refusal was withdrawn as to Registration No. 4726293 after the registrant and Applicant executed a consent agreement; the refusal was also withdrawn with regard to Registration No. 4331441 in the May 3, 2017 Final Office Action by the former Examining Attorney; and it was withdrawn as to Registration No. 2230928 by the current Examining Attorney in the appeal brief.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Trademark Examining Attorney denied the request for reconsideration, the appeal was resumed and is now briefed.

I. Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all of 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). See also *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905 (Fed. Cir. 2012); and *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). As a general proposition, two key considerations are the similarities between the marks and the similarities between the goods and/or services, the first and second *du Pont* factors. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). However, in some instances, another single *du Pont* factor may be pivotal, and as discussed in more detail below, such is the case here regarding the sixth factor.

A. The Goods, Services and Channels of Trade

We commence with the goods and services as they are identified in the involved application and cited registration. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) and *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). It is not necessary that the respective goods and services be identical

or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis; rather, they need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). See also *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991). Evidence of relatedness may include news articles and/or evidence from computer databases showing that the relevant goods/services are used together or used by the same purchasers; advertisements showing that the relevant goods/services are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both an applicant’s goods/services and the goods/services listed in the cited registration. See, e.g., *In re Davia*, 110 USPQ2d 1810, 1817 (TTAB 2014) (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

Insofar as both the application and cited registration include “juice bar services,” the International Class 43 services are identical in part. Applicant does not dispute this fact. In addition, the Examining Attorney submitted ample third-party website evidence, none of which Applicant contests, to demonstrate that Applicant’s “fruit juices; vegetable juices; smoothies” in International Class 32 are commercially related

to Registrant’s “juice bar services” in International Class 43. *See, e.g.*, “Jungle Juice Bar offers a wide range of fresh fruit/vegetable smoothies and raw juice blends as well as healthy grab-and-go snacks and a menu featuring sandwiches, salads, desserts and other vegan/vegetarian selections ...”; “Hill’s Café and Juice Bar proudly serves lunch and freshly prepared vegetable and fruit juices”; “A Good Life Café & Juice Bar Lunch provides outstanding Fresh Sandwiches, Delicious Salads, House-made Soups, Real Fruit Smoothies, Fresh Raw Juices and other All-Natural Delights...” attached to May 3, 2017 Final Office Action at 14, 16, and 57.⁵ Invoking the appropriate legal presumptions under *In re Viterra Inc.*, 101 USPQ2d at 1908, we can assume that for the identical services, the trade channels and consumers are identical. For the remaining goods and services, which contain no limitation as to their nature, type, channels of trade, or class of purchasers, it is presumed that they move in all normal channels of trade, and that they are available to all classes of purchasers. *See, e.g.*, *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638 (TTAB 2009) (“We have no authority to read any restrictions or limitations into the registrant’s description of goods.”); *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006). The normal channels of trade consist of juice bars, smoothie bars, and cafes, and the consumers are ordinary members of the general public. Hence, the *du Pont* factors regarding the relatedness of the goods and services and similarity or

⁵ Citations to the prosecution history in the USPTO’s TSDR database are to the downloadable .pdf version. *See, e.g.*, *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 n.4 (TTAB 2018).

dissimilarity of established, likely to continue trade channels favor a finding of likelihood of confusion.

B. The Marks

Next, we compare the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). “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.*, 101 USPQ2d at 1721.

Applicant argues that the Examining Attorney improperly focuses on the wording in Applicant’s mark without giving due consideration to the design and appearance. In Applicant’s view, the fruit-in-goblet design element with the uniquely stylized wording SQUEEZE is the dominant portion of the mark because it catches the consumer’s eye. *See, e.g., Parfums de Coeur Ltd. v. Lazarus*, 83 USPQ2d 1012, 1016 (TTAB 2007) (“...the design is very noticeable and has the effect of catching the eye and engaging the viewer before the viewer looks at the word BODYMAN.”). We disagree. The design element in Registrant’s mark depicting a citrus fruit filled goblet with droplets merely serves to emphasize the literal meaning of the word SQUEEZE as suggesting freshly squeezed fruit juice. This, coupled with the display of the wording SQUEEZE at the forefront in relatively larger size lettering renders the mark similar in sound, appearance, meaning and commercial impression to

Applicant's word mark SQUEEZE JUICE COMPANY. That is to say, when both marks are considered as a whole, each convey the impression that their respective products and services consist of freshly squeezed fruit juices and involve the service thereof.

We therefore find Applicant's mark similar in sound, connotation and commercial impression to the cited mark. This factor also weighs in favor of finding a likelihood of confusion.

C. Strength of the Cited Mark

Notwithstanding the foregoing, when we consider the evidence submitted by Applicant of third-party registrations, we find that the term SQUEEZE is relatively weak and entitled to a narrow scope of protection as applied to the involved goods and services. Active third-party registrations may be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or so commonly used in a particular industry that the public will look to other elements to distinguish the source of the goods and services. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015); *In re Hartz Hotel Servs., Inc.*, 102 USPQ2d 1150, 1153-54 (TTAB 2012); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Dayco Products-Eagle Motive Inc.*, 9 USPQ2d 1910, 1911-12 (TTAB 1988); *Plus Prods. v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983). As explained in *Juice Generation, supra*, a seminal decision on this issue:

[The] real evidentiary value of third party registrations per se is to show the sense in which ... a mark is used in ordinary parlance." 2 McCarthy on Trademarks and Unfair Competition

§ 11:90 (4th ed. 2015) (emphasis added). “Third party registrations are relevant to prove that some segment of the composite marks which both contesting parties use has a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Id.*; see *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917 [189 USPQ 693] (CCPA 1976) (even if “there is no evidence of actual use” of “third-party registrations,” such registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used”). Marks that are descriptive or highly suggestive are entitled to a narrower scope of protection, i.e., are less likely to generate confusion over source identification, than their more fanciful counterparts. See, e.g., *Nat’l Data Corp. v. Computer Sys. Eng’g, Inc.*, 940 F.2d 676, at *2 (Fed. Cir. 1991) (unpublished); *Drackett Co. v. H. Kohnstamm & Co.*, 404 F.2d 1399, 1400 [160 USPQ 407] (CCPA 1969) (“The scope of protection afforded such highly suggestive marks is necessarily narrow and confusion is not likely to result from the use of two marks carrying the same suggestion as to the use of closely similar goods.”).

Id. at 1675. See also *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015).

Applicant contends that if the SQUEEZE-formative marks summarized below can co-exist on the register, then Applicant’s mark should be allowed for registration as well:

Registration No. 4624738 for the standard character mark "WE SQUEEZE TO PLEEZE" for “fruit juices” in International Class 32;

Registration No. 4094265 for the standard character mark HAPPYSQUEEZE for “Fruit and vegetable juices, namely, smoothies” in International Class 32;

Registration No. 4318595 for the standard character mark KARMIC SQUEEZE for “...Fruit juices; ... Smoothies; Vegetable juices; ...” International Class 32;

Registration No. 4176892 for the standard character mark NATURE’S SQUEEZE for “Fruit juices; ... Smoothies; Vegetable juices; ...” International Class 32;

Registration No. 4215513 for the standard character mark TEXAS SQUEEZE for “Fruit drinks and juices” in International Class 32;

Registration No. 4039849 for the standard character mark SQUEEZE THE DAY for “... Fruit juices ... Smoothies” in International Class 32;

Registration No. 3039948 for the standard character mark BIG SQUEEZE for “100 percent pure fruit juices, namely, orange juice and grapefruit juice” in International Class 32;

Registration No. 3743301 for the standard character mark PURE SQUEEZE for “fruit juices” in International Class 32;

Registration No. 5027486 for the standard character mark SQUEEZE YOUR IMAGINATION for “fruit juices” in International Class 32 and “Juice bar services” in International Class 43;

Registration No. 4433466 for the standard character mark MORNING SQUEEZE for “... cafe services ...” in International Class 43;

Registration No. 5084563 for the standard character mark THE MAIN SQUEEZE for “... juice bar services ...” in International Class 43; and

Registration No. 4862321 for the mark MIAMI SQUEEZE JUICE BAR • RESTAURANT • CAFÉ EAT SMART. LIVE WELL. LOVE LIFE. and design⁶ displayed below for “...Café and restaurant services; ... Restaurant services featuring smoothies, juices, wraps, sandwiches, and supplements; ...” in International Class 43.

⁶ The registration describes the mark as follows: “The mark consists of a circular design consisting of a green leaf and a wave of juice in the color orange. The wording ‘MIAMI SQUEEZE’ appears below the design with ‘MIAMI’ in the color green with orange border and ‘SQUEEZE’ in the color orange. The wording ‘JUICE BAR,’ ‘RESTAURANT,’ and ‘CAFÉ’ appear below in the color orange with green dots between the terms. The wording ‘EAT SMART. LIVE WELL. LOVE LIFE’ appears across the bottom in the color green. The color white represents background and/or transparent areas and is not part of the mark.” In addition, the colors green and orange are claimed as a feature of the mark.



Eat Smart. Live Well. Love Life.

See November 1, 2016 Office Action Response. The number of third-party registered marks all owned by different entities indicates that SQUEEZE is highly suggestive as applied to fruit juices, smoothies, juice bar services and cafe services. We can surmise that the word “squeeze” in this context alludes to freshly squeezed juices, smoothies made with this ingredient, or services offering freshly squeezed juice or smoothies. Based on this evidence, we find that Applicant has established that SQUEEZE is so highly suggestive of juice, smoothies, juice bars, and cafes that the public will look to other elements to distinguish the source of the goods and services. See *Juice Generation*, 115 USPQ2d at 1674-75. Given the number of third-party registrations for the involved goods or services, consumers are conditioned to look for differences between SQUEEZE and SQUEEZE formative marks to determine the source of a given product and therefore less likely to be confused. This factor weighs against finding a likelihood of confusion.

II. Conclusion

In summary, we have carefully considered all of the evidence of record pertaining to the relevant *du Pont* likelihood of confusion factors, as well as the Examining Attorney’s and Applicant’s arguments with respect thereto. As explained above, our analysis of the marks, goods and services, and trade channels weigh in favor of

finding a likelihood of confusion. As indicated above, there are instances, however, where a single *du Pont* factor is dispositive as to outweigh these other *du Pont* factors. See, e.g., *Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991). Such is the case here where the highly suggestive term SQUEEZE in the cited mark renders the mark as a whole conceptually weak, such that “the public will look to other elements to distinguish the source of the [goods and] services.” See *Juice Generation*, 115 USPQ2d at 1674-75. See also *Tektronix*, 189 USPQ at 695. “[T]he strength of a mark is not a binary factor” and “varies along a spectrum from very strong to very weak.” *Juice Generation*, 115 USPQ2d at 1675-76 (internal citations omitted). “The weaker [the Registrant’s] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Id.* at 1676 (internal citations omitted). Thus, in this particular case, the goblet design element and stylized lettering of the cited mark⁷ are distinguishing factors given that the sole literal element, the word “squeeze,” is highly suggestive as applied to Registrant’s services. Balancing these factors, we find no likelihood of confusion. Consumers encountering Applicant’s mark SQUEEZE JUICE COMPANY are likely to perceive it as merely another entrant in the consumer market for “Fruit juices; Vegetable juices; Smoothies” in International Class 32 and “Juice bar services; Smoothie bar services; Cafe services” in International Class 43.”

⁷ The letter “E” as depicted in Registrant’s mark is presented as three stacked bars, a clever play on the “juice bar” services.

Decision: The Section 2(d) refusal to register Applicant's mark is reversed.