

This Opinion Is Not a
Precedent of the TTAB

Mailed: March 14, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re M & Y Trading
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Serial No. 86879006
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Heather A. Sapp of LegalForce RAPC Worldwide, P.C.,
for M & Y Trading.

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Before Cataldo, Kuczma, and Hightower,
Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

Applicant M & Y Trading seeks registration on the Principal Register of the mark S-LON in standard characters for “yarns and threads for use in making beaded jewelry” in International Class 23.¹ The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the mark C-LON, previously registered

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¹ Application Serial No. 86879006 was filed on January 19, 2016, based on 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(b).

on the Principal Register for “threads made of nylon” in International Class 23,² as to be likely to cause confusion, to cause mistake, or to deceive. After the Examining Attorney made the refusal final, Applicant appealed to this Board, and the appeal is fully briefed. We affirm the refusal to register.

I. Likelihood of Confusion

Our determination under Section 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 E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or services. *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.”). A likelihood of confusion may be found with respect to a particular class based on any item within the identification of goods for that class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

² Registration No. 2836453, issued April 27, 2004; renewed.

A. Similarity of the Goods, Channels of Trade, and Classes of Customers

We begin by considering the second and third *du Pont* factors, the similarity of the goods, channels of trade, and classes of customers. The goods identified in the application are “yarns and threads for use in making beaded jewelry,” while the goods in the cited registration are “threads made of nylon.” To state the obvious, both identifications cover “threads.” Registrant’s threads are restricted by composition (nylon), while Applicant’s threads are restricted by purpose (for use in making beaded jewelry). Nevertheless, there is no evidence to indicate that threads made of nylon are not used in making beaded jewelry. To the contrary, the website of Registrant, Caravan Beads Inc, demonstrates that the threads it offers under the C-LON mark also are intended for use in making beaded jewelry. A screenshot submitted by the Examining Attorney states, under the heading “Thread & Wire”:

Because great beads deserve to have the best quality stringing materials, our C-flex beading wire, **C-Lon thread** and C-Lon cord are all made for Caravan Beads in the USA. Each size is made in a wide palette of colors to help compliment your bead choices (emphasis added).³

The screenshot shows listings for “C-Lon Beading Thread,” while beaded jewelry is displayed and beads are sold on other pages of Registrant’s website.⁴ In addition, Applicant agrees that the “Examining Attorney is correct that Applicant’s identification in the broadest interpretation also covers nylon thread.” Appeal Brief at 8-9, 4 TTABVue 9-10. Thus, the types of threads identified in the application and

³ February 2, 2017 Final Office Action at TSDR 48 (from caravanbeads.com/ThreadAndWire).

⁴ *See id.* at 45-69.

cited registration overlap, and the second *du Pont* factor weighs heavily in favor of a finding that confusion is likely.

To the extent that the threads described in the application and cited registration overlap, moreover, they are legally identical, and we must presume that the overlapping goods travel through the same channels of trade and are offered to the same classes of customers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1518-19 (TTAB 2016). In our likelihood of confusion analysis, the third *du Pont* factor also strongly supports a finding that confusion is likely.

B. Similarity of the Marks

We next consider the first *du Pont* likelihood of confusion factor, which focuses on “[t]he similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017) (quoting *du Pont*, 177 USPQ at 567). “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.” *Id.* (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 688 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)). We focus on the recollection of the average consumer – here, an ordinary purchaser of threads – who retains a general rather than a specific impression of trademarks. *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016).

Applicant directs most of its arguments against refusal to this *du Pont* factor. Applicant contends that each mark contains only “one letter with source identifying capacity,” Appeal Brief at 10, 4 TTABVUE 11, and that the different initial letters S and C sufficiently distinguish its mark from Registrant’s in appearance, sound and pronunciation, connotation, and commercial impression. We do not agree.

Applicant’s mark S-LON is identical to the cited mark C-LON except for the first letter. Considered in their entirety, the marks are highly similar in appearance. With respect to sound, it is well-established that “there is no correct pronunciation of a trademark, and consumers may pronounce a mark differently than intended by the brand owner.” *Viterra Inc.*, 101 USPQ2d at 1912; *see also In re Lebanese Arak Corp.*, 94 USPQ2d 1215, 1219 (TTAB 2010) (stating that “it has long been held that there is no correct pronunciation of a trademark that is not a recognized English word”). Although there is no “correct” way to verbalize the two coined terms before us, we find the most likely pronunciation of Applicant’s mark to be “ess-lon,” which is similar to Registrant’s mark “cee-lon.” Particularly given the overlapping nature of the goods at issue, it is likely that consumers will view C-LON and S-LON as variations of each other; perhaps denoting different varieties of threads, but nonetheless pointing to a common source.

As for connotation and overall commercial impression, there is no record evidence that the element –LON conveys to consumers that the threads in question are made of nylon, as Applicant argues. Appeal Brief at 8, 4 TTABVUE 9; Reply Brief at 5, 8

TTABVUE 6. Even if it does, this shared significance serves to heighten the similarity in meaning between the marks.

Applicant argues that the first letter in the cited mark likely references the name of its owner, *see* Appeal Brief at 8, 4 TTABVUE 9, but we cannot conclude that consumers will view the “C” in Registrant’s mark to connote “Caravan Beads.” The derivations of letter marks, acronyms, or initialisms are of no particular significance in our analysis under Section 2(d), particularly where, as here, there is no evidence that purchasers are aware of the derivations. *B.V.D. Licensing Corp. v. Rodriguez*, 83 USPQ2d 1500, 1508 (TTAB 2007); *Edison Bros. Stores, Inc. v. Brutting E.B. Sport-Int’l GmbH*, 230 USPQ 530, 533 (TTAB 1986) (“It should be noted that the lettered marks in almost all of the cited decisions were, as in the case before us, derived from the trade or corporate names of the involved parties, but these facts had no negative influence upon the likelihood of confusion conclusions which were reached.”).

We are mindful that because the marks would appear on goods that are overlapping and legally identical, the degree of similarity necessary to support a conclusion of likely confusion declines. *See Viterra*, 101 USPQ2d at 1908; *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016). We find the marks in their entireties to be highly similar in appearance, sound, connotation and commercial impression. The first *du Pont* factor thus weighs heavily in favor of a finding that confusion is likely.

C. Consumer Sophistication

Finally, we address Applicant's contention that purchasers of its goods and Registrant's are sophisticated. *See* Appeal Brief at 10-12, 4 TTABVUE 11-13; Reply Brief at 10, 8 TTABVUE 11. This argument concerns the fourth *du Pont* factor, the "conditions under which and buyers to whom sales are made, i.e., 'impulse' vs. careful, sophisticated purchasing." *Id.*, 177 USPQ at 567.

Applicant argues:

As a class, people who engage in handcrafts (the market for the goods identified by both marks) are particular about the materials that they use in fabricating their craft products. These consumers will research and discuss with other similarly-minded crafters the type, brand, and quality of products that work best for a particular craft activity. Here, the purchasers are familiar with the common materials used in their crafts, and are aware of the material nylon. They are highly unlikely to expect that all marks with the element "LON" emanate from the same source, even side by side at the point of sale.

Appeal Brief at 11-12, 4 TTABVUE 12-13.

Applicant offers no support for this argument. Screenshots from Registrant's website indicate that its C-LON threads are offered for sale for as little as \$2.⁵ Such inexpensive items may be subject to impulse purchase, including by consumers new to beaded jewelrymaking. Precedent requires that we base our decision on the least sophisticated potential purchasers. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014). Even assuming that consumers of the identified goods are knowledgeable, it is settled that careful or

⁵ February 2, 2017 Final Office Action at TSDR 48-58.

sophisticated purchasers “are not immune from source confusion where similar marks are used in connection with related [goods or] services.” *Id.* at 1163-64 (quotation omitted); *see also In re Research & Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) (“Human memories even of discriminating purchasers . . . are not infallible.”) (quotation omitted). The fourth *du Pont* factor does not weigh against a finding that confusion is likely.

II. Conclusion

We have considered all of the arguments and evidence of record, including any not specifically discussed, as they pertain to the relevant *du Pont* likelihood of confusion factors. To the extent that any other *du Pont* factors for which no evidence was presented by Applicant or the Examining Attorney may nonetheless be applicable, we treat them as neutral.

We have found that Applicant’s mark is similar to the cited mark, that goods identified in the subject application and cited registration are overlapping and legally identical, and that the goods travel through the same channels of trade to the same classes of customers. There is no evidence that any *du Pont* factor weighs against a finding that confusion is likely. We find that Applicant’s mark S-LON is likely to cause confusion with the cited mark C-LON when used in association with the goods identified in the application.

Decision: The refusal to register is affirmed.