

This Opinion is Not a
Precedent of the TTAB

Mailed: November 8, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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In re A.F. Djurberg AB

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Serial No. 87677215

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A.F. Djurberg AB, *pro se*.

Fong Hsu, Trademark Examining Attorney, Law Office 117,
Hellen Bryan-Johnson, Managing Attorney.

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Before Lykos, Adlin and Larkin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant A.F. Djurberg AB seeks registration of the mark CRUCIBLE
COOKWARE (standard characters, COOKWARE disclaimed) for:

Household utensils, namely, trivets; pot lids; cooking utensils, namely, mixing spoons, slotted turners, potato mashers, solid spoons, slotted spoons, ladles, spaghetti servers, baking spatulas, bottle openers, graters, potato peelers, garlic presses, whisks, basting brushes, ice cream scoops, tong, scissors, pizza cutters, can openers, measuring cups and spoons, basting brushes, kitchen tongs, barbecue mitts, peelers; cooking utensils of metal or silicone, namely, spatulas, mixing spoons; heat protective gloves for kitchen use; potholders for kitchen use; hot handle holders; handles being parts of cooking utensils; gloves for household purposes; scrapers for household

purposes; frying pans; Cast Iron Cleaners; cast iron skillets and pans.; Kitchen mitts, in International Class 21.¹

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, on the ground that Applicant's mark so resembles the mark LE CREUSET, registered in standard characters² and a variety of design forms³ for a wide range of kitchen and cooking-related goods, that use of Applicant's mark in connection with Applicant's goods is likely to cause confusion. The French company known as Le Creuset owns each of the cited registrations. The cited standard character '113 Registration, like several of the others, includes this translation statement: "The English translation of 'LE CREUSET' in the mark is 'THE CRUCIBLE'." After the refusal became final, Applicant appealed and filed a request for reconsideration which was denied. The appeal is fully briefed.⁴

I. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth

¹ Application Serial No. 87677215, filed November 8, 2017 under Section 1(a) of the Trademark Act, based on alleged first use dates of July 1, 2015.

² Registration No. 5304113, issued October 10, 2017 under Sections 1 and 44(e) based on a French registration (the "113 Registration").

³ Registration Nos. 566951, 993620, 4721891, 4456962 and 5052501.

⁴ Applicant's Appeal and Reply Briefs do not comply with Trademark Rule 2.126(a)(1) because they are single-spaced, or with Trademark Rule 2.126(b)(5) because the pages are not numbered. Nevertheless, because it appears that the briefs would fall within the Rule's page limits if double-spaced, and in the absence of any objection by the Examining Attorney, we have exercised our discretion to consider the briefs. *See Univ. of Miami*, 123 USPQ2d 1075, 1077 n.2 (TTAB 2017).

factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *du Pont* factor about which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). 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.”).

We focus our analysis on the cited standard character mark LE CREUSET in the '113 Registration, because if we find confusion likely between that cited mark and Applicant's mark, we need not consider the likelihood of confusion between Applicant's mark and the other cited marks (all of which include designs in addition to the words LE CREUSET), while if we find no likelihood of confusion between Applicant's mark and LE CREUSET in standard characters, we would not find a likelihood of confusion between Applicant's mark and the other cited marks. *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010). The '113 Registration identifies an exceedingly wide range of goods in International Classes 8, 9, 11, 20, 21, 24 and 25, including the following in International Class 21:

Household or kitchen utensils, namely, spatulas, mixing spoons, turners, basting brushes, kitchen tongs, whisks, pasta serving forks, honey dippers, ladles, potato mashers, wire skimmers and mesh strainers and household or kitchen containers; cups, not of precious metal; bowls, not of precious metal; dishes, not of precious metal; plates, not

of precious metal; pots; wine glasses; non-electric kettles; fruit bowls, not of precious metal; portable coolers in the shape of boxes; frying pans; cooking pots; salad bowls, not of precious metal; corkscrews; woks; earthenware saucepans; casseroles; stew-pans; grills being cooking utensils; trivets

A. The Goods, Channels of Trade and Classes of Consumers

Registrant's "Household or kitchen utensils, namely, spatulas, mixing spoons, turners, basting brushes, kitchen tongs, whisks" encompass Applicant's "cooking utensils, namely, mixing spoons, slotted turners ... baking spatulas ... whisks, basting brushes ... kitchen tongs." Thus, these goods are either identical or legally identical. Furthermore, the "trivets" in the involved application and cited registration are also identical. Where, as here, the goods are in-part identical, we must presume that the channels of trade and classes of purchasers for those goods are also the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. 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); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Research Instit.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

The identity (in part) of Applicant's and Registrant's goods and their overlapping channels of trade and classes of consumers weigh heavily in favor of finding a likelihood of confusion. In addition, where, as here, the goods are in-part identical, the degree of similarity between the marks necessary to find a likelihood of confusion

declines. *In re Viterra*, 101 USPQ2d at 1908; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); *In re Max Capital*, 93 USPQ2d at 1248.

B. The Marks

We must consider the marks “in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d* 777 Fed.Appx. 516 (Fed. Cir. 2019) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)). Here, the marks CRUCIBLE COOKWARE and LE CREUSET obviously look and sound different.

The Examining Attorney argues that the marks convey the same meaning, however, based on the doctrine of foreign equivalents and evidence that CREUSET means “crucible,” or “melting-pot.” February 22, 2018 Office Action TSDR 34 (printout from Google translate); August 19, 2018 Office Action TSDR 10 (translation based on “wordreference.com”).

Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine similarity of connotation with English word marks. See *Palm Bay Import, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The doctrine is applied when it is likely that “the ordinary American purchaser would ‘stop and translate [the term] into its English equivalent.” *Palm Bay*, supra at 1696, quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976) ... The “ordinary American purchaser” in this context refers to the

ordinary American purchaser who is knowledgeable in the foreign language.

In re Thomas, 79 USPQ2d 1021, 1024 (TTAB 2006). *See also Ricardo Media Inc. v. Inventive Software, LLC*, 2019 USPQ2d 311355 *6-7 (TTAB 2019).

In *In re Thomas* we applied the doctrine to the French term in question based on evidence that more than 1.5 million people in the United States speak French, finding that “French is a common foreign language spoken by an appreciable segment of the population.” *Id.* We apply the doctrine in this case for essentially the same reason – the Examining Attorney introduced evidence from the Cultural Services section of the French Embassy in the United States (which in turn is based on U.S. Census data), that more than 1.3 million people in the United States speak French at home. August 19, 2018 Office Action TSDR 95-96 (printout from “frenchlanguagek12.org”).

We also find that ordinary American purchasers who speak French would “stop and translate” LE CREUSET. The term translates into “the crucible,” or “the melting pot.” We take judicial notice that “crucible” is defined as “a vessel of very refractory material (such as porcelain) used for melting and calcining a substance that requires a high degree of heat.”⁵ Thus, the cited mark has a single, clear, specific, literal and direct meaning (which relates to the goods in question), and is spelled correctly in

⁵ *See* merriam-webster.com/dictionary/crucible. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).

French, which weighs in favor of applying the doctrine. *In re Fiore*, 75 USPQ2d 1564, 1569 (TTAB 2005).

Furthermore, this case is similar to those, like *In re Thomas*, in which we found that relevant consumers would “stop and translate” the foreign term. *In re Thomas*, 79 USPQ2d at 1025 (finding that consumers would stop and translate not only because “MARCHE NOIR is the exact translation of ‘black market,’” but also because of the “inherent nature” of the mark); *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1648 (TTAB 2008) (doctrine applied because “la peregrina” and “the pilgrim” are “equivalent in meaning,” and “the translated meaning of LA PEREGRINA is not obscure”); *In re Perez*, 21 USPQ2d 1075, 1076 (TTAB 1991) (“there is no support for the argument that the other English meanings of ‘gallo’ would be ascribed to the marks by purchasers. Moreover, in the dictionary listing for ‘rooster’, only one Spanish word is given, namely ‘gallo.’”); *In re Ithaca Industries, Inc.*, 230 USPQ 702,704 (TTAB 1986). This case is unlike those in which it was found that consumers would not “stop and translate.” *Cf. In re Spirits Int’l. N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009) (“The ordinary American consumer would not translate VEUVE CLICQUOT because its literal translation would be irrelevant to even those ordinary American consumers who speak French.”) (citing *Palm Bay*, 73 USPQ2d at 1689); *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111 (Fed. Cir. 1983) (finding that consumers would not “stop and translate” repêchage into “second chance” because they “are *not* equivalent French-English terms”); *Ricardo Media*, 2019 USPQ2d 311355 * 9 (finding consumers would not translate a personal name to its English

equivalent); *In re Weiss Watch Co., Inc.*, 123 USPQ2d 1200, 1205 (TTAB 2017) (consumers would not “stop and translate” because the term in question “is not spelled in the standard German dictionary form,” and is merely an “approximation” of the English term).

While we have not ignored the term COOKWARE in Applicant’s mark, it is generic or at best highly descriptive of Applicant’s and Registrant’s cooking/kitchen goods, and thus does not impact the connotation of Applicant’s mark. It is entitled to significantly less weight in our analysis. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)); *see also In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (DELTA, not the disclaimed term CAFÉ, is the dominant portion of the mark THE DELTA CAFÉ). Indeed, the term only highlights the meaning conveyed by Applicant’s mark. In short, the marks convey the same meaning.

While we recognize that the marks’ “equivalency in connotation does not, in and of itself, determine the question of likelihood of confusion,” and that connotation is “but a single factor in the overall evaluation of likelihood of confusion,” *In re Ithaca Indus., Inc.*, 230 USPQ 702,704 (TTAB 1986), we nevertheless find that here, as in many doctrine of foreign equivalent cases, the similarity in connotation results in the marks being more similar than dissimilar in their entireties. *Id.* (finding LUPO, for

men's and boy's underwear likely to be confused with WOLF for sportswear, in large part because LUPO means "wolf" in Italian). This is because here the goods, channels of trade and classes of customers are all identical, reducing the degree of similarity between the marks necessary to find a likelihood of confusion. *In re Viterra*, 101 USPQ2d at 1908; *In re Mighty Leaf*, 94 USPQ2d at 1260. As a result of the identical goods and overlapping channels of trade and consumers, the marks' similarity in meaning is enough to outweigh the differences in how the marks look and sound. *In re La Peregrina*, 86 USPQ2d at 1649-50 ("LA PEREGRINA and PILGRIM [both for jewelry] are foreign equivalents and, thus, the marks are identical in meaning. This factor outweighs the differences in appearance and pronunciation."); *In re Thomas*, 79 USPQ2d at 1021 (MARCHE NOIR for jewelry likely to be confused with BLACK MARKET MINERALS for retail jewelry store services, despite marks being "decidedly different in sound and appearance," in large part because "marche noir" means "black market" in French); *In re Perez*, 21 USPQ2d at 1075 (finding EL GALLO for fresh vegetables, namely tomatoes and peppers likely to be confused with ROOSTER for fresh fruit, in large part because "gallo" means "rooster" in Spanish); *In re Am. Safety Razor*, 2 USPQ2d at 1460 ("While the marks are concededly distinguishable in their appearance and pronunciation, it is our view that the equivalency in meaning or connotation is sufficient, in this case, to find likelihood of confusion."); *In re Hub Distrib.*, 218 USPQ at 284; *Rosenblum v. George Wilsher & Co.*, 161 USPQ at 492 (RED BULL for Scotch whiskey likely to be confused with

TORO ROJO for rum, in large part because “toro rojo” means “red bull” in Spanish). This factor also weighs in favor of finding a likelihood of confusion.

C. Alleged Fame of the Cited Mark

Typically, in *ex parte* proceedings such as this, the fame of a cited mark is a nonissue. Indeed, “the owner of the cited registration is not a party to this *ex parte* appeal, and the Examining Attorney is under no obligation to demonstrate the fame of a cited mark.” *In re Integrated Embedded*, 120 USPQ2d 1504, 1512 (TTAB 2016). *See also In re Majestic Distilling Co.*, 65 USPQ2d at 1205 (“Although we have previously held that the fame of a registered mark is relevant to likelihood of confusion, *DuPont*, 476 F.2d at 1361, 177 USPQ at 567 (factor five), we decline to establish the converse rule that likelihood of confusion is precluded by a registered mark’s not being famous.”); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1086 (TTAB 2016) (“in an *ex parte* appeal the ‘fame of the mark’ factor is normally treated as neutral because the record generally includes no evidence as to fame.”); *In re Davey Prods. Pty Ltd.* 92 USPQ2d 1198, 1204 (TTAB 2009) (“[I]t is settled that the absence of such evidence is not particularly significant in the context of an *ex parte* proceeding.”); *In re Big Pig Inc.*, 81 USPQ2d 1436, 1439 (TTAB 2006) (“It is not necessary that a registered mark be famous to be entitled to protection against a confusingly similar mark.”).

Here, however, the Examining Attorney has asserted that the cited mark is famous, based on media reports indicating that, for example, LE CREUSET is a “world renowned brand” and “one of the most coveted kitchenware brands in the world.” August 19, 2018 Office Action TSDR 4, 11-48. In its Appeal Brief, Applicant

agrees, stating, for example, that “the applicant share [sic] the same view as the examiner that Le Creuset is a ‘world renowned cookware brand,’” and “[t]he more famous a trademark is the less is the likelihood of confusion, which is probably why it has since 2015, not been a single known case of confusion.” 7 TTABVUE 6-7.

Assuming the Examining Attorney and Applicant are correct that LE CREUSET is a famous mark, that can only weigh in favor of finding a likelihood of confusion. *Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 675, 223 USPQ 1281, 1284 (Fed. Cir. 1984) (fame “can never be of little consequence”). *See also Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000) (“When a famous mark is at issue, a competitor must pause to consider carefully whether the fame of the mark, accorded its full weight, casts a ‘long shadow which competitors must avoid.”) (quoting *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1457 (Fed. Cir. 1992)). As the Federal Circuit stated in *Kenner Parker*: “If investors forfeit legal protection by increasing a mark’s fame, the law would then countenance a disincentive for investments in trademarks.” *Kenner Parker Toys*, 22 USPQ2d at 1457. That is why we have specifically rejected the exact argument Applicant makes in this case, and have held that fame can only weigh in favor of, not against, a likelihood of confusion. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012).

To the extent this factor is relevant, it also weighs in favor of finding a likelihood of confusion.

D. Consumer Sophistication

Applicant argues that consumers of kitchen and cooking-related goods are sophisticated and careful, specifically referring to “the often extremely high cost of many kitchen utensils,” and claims this would lessen the likelihood of confusion. 7 TTABVue 4. The argument is unavailing, as it is unsupported by any evidence.

In any event, Applicant’s identification of goods includes no limitations as to price, or type of consumers, for its spoons, bottle openers, whisks, scissors, can openers, kitchen mitts, or other goods, just as Registrant’s identification includes no price or other limitations on its spatulas, corkscrews, pasta turning forks and other goods. We must base our decision on the “least sophisticated potential purchasers” for the goods as identified, many of which are simple kitchen or cooking tools. *See e.g. Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014) (quoting *Gen. Mills, Inc. v. Fage Dairy Proc. Indus. S.A.*, 100 USPQ2d 1584, 1600 (TTAB 2011), *judgment set aside on other grounds*, 2014 WL 343267 (TTAB 2014)). Ordinary consumers at all income levels purchase these ubiquitous items, which as identified are not limited to any particular consumers or price points. This factor is neutral.

E. Lack of Actual Confusion

The lack of evidence of actual confusion carries little weight in an *ex parte* case such as this. *Majestic Distilling*, 65 USPQ2d at 1205. In fact, “it is unnecessary to show actual confusion in establishing likelihood of confusion.” *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 396 (Fed. Cir. 1983). This factor is also neutral.

II. Conclusion

The goods, channels of trade and classes of consumers are identical, which reduces the degree of similarity between the marks needed to show a likelihood of confusion. As a result, the marks' identical connotation is likely to result in consumer confusion, notwithstanding the marks' differences in appearance and sound.

Decision: The refusal to register Applicant's mark under Section 2(d) of the Trademark Act is affirmed.