

This Opinion is not a
Precedent of the TTAB

Mailed: August 9, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Young Living Essential Oils, LC
—

Serial No. 87684401
—

Young Living Essential Oils, LC, pro se.

Lauren Dantzler, Trademark Examining Attorney, Law Office 122,
John Lincoski, Managing Attorney.

—
Before Ritchie, Lynch, and Pologeorgis
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Young Living Essential Oils, LC (“Applicant”) seeks registration on the Principal Register of the standard character mark R.C. for goods identified as “Essential oils for aromatherapy use,” in International Class 3.¹ The Examining Attorney refused registration of Applicant’s mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on the prior registration issued on the Principal Register of the mark

¹ Serial No. 87684401, filed on November 14, 2017, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1(a), alleging dates of first use and first use in commerce on December 31, 1995.

RC COSMETICS (and design), as shown below, for “Cosmetics and cosmetic preparations; cosmetics and make-up,” in International Class 3:²



The description of the marks states: The mark consists of the literal elements "RC COSMETICS" in stylized form wherein the word "RC" is placed inside a stylized shield-like frame image on left side [sic] and beside the image appears the word "COSMETICS". Color is not claimed as a feature of the mark.

The registration disclaims the right to exclusive use of the term “COSMETICS” apart from the mark as shown.

After the Examining Attorney made the refusal final, Applicant filed a timely appeal. Both Applicant and the Examining Attorney filed briefs. For the reasons discussed herein, we affirm the refusal to register.

I. Likelihood of Confusion

Our determination under Section 2(d) of the Trademark Act is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin*

² Registration No. 4733941, registered May 12, 2015.

Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that “[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *see also In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014). “Not all of the [*du Pont*] factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1719 (Fed. Cir. 2012) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)).

A. The Marks

We first compare the marks for similarities and dissimilarities in appearance, sound, connotation and commercial impression. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d at 1692. 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 that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1721. Under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections. *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ

255, 259 (TTAB 1980). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Assoc. of the United States Army*, 85 USPQ2d 1264 (TTAB 2007); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). In this case, the relevant purchaser includes consumers of cosmetics and essential oils, as identified in the application and the cited registration.

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. Vv. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). On the other hand, different features may be analyzed to determine whether the marks are similar. *Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1430 (TTAB 2013) (citing *Price Candy Co. v. Gold Medal Candy Corp.*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955)). In fact, 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 a consideration of the marks in their entireties. *In re Nat'l Data Corp.*, 224 USPQ at 751.

Applicant's mark consists solely of the letters or terms "R.C.," in standard character form. We find that consumers are likely to pronounce Applicant's mark as the letters "RC," without vocalizing "period" or "dot" subsequent to each of the two



letters.³ The mark in the cited registration, , contains the literal terms "RC COSMETICS." Regarding the appearance of the marks, while we consider the marks as a whole, our precedent dictates that "it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered." *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). We find the marks look and sound highly similar because of the common element RC/R.C., which forms the entirety of Applicant's mark and which dominates the cited mark.

The cited registration contains a disclaimer of the term "COSMETICS," which is descriptive or generic for the identified "cosmetics." While we consider each mark in its entirety, it is, nevertheless, well-settled that disclaimed, descriptive matter may have less significance in likelihood of confusion determinations. *See 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

³ Indeed while, as noted below, we do not consider the web pages submitted by Applicant, since they do not contain the required URL and access date, we observe nevertheless that the web page in Exhibit B to Applicant's August 2, 2018 Response to Office Action, which Applicant refers to as "a screenshot from Applicant's website," refers to "RC Essential Oil," with no periods.

be given little weight in reaching a conclusion on the likelihood of confusion.”) (quoting *In re Nat'l Data Corp.*, 224 USPQ at 752); *In re Dixie Rests. Inc.*, 41 USPQ2d at 1533-34; *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”). Furthermore, while the cited mark contains a design element, we generally give less weight to the style and design elements of a mark than to the wording, because it is the wording that would be used by purchasers to request the services. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1911 (Fed. Cir. 2012).

Applicant argues that the term “RC” in the cited mark will be perceived as a house mark for Registrant, Royal Care Cosmetics. To support this assertion, Applicant stated in its August 2, 2018 Response to Office Action, that “Exhibit A is a screenshot from Registrant’s website showing RC COSMETICS Logo and a screenshot from Registrant’s Facebook page showing the RC COSMETICS Logo directly above the name Royal Care Cosmetics.” The Examining Attorney objected to this evidence, however, on the ground that the webpages submitted by Applicant do not contain an indication of the URL or of the date accessed, as required by the Board. *See In re I-Coat Co.*, 126 USPQ2d 1730, 1733 (TTAB 2018); *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1593 (TTAB 2018).

The objection is sustained, and we give the unlabeled webpages no consideration. We further note that, as our precedent dictates, we must base our analysis not on marketplace use, but rather how the marks appear in the registration and the

application. See *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017). In this regard, we find that consumers are likely to consider Applicant’s “R.C.” to be the same as, or a close variation on, the cited mark,



Viewing the marks in their entireties, we find that they are similar in sight and sound, as well as in commercial impression and connotation. Accordingly, we find this *du Pont* factor to weigh in favor of finding a likelihood of consumer confusion.

B. The Goods, Trade Channels, and Purchasers

We now consider the similarities or dissimilarities between the respective goods as identified in the application and in the cited registration. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014) (goods as identified in involved application and cited registration compared); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Applicant identifies “essential oils for aromatherapy use,” while the cited registration identifies “cosmetics and cosmetic preparations; cosmetics and make-up.”

The Examining Attorney submitted the following relevant definition of cosmetics:

Cosmetics: substances intended to be applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance without affecting the body’s structure or functions. Included in this definition are skin creams, lotions, perfumes, lipsticks, fingernail polishes, eye and facial makeup preparations, permanent waves, hair

colors, toothpastes, and deodorants, as well as any material intended for use as a component of a cosmetic product.⁴

The Examining Attorney also submitted evidence of third-party websites that discuss how “essential oils,” as identified by Applicant, may be used as an ingredient or feature of “cosmetics,” as identified by Registrant:

Essential oils for Homemade Cosmetics: Essential oils are not limited to being used as fragrances only. These potent essences can be used in cosmetics, supplying the skin with precious nutrients.
Ecco-Verde.com.⁵

The beauty benefits of essential oils: Most essential oils have cosmetic benefits in addition to their therapeutic properties.
Uniprix.com.⁶

The Examining Attorney submitted additional evidence from Applicant’s own website, touting its use of “essential oils” in creating its cosmetic products:

Personal Care: When it comes to beauty, who knows better than Mother Nature? Infused with the purest essential oils, our personal care, skin care, and beauty products unite nature with luxury.
Youngliving.com.⁷

Finally, the Examining Attorney submitted evidence of third-parties that offer for sale under the same mark both essential oils, as identified by Applicant, and various cosmetics, as identified by Registrant. These include Doterra (doterra.com); Aura Cacia (AuraCacia.com); Now Foods (NowFoods.com); PipingRock (PipingRock.com); Aveda (Aveda.com); NuSkin (NuSkin.com); Orglamix (Orglamix.com); and Shea Moisture (SheaMoisture.com), several of which refer more

⁴ Medicaldictionaryweb.com; Attached to March 3, 2018 Office Action, at 5.

⁵ Attached to September 4, 2018 Final Office Action, at 27.

⁶ Attached to September 4, 2018 Final Office Action, at 31.

⁷ Attached to September 4, 2018 Final Office Action, at 39.

specifically to the “aroma” or aromatherapy uses of the essential oils.⁸ *See In re Detroit Ath. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (relatedness supported by evidence that third parties sell both types of goods under the same mark, showing that “consumers are accustomed to seeing a single mark associated with a source that sells both”). We find that the goods are similar and may be used in a complementary manner.

As to channels of trade and classes of consumers, while Applicant’s identification refers to “aromatherapy use,” the evidence indicates that such use is not exclusive of other possible uses of essential oils, including as a complement to, or even an ingredient in, cosmetics. Accordingly, we must assume that Applicant’s and Registrant’s goods may travel via all normal channels of trade for such goods and be marketed to typical consumers. *See Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937 (Fed. Cir. 1983). As indicated by the third-party evidence and Applicant’s own website, some of the same websites of record offer both types of goods to overlapping members of the general public that seek both essential oils for aromatherapy use, such as Applicant’s, and cosmetics, such as Registrant’s.⁹ Accordingly, the second and third *du Pont* factors also weigh in favor of finding a likelihood of confusion.

⁸ Attached to March 3, 2018 Office Action, at 6-34, and September 4, 2018 Final Office Action, at 3-23.

⁹ Although Applicant correctly points out that mere marketing via the Internet may not be sufficient to find overlapping channels of trade, the evidence of record demonstrates that a number of third-party sellers offer for sale both cosmetics and essential oils via the same channels and under the same mark.

C. Conclusion

After considering all of the arguments and evidence of record as they pertain to the relevant *du Pont* factors, we find that Applicant's mark is similar to the cited mark, when considered as a whole in sight, sound, connotation, and commercial impression. We further find that the goods are similar and are likely to be used in a complementary way, and travel through some of the same channels of trade to the same classes of consumers. Accordingly, we find a likelihood of confusion between

Applicant's mark, R.C., and the mark in the cited registration, , for the goods identified.

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