

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Oral Hearing:
March 9, 2006

Mailed:
November 21, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Mattel Inc.
v.
Stephen Daniel Scott

Opposition No. 91123052
to application Serial No. 78004035
filed on April 13, 2000

Jill M. Pietrini of Manatt, Phelps & Phillips, LLP for
Mattel Inc.

Stephen Daniel Scott, pro se

Before Rogers, Drost and Kuhlke, Administrative Trademark
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, Stephan Daniel Scott, seeks registration of
the mark shown below



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for goods identified in the application as "magazine with pictures and editorials on high performance vehicles such as boats, cars, trucks, motorcycles with female models included" in International Class 16; and "Internet based classified advertising web-site consisting of high-performance boats, cars, motorcycles, trucks, accessories, and all other forms of motorized vehicles" in International Class 35.¹

Opposer, Mattel Inc., opposed registration of applicant's mark, on the grounds that, as applied to applicant's magazines and Internet-based classified advertising services, the mark so resembles opposer's previously used and registered HOT WHEELS and HOT formative marks² for various goods and services, including toy vehicles, entertainment services in the nature of automobile races and sponsorship, and informational services providing data and information via the Internet about collectible toy vehicles, professional automobile racing cars, professional automobile races, and standard, custom, and classic automobiles, as to be likely to cause confusion, to cause

¹ Serial No. 78004035, filed April 13, 2000 based on a bona fide intention to use the mark in commerce under Trademark Act Section 1(b). 15 U.S.C. §1051(b).

² Opposer pleaded 28 registrations and 21 applications which are discussed infra.

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mistake, or to deceive under Trademark Act Section 2(d), 15 U.S.C. §1052(d).³

Applicant filed an answer by which it denied the salient allegations of the notice of opposition.

The evidence of record includes the pleadings; the file of the opposed application; and the testimony deposition (with exhibits) of Mr. John Buchanan, Senior Brand Manager Worldwide Hot Wheels Marketing for Mattel Inc. In addition, opposer submitted, under a notice of reliance, status and title copies of 15 of opposer's pleaded registrations, status and title copies of 3 registrations subsequently issued from pleaded applications, status and title copies of 2 unpleaded registrations, and copies of several applications.⁴ Finally, opposer submitted, under a notice of reliance, opposer's first set of interrogatories; opposer's first set of requests for admissions; applicant's responses to opposer's first set of interrogatories; applicant's responses to opposer's first set of requests for admissions; applicant's second supplemental responses to opposer's first set of requests for admissions,

³ In the brief and at the oral hearing opposer also argued dilution under Section 43(c) of the Trademark Act; however, this claim was not pleaded and the record does not support a finding that dilution was tried by the implied or express consent of the parties. We, therefore, have given no consideration to the arguments concerning dilution.

⁴ Opposer did not submit status and title copies of all of the pleaded registrations.

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interrogatories and document requests; and articles from various printed publications.⁵ Applicant did not submit any evidence or testimony.

Although opposer pleaded a family of "HOT" marks opposer did not pursue that argument in its brief or submit sufficient evidence to prove a family based on the common element "HOT." Further, opposer's arguments in the brief, regarding the numerous registrations for the mark HOT WHEELS, do not support a finding of a family of "HOT WHEELS" marks. Mere ownership of various marks with a common feature, or registrations thereof, does not suffice to establish a family of marks. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); and *Consolidated Foods Corp v. Sherwood Medical Industries, Inc.*, 177 USPQ 279 (TTAB 1973). Therefore, our analysis of Section 2(d) priority and likelihood of confusion is based separately on certain of opposer's pleaded marks. The more relevant HOT WHEELS registrations are summarized as follows:

Registration No. 884563 for the mark

⁵ We note that some of the documents referred to as printed publications appear to be merely printouts of web pages that are not available in printed format in general circulation. These documents are not proper matter for submission under a notice of reliance because they are not self authenticating. *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370 (TTAB 1998). However, we note that applicant discussed exhibits to opposer's notice of reliance in his brief but did not object to these documents. Therefore, they have been considered for whatever probative value they may have. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1266 (TTAB 2003).



for "toy miniature automobiles and accessories therefor" in International Class 28, filed May 12, 1969, issued January 20, 1970, Section 8 accepted, Section 15 acknowledged, renewed;

Registration No. 1961774 for the mark



for "clothing, namely tee shirts" in International Class 25, filed on February 21, 1995, issued on March 12, 1996, Section 8 accepted, Section 15 acknowledged, renewed;

Registration No. 2152706 for the mark



for "prerecorded computer storytelling software, audio and video cassettes featuring games and storytelling, musical sound recordings featuring games and storytelling, audio sound recordings featuring games and storytelling and video sound recordings featuring games and storytelling, screensaver programs, CD-ROM featuring directories of toy vehicles, all for informational, educational and entertainment uses; and, merchandising kiosks for use with computer software, audio sound and video sound recordings, and the like, for informational, educational and entertainment uses" in International Class 9,

"coin-operated arcade games, prerecorded computer game cartridges, cassettes, cards, discs and programs for informational, educational and entertainment uses; electronic hand-held games; computer game joysticks, adapters, connectors and

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controllers for use with prerecorded computer software, audio and video cassettes, CD-ROM, game cartridges, game cassettes, game cards and game discs, all for informational, educational and entertainment uses" in International Class 28,

"providing access to interactive computer on-line services featuring games, stories and directories for toys, games and sporting goods" in International Class 42, filed March 16, 1995, issued April 21, 1998, Section 8 accepted, Section 15 acknowledged;

Registration No. 1906461 for the mark HOT WHEELS (typed form) for "watches and clocks" in International Class 14, filed January 15, 1993, issued July 18, 1995, Section 8 accepted, Section 15 acknowledged, renewed;

Registration No. 2105646 for the mark HOT WHEELS (typed form) for "clothing, namely jackets, coats, vests, sweatshirts, shirts, T-shirts, pants, belts, suspenders, ties, scarves, mittens, gloves and undergarments such as boxer shorts; footwear; and headwear" in International Class 25, filed December 20, 1993, issued October 14, 1997, Section 8 accepted, Section 15 acknowledged;

Registration No. 2782148 for the mark⁶ HOT WHEELS (typed form) for "entertainment services in the nature of automobile races and sponsorship" in International Class 41, filed June 24, 1999, issued November 11, 2003;

Registration No. 2310162 for the mark HOT WHEELS (typed form) for "entertainment, educational and information services, namely, providing data and information concerning collectible toy vehicles, professional automobile racing cars, professional automobile races, and standard, custom, and classic automobiles, providing general interest

⁶ The underlying application was pleaded in the notice of opposition and the registration issued during the course of the proceeding, in view thereof, we consider the pleadings amended to include this registration. Cf. Time Warner Entertainment Co. v. Jones, 65 USPQ2d 1650, 1653 n.2 (TTAB 2002) (opposition deemed amended to include opposer's claim of ownership of previously unpleaded registrations where opposer filed notice of reliance on those registrations at trial and applicant did not object thereto).

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stories directed toward toy vehicle collectors and enthusiasts all of which are provided via a global computer network" in International Class 41, filed November 12, 1996, issued January 25, 2000, Section 8 accepted, Section 15 acknowledged.

For purposes of our analysis we will focus our consideration on Registration No. 884563 and Registration No. 2310162.

Because opposer has made its pleaded registrations of record, opposer has established its standing to oppose registration of applicant's mark, and its priority is not in issue. See *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). In addition, applicant admitted opposer's prior use of its word mark HOT WHEELS and its composite mark HOT WHEELS with a flame design. See Opposer's Notice of Reliance Exh. No. 4 Applicant's Responses to Opposer's Requests for Admissions 1-6.

Our likelihood of confusion determination under Section 2(d) 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 and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 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 and/or services. See

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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). However, another key factor, is the fame of the prior mark. Palm Bay Imports, Inc. v. Veuve Clicquot, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). Opposer has argued that its HOT WHEELS marks are famous and we begin our analysis with this factor, because fame "plays a 'dominant' role in the process of balancing the du Pont factors." Recot Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000).

Opposer's testimony and evidence establish that opposer has sold toy vehicles under the HOT WHEELS marks for over 37 years (Buchanan Dep. pp. 17, 20-27); opposer has manufactured at least two billion toy vehicles (Buchanan Dep. pp. 45-46); sales of products under the HOT WHEELS product line have generated substantial revenue⁷ per year for many years (Buchanan Dep. pp. 92-96; 103-114; 121-127; Exh. Nos. 41-49; 52-55); opposer has sold 800,000-900,000 units of Hot Wheels products at a single retailer in a single week (Buchanan Dep. p. 59); opposer spends a substantial amount per year advertising the HOT WHEELS line

⁷ We note that some of the evidence submitted to support opposer's assertion of fame has been redacted pursuant to the parties' protective agreement; therefore, certain evidence must be discussed in more general terms.

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of products and services (Buchanan Dep. pp. 92-96; 103-114; 121; Exh. Nos. 41-49; 52-55); opposer advertises nationwide on television and radio and in magazines (Buchanan Dep. pp. 89-91; 96); opposer also gains exposure for its HOT WHEELS marks in catalogs, on its websites, on its retailers' websites, and through automotive sponsorships, fast food promotions, and retailer promotions; HOT WHEELS marks regularly appear in print advertisements of large retail outlets including Ames, K-Mart, KB Toys, Target, Toys-R-Us, Walgreens and Wal-Mart (Buchanan Dep. pp. 68-84; Exh. Nos. 23-40); HOT WHEELS marks are regularly the subject of substantial unsolicited publicity from major media in the United States, with 100 separate media impressions occurring in 2003 alone, including The Atlanta Journal-Constitution, The Chicago Tribune, CNN, The Los Angeles Times, The New York Post, The New York Times, USA Today, and The Washington Times (Buchanan Dep. 97-98; Exh. Nos. 10-12, 13-125); HOT WHEELS marks and products also are promoted through product placement in movies (Buchanan Dep. pp. 98-99); opposer oversees two HOT WHEELS collectors clubs with approximately 122,000 members ranging in age from 18 to 80 years (Buchanan Dep. 45-46, 133); opposer's HOT WHEELS website receives a very high number of visitors each month (Buchanan Dep. 101-102; 117-118); opposer currently has approximately 100 licensees of the HOT WHEELS marks selling a variety of

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products, including home accessories, clothing, backpacks, stationery, pens, pencils, sporting goods and various electronics (Buchanan Dep. pp. 116-117); opposer sponsors race cars, bearing the HOT WHEELS logo, on the NASCAR circuit and in Monster Jam events (Buchanan Dep. 50-51, 53); The Petersen Automotive Museum in Los Angeles, California opened a HOT WHEELS exhibit in 2003, which continues to this day and houses and displays life-size HOT WHEELS cars (Buchanan Dep. 141); a book about HOT WHEELS has been written by a third party that features HOT WHEELS toy vehicles through the years (Buchanan Dep. 17-18; 65); opposer owns registrations for HOT WHEELS marks in connection with various types of merchandise, including toy vehicles, watches and clocks, clothing, video games, audio tapes, arcade games, construction toys, and in connection with various services, including online retail services, online provision of information in the field of collectible toy vehicles and professional auto racing, online games, and sponsorship of automobile races.⁸

As applicant presented no evidence, there is no evidence rebutting opposer's evidence of fame. Nor did applicant argue that opposer's marks are not famous.

⁸ Applicant's reference in its brief to a survey is unavailing inasmuch as no survey is of record in this case and one conducted in an unrelated case is of no probative value.

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As shown through the testimony and other evidence, opposer has extensive sales under and advertising expenditures in connection with the HOT WHEELS marks. Moreover, opposer's advertising and sales statistics are placed in the context of a broad, organized and aggressive marketing strategy that places its HOT WHEELS marks in front of consumers in a variety of ways (e.g., promotional events, sponsorships, merchandising, television and radio advertising, feature films, national magazines with wide circulation, etc.). The HOT WHEELS marks have been used for over thirty seven years and are displayed prominently on the product packaging. HOT WHEELS toy vehicles have been extensively promoted and heavily advertised in a variety of media. On this record, we find that opposer's HOT WHEELS typed mark and flame design mark are famous, at a minimum for its toy vehicles, and entitled to broad protection. *Bose Corp. v. QSC Audio Products, Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002) ("[T]he fame of a mark may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling under the mark, and by the length of time those indicia of commercial awareness have been evident.").


We turn next to the first du Pont factor, i.e., whether applicant's mark and opposer's marks are similar or dissimilar when compared in their entireties in terms of

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appearance, sound, connotation and commercial impression. We make this determination in accordance with the following principles. The test, under this du Pont factor, 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 impressions that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Opposer's mark HOT WHEELS is in typed form in Registration No. 2310162 and in stylized form with a flame

design  in Registration No. 884563.

Applicant's mark  is in stylized form with a flame design. The literal portions of the parties' marks begin with the identical word HOT and the second word in each mark begins with a capitalized letter and ends in a plural form. The similarity of the marks continues with the design elements in applicant's and one of opposer's marks where the words are depicted in a similar slanted font, as part of a flame design, and as opposer notes the letters "bend in accord with the flames." Br. p. 20. Further, as opposer

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notes, the H in HOT in applicant's mark and in opposer's design mark flows in the direction of the flames and the O's are similarly elongated. We find the design elements to be strikingly similar. We note that opposer's mark registered in typed form could appear in any reasonable form of stylization, and because opposer actually uses HOT WHEELS in stylized, slanted script it is certainly reasonable to assume it will continue to do so. Opposer's and applicant's stylized forms of lettering are also strikingly similar.

As to connotation, while WHEELS and TOYZ are technically different words that have different meanings, taken in the context of the goods and services in issue here, toy vehicles which include reproductions of classic cars, information provided over the Internet about automobiles and auto racing, and magazines and classified advertising related to high-performance automobiles and motorcycles, the different literal meaning of TOYZ from WHEELS does not serve to distinguish the marks. In particular, we note that WHEELS is a term used not just to refer to components of wheeled vehicles, but also to entire vehicles. We take judicial notice of the following definition for WHEELS: 9. pl. slang: a wheeled vehicle; esp: AUTOMOBILE. Merriam-Webster's Collegiate Dictionary (10th ed. 1999). *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982),

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aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). Also the general connotation of TOYZ as it relates to opposer's goods and services similarly is of entire vehicles as the "toys" of those who would use them. Thus, both marks, despite utilizing different second words, have the same connotation of "hot vehicles." In addition, applicant's use of the word TOYZ in combination with the first word HOT creates a direct connection to opposer's toy goods. In deciding to use the word TOYZ, applicant has chosen one of the few words that directly applies to opposer, famous for toy vehicles.

Thus, the appearance, connotation and overall commercial impressions of the marks are highly similar. Given the fame of opposer's HOT WHEELS marks, and the broad scope of protection to which they are entitled, we find that the similarities in the parties' marks outweigh their differences.

In arguing that the marks are dissimilar, applicant contends that its mark is depicted as one word and opposer's marks are depicted as two words. However, applicant's mark, as depicted, does not support applicant's argument in view of the capitalization of the second word TOYZ, similar to the capitalization of WHEELS in opposer's stylized mark, and the flame that divides the two words. Applicant also argues that the exhibits attached to applicant's supplemental

responses to opposer's interrogatories⁹ "clearly demonstrated the wide spread [sic] use of the word HOT in the automotive industry and lack of opposer's exclusive rights to the word." Br. p. 16. We first point out that only applicant's answers to opposer's interrogatories are of record. No responsive documents were made of record during trial. The relevant interrogatories and the responses are set forth below:

Interrogatory No. 31: Identify all third parties of which Applicant is aware that currently use the term HOT in a mark used for vehicles, toy vehicles, or related products or services.

Response: Hot Rod, Hot Boat, Hot Bike, Hot Trucks.

Supplemental Response: My response was not a list of Vehicles rather a list of Publications of which it is general public knowledge and are available at most Magazine retailers.

Applicant is aware of Opposer's use of the term HOT in its sale of miniature cars (Hot Wheels) Applicant has no knowledge of any other products or services other than the magazines stated in my initial answer, Please see Exhibit 3, for copies of said publications.

Interrogatory No. 32: Identify all third parties of which Applicant is aware that currently use the term HOT in a mark used for magazines or other publications related to vehicles or toy vehicles.

Response: Hot Rod, Hot Boat, Hot Bike, Hot Rodding.

⁹ We note applicant's reference to pages 4 and 5 of its answer as evidence in support of his assertion of third-party use of the word HOT. However, statements in an answer do not constitute evidence and documents attached to an answer are not considered of record. Trademark Rule 2.122(c); TBMP § 317 (2d ed. rev. 2004).

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Supplemental Response: My response was not a list of Vehicles rather a list of Publications of which it is general public knowledge and are available at most Magazine retailers.

Interrogatory No. 33: Identify all third parties of which Applicant is aware that currently use the term HOT in a mark used for internet-based classified advertising websites related to vehicles or toy vehicles.

Response: None that I am aware of at this time.

These unsupported statements are simply not sufficient to make a determination that the word HOT is weak in the automotive magazine field. Moreover, there is no evidence to support a finding that HOT is weak for opposer's identified goods and services.

We turn next to the second, third and fourth du Pont factors, i.e., the similarities between opposer's and applicant's goods and services and the similarities between opposer's and applicant's trade channels and classes of purchasers of these goods and services. We must make our determinations under these factors based on the goods and services as they are recited in the application and registrations, respectively. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981).

The goods or services need not be identical or directly competitive in order for there to be a likelihood of confusion. Rather, the respective goods or services need only be related in some manner or the conditions surrounding their marketing be such that they could be encountered by

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the same purchasers under circumstances that could give rise to the mistaken belief that the goods or services come from a common source. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Opposer's Registration No. 884563 is for "toy miniature automobiles and accessories therefor" which includes reproductions of classic and racing cars. Registration No. 2310162 is for "entertainment, educational and information services, namely, providing data and information concerning collectible toy vehicles, professional automobile racing cars, professional automobile races, and standard, custom, and classic automobiles, providing general interest stories directed toward toy vehicle collectors and enthusiasts all of which are provided via a global computer network." The conditions surrounding the marketing of these goods and services include the production and display of life-size fully functional versions of HOT WHEELS vehicles. Buchanan Dep. p. 141. In addition, consumers encounter opposer's HOT WHEELS marks at automobile races displayed on life-size race cars in the flame logo format (Buchanan Dep. pp. 50-51), in a variety of retail stores where the automobile toy replicas are sold, and on the Internet, both in typed form and with the flame design, where they can purchase the toy vehicles and obtain information about professional automobile racing cars, professional automobile races, and standard, custom,

and classic automobiles on the same website. Finally, opposer's marks are widely advertised on television, radio and in magazines.¹⁰

Applicant has admitted that "the products sold or promoted under the mark HOT WHEELS relate to cars" (Opposer's Notice of Reliance Exh. No. 4 Request for Admission No. 19). Applicant's classified advertising that features high-performance vehicles shares the same subject matter as opposer's website and has a close relationship to opposer's toy vehicles, some of which are replicas of high-performance vehicles. Consumers familiar with opposer's website, which offers for sale miniature replicas of high-performance vehicles and provides information on standard,

¹⁰ With regard to magazines, we further note that opposer also testified that some of its licensees use the HOT WHEELS logo mark in connection with magazines. Mr. Buchanan testified as follows:

Q. Are there any Hot Wheels magazines or collectors magazines?

A. Yes.

Q. Are those products of Mattel, or any of them?

A. No. We traditionally license those out to people to publish them for us. But they use the Hot Wheels logo.

Q. In other words, they are authorized Hot Wheels magazines or collector magazines? That's what I'm driving at.

A. Yes. Buchanan Dep. p. 130.

We note that opposer did not specify which of the HOT WHEELS marks were used (for example, on this record there are two HOT WHEELS logo marks) or when such use began; nor did opposer provide examples of such use. Thus, we are not able to make a determination as to opposer's common law rights to a specific HOT WHEELS mark with regard to magazines; however, such evidence of record, although limited in probative value, provides additional facts to understand the conditions under which the HOT WHEELS brand goods and services in issue are sold.

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custom, and classic vehicles, and who subsequently encounter applicant's website, could reasonably believe opposer is now offering classified advertising on these same types of vehicles. Similarly, applicant's magazines share the same subject matter as opposer's website. With regard to opposer's toy vehicles, the subject matter of applicant's magazine also relates to opposer's high-performance vehicle replicas and adult collectors of opposer's toy vehicles, when confronted with applicant's magazine, could reasonably believe opposer is offering a magazine related to high-performance vehicles. Further, as noted above, applicant's mark is strikingly similar to opposer's logo mark used and registered in connection with its toy vehicles. We find that the goods and services of the parties are related and, on this record establishing the marketing conditions and the fame of opposer's marks, we find that consumers would view the respective goods and services as having common source or sponsorship. *Recot, supra*, 54 USPQ2d at 1898 ("Indeed, this court and its predecessor court have consistently stated that fame of the mark is a dominant factor in the likelihood of confusion analysis for a famous mark independent of the consideration of the relatedness of the goods.")

With regard to the channels of trade and potential purchasers, the record establishes that in addition to children, opposer also targets adults 18 to 80 years of age

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(Buchanan Dep. p. 133) and has a large adult collectors club. These adult collectors are purchasing toy vehicles and also of the demographic likely to be seeking information about high-performance vehicles and racing on opposer's website. Those adult members of opposer's collectors club seeking to purchase a life-size high-performance vehicle could be confused as to source when encountering applicant's services under its HOT TOYZ logo mark. Moreover, Internet users seeking information on vehicles for sale, as through applicant's website, would also be likely to frequent other websites providing information on vehicles, as at opposer's website. Thus, such prospective purchasers could easily encounter both applicant's mark and opposer's famous marks.

With regard to applicant's magazines, given the notoriety of opposer's marks and their frequent appearance in print media, consumers would be exposed to the marks in printed publications. In addition, applicant intends to sell its magazines in the same types of stores opposer sells and advertises its toy vehicles. Specifically, as to its magazines, applicant has described its trade channels as including "grocery stores, convenience stores, magazine stands and mail order subscriptions." Notice of Reliance Exh. No. 5, Applicant's Supplemental Response to Interrogatory No. 16. Opposer's toy vehicles are sold in grocery stores (Safeway, Albertsons), convenience stores

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(Rite Aid, 7-Eleven) and gas stations (Chevron, Exxon Mobil). Buchanan Dep. p. 118-120. While the sale of different types of goods in a large store is not particularly dispositive in the likelihood of confusion analysis, *Federated Foods, supra*, 192 USPQ at 29, in this case, where opposer's marks are famous, the sale of the parties respective goods in the same venue enhances the possibility of confusion.

Finally, as to the sophistication of the purchasers, we agree with applicant that, in connection with its classified advertising services, buyers of automobiles, using applicant's website to find automobiles to purchase, and sellers, purchasing space on his website to advertise their automobiles, would exercise care in their purchasing decision. However, given the fame of opposer's marks the relative importance of this factor is minimized. *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281, 1284 (Fed. Cir. 1984) ("The fame of a trademark may affect the likelihood purchasers will be confused inasmuch as less care may be taken in purchasing a product under a famous name.") We further note that some of opposer's goods that can be found and purchased on opposer's website are also very expensive. Buchanan Dep. p. 86. Thus, consumers of opposer's goods are accustomed to seeing

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the HOT WHEELS marks used in connection with expensive items.

Considering the respective marks in their entireties, we conclude that the evidence of record as it pertains to the relevant du Pont factors clearly supports a finding of likelihood of confusion as to the marks in opposer's Registration Nos. 884563 and 2310162 and that registration of applicant's mark, therefore, is barred under Trademark Act Section 2(d). Finally, to the extent there is any doubt with regard to the question of likelihood of confusion, such doubt must be resolved in favor of opposer, the prior registrant. *Hewlett-Packard Co. v. Packard Press, inc.*, 281 USPQ2d 1001, 1003 (Fed. Cir. 2002) ("This court resolves doubts about the likelihood of confusion against the newcomer because the newcomer has the opportunity and obligation to avoid confusion with existing marks"); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Decision: The opposition is sustained.