

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

Hearing: July 27, 2010

Mailed: August 30, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Le Cordon Bleu International
v.
Muffman Products, LLC

Opposition No. 91155779
to application Serial No. 78129397
filed on May 16, 2002

Joseph D. Lewis of Barnes & Thornburg LLP for Le Cordon Bleu International.

Muffman Products, LLC *pro se*.

Before Seeherman, Walters and Bergsman,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Muffman Products, LLC ("applicant") filed an intent-to-use application for the mark CORD ON BLUE, in standard character form, for "general purpose non-metal storage units for use in hanging cards (sic), namely, stretch cords, electrical cords and bungie (sic) cords," in Class 20.¹

Le Cordon Blue International ("opposer") opposed the registration of applicant's mark on the grounds of likelihood of confusion under Section 2(d) of the

¹ Applicant's product is a blue plastic holder for storing cords. (Hughes Testimony Affidavit, Exhibit A; Opposer's notice of reliance).

Trademark Act of 1946, 15 U.S.C. §1052(d), and dilution under Section 43(c) of the Trademark Act of 1946, 15 U.S.C. §1025(c).² Specifically, opposer alleged that prior to any use upon which applicant may rely, opposer has been using a number of different marks incorporating the term "Cordon Bleu" for a wide variety of goods and services, including educational services in the field of cooking; that opposer's CORDON BLEU marks became famous in connection with opposer's goods and services prior to any use of applicant's mark; that applicant's mark CORD ON BLUE for "general purpose non-metal storage units for use in hanging cards (sic), namely, stretch cords, electrical cords and bungie (sic) cords" so resembles opposer's CORDON BLEU marks as to be likely to cause confusion; and that applicant's mark CORD ON BLUE will dilute the distinctive quality of opposer's marks.

Applicant denied the salient allegations in the notice of opposition.

The Record

By rule, the record includes applicant's application file and the pleadings. Trademark Rule 2.122(b), 37 CFR §2.122(b).

² Opposer also pleaded that applicant's mark is merely descriptive. However, opposer did not reference the descriptiveness claim in its brief and, therefore, we deem it withdrawn.

The parties stipulated that they may submit their testimony through sworn affidavits or declarations.

A. Opposer's testimony and evidence.

1. The declaration of André Cointreau, the President of opposer, with attached exhibits;

2. A notice of reliance on printed publications filed pursuant to Trademark Rule 2.122(e);

3. A notice of reliance on copies of opposer's pleaded registrations prepared by the U.S. Patent and Trademark Office showing the current status of and current title to the registrations, including the registration for the mark LE CORDON BLEU, in typed drawing form, for "educational services - namely, courses and lectures in cooking and oenology";³ and,

4. A notice of reliance on applicant's responses to enumerated requests for admission.

B. Applicant's testimony and evidence.

Applicant submitted the affidavit of Eric M. Hughes, applicant's manager, with attached exhibits. In addition, applicant submitted a document entitled "Applicant's Testimony," with attached exhibits. "Applicant's Testimony" was not supported by an affidavit or declaration and was in the nature of a legal argument rather than testimony.

³ Registration No. 0786557, issued March 9, 1965; second renewal. We note that the status and title copy incorrectly states "1st Renewal for a term of 10 years from March 09, 2005."

Opposer objected to "Applicant's Testimony" on the ground that it comprised legal argument. Opposer's objection is sustained to the extent that we will not consider the legal argument in "Applicant's Testimony." However, we will consider the documents because they are admissible as official records and documents obtained through the Internet. See Trademark Rule 2.122(e); see also *Safer Inc. v. OMS Investments Inc.*, 94 USPQ2d 1031, 1039 (TTAB 2010).

Standing

Because opposer has properly made its pleaded registrations of record, opposer has established its standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

Priority

Because opposer's pleaded registrations are of record, Section 2(d) priority is not an issue in this case as to the marks and the goods and services covered by the registrations. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the 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 Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). With respect to applicant's argument that the Examining Attorney allowed the mark for publication, the Board is not bound by the decision of the Examining Attorney. *Cineplex Odeon Corp. v. Fred Wehrenberg Circuit of Theatres Inc.*, 56 USPQ2d 1538, 1541 (TTAB 2000).

A. The fame of opposer's marks.

This *du Pont* factor requires us to consider the fame of opposer's marks. Fame, if it exists, plays a dominant role in the likelihood of confusion analysis because famous marks enjoy a broad scope of protection or exclusivity of use. A famous mark has extensive public recognition and renown. *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992).

Fame may be measured indirectly by the volume of sales and advertising expenditures of the goods and services identified by the marks at issue, "by the length of time those indicia of commercial awareness have been evident," widespread critical assessments and through notice by

independent sources of the products identified by the marks, as well as the general reputation of the products and services. *Bose Corp. v. QSC Audio Products Inc.*, 63 USPQ2d at 1305-1306 and 1309.

Opposer's evidence regarding the fame of its marks is newspaper articles, submitted under notice of reliance, that uniformly reference LE CORDON BLEU as the famous cooking school (e.g., the famous French cooking school, the famous cooking school in France, or the famous cooking school in Paris).⁴ Similar evidence of fame includes articles attached as exhibits to the affidavit of André Cointreau.⁵ The following examples are illustrative:

The Oregonian (July 6, 2001)

Chefs School Gains An Advantage From
French Connection

A cooking and restaurant-management
training ground affiliated with France's
Le Cordon Bleu program opens

* * *

The vision for the hands-on education
program started with a partnership
between the world-famous French cooking
institution Le Cordon Bleu and Illinois-
based Career Education Corp., a company
that buys private vocational schools. ...
In the process, it landed an exclusive
partnership with Le Cordon Bleu,

⁴ Absent a showing that foreign articles would be seen by readers in the United States, we have only considered the publications originating in the United States.

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becoming the only company licensed to offer the prestigious French culinary programs in the United States.

The Cincinnati Enquirer (February 13, 2000)

Cruisers Sail With Celebs

Recently, aboard the Silver Cloud, something special was cooking. In a collaboration with Le Cordon Bleu, the famous culinary school, Silversea Cruises offered an opportunity for food fanciers to enjoy a seagoing introduction to l'art culinaire. Le Cordon Bleu, considered the foremost ambassador of French cuisine, provided two chefs to educate, entertain and guide us through the complicated world of ramekins and recipes.

The Houston Chronicle (September 3, 1995)

Hawaiian Beachfront Resort Hosts Cooking Workshop

Q. Is there any way we could combine a vacation with an opportunity for my daughter to learn some cooking skills?

A. The Halekulani, a romantic beachfront resort hotel on Waikiki in Honolulu, is offering a vacation package that might interest you.

The hotel is celebrating the 100th anniversary of the famous cooking school Le Cordon Bleu by offering cooking instruction and workshops Sept. 25-29.

While the references to LE CORDON BLEU in the articles are hearsay, the references reflect the perception of the authors and that perception is conveyed to the readers. The numerous articles uniformly identifying LE CORDON BLEU as the famous cooking school is sufficient to show that opposer's mark LE CORDON BLEU is famous in connection with educational services in the field of cooking for purposes of determining likelihood of confusion.⁶ Because opposer's mark LE CORDON BLEU for educational services in the field of cooking is famous, it is entitled to a broad scope of protection or exclusivity of use. *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 22 USPQ2d at 1456. As a mark's fame increases, the tolerance for similarities in competing marks falls. *Id.*

When an opposer's trademark is a strong, famous mark, it can never be "of little consequence." 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.

Id., quoting *Specialty Brands v. Coffee Bean Distributors*, 748 F.2d 669, 223 USPQ 1281, 1284 (Fed. Cir. 1984); see also *B.V.D. Licensing v. Body Action Design*, 846 F.2d 727, 730, 6 USPQ2d 1719, 1722 (Fed. Cir. 1988) (Nies, J., dissenting) ("a purchaser is less likely to perceive differences from a

⁶ In its notice of reliance, opposer introduced 74 articles from various U.S. publications from 1982 through 2009.

famous mark.") (emphasis in original). In this regard, the Court of Appeals for the Federal Circuit has stated the following:

[T]here is "no excuse for even approaching the well-known trademark of a competitor ... and that all doubt as to whether confusion, mistake, or deception is likely is to be resolved against the newcomer, especially where the established mark is one which is famous."

Nina Ricci S.A.R.L. v. E.T.F. Enterprises Inc.,
889 F.2d 1070, 12 USPQ2d 1901, 1904 (Fed. Cir. 1989),
quoting, *Planter's Nut & Chocolate Co. v. Crown Nut Co.*,
305 F.2d 916, 134 USPQ 504, 511 (CCPA 1962).

In view of the foregoing, we find that applicant's evidence that chicken cordon bleu is a recipe for a chicken dish or that the term cordon bleu identifies a finch and a rose is not sufficient to limit the scope of protection to which the mark LE CORDON BLEU is entitled.

B. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*,

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8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*,

6 USPQ2d 1041, 1042 (TTAB 1988).

Although opposer's mark LE CORDON BLEU consists of French words, many Americans will not be aware of the French pronunciation, and will say the mark with an American accent. Thus, opposer's mark and applicant's mark CORD ON BLUE must be considered to be identical in sound with the exception of the French article "Le" in opposer's mark. The marks are also similar in appearance in that opposer's mark has the single word "Cordon" which applicant has made into two words "Cord On." The word "Cordon" in opposer's mark is followed by the word "Bleu" whereas in applicant's mark "Cord On" is followed by the word "Blue." The "Le" component of opposer's mark, which is the equivalent of the word "the," is not a sufficient basis for consumers to distinguish the marks; nor is the difference in spelling of the word "Bleu"/"Blue"; because only the last two letters are transposed, and because the words may be pronounced similarly, many consumers may not note or remember this difference.

The meanings of the marks are different. Opposer's mark LE CORDON BLEU means "The Blue Ribbon,"⁷ whereas applicant's mark CORD ON BLUE has no discernable meaning but for the literal meaning of the words which as used with

⁷ See the translation statement in Registration No. 0786557.

applicant's goods means something blue that cords are put on.

With respect to the commercial impressions created by the marks, opposer's mark LE CORDON BLEU engenders the commercial impression of something of "high distinction" or "any person of great distinction in a specific field, esp. a distinguished chef."⁸ Because of the fame of opposer's mark, when consumers encounter applicant's mark, the commercial impression engendered by applicant's mark will call to mind opposer's mark.

To the extent that applicant argues that its mark is displayed in a logo format that is distinctly different from opposer's marks,⁹ that argument is not relevant because applicant is seeking to register its mark in standard character form. A mark displayed in standard character form is for the words without any particular font style, size or color. Trademark Rule 2.52(a).

In view of the foregoing, we find that the overall similarities of the marks, particularly in sound and appearance, outweigh any differences and that the marks are,

⁸ The Random House Dictionary of the English Language (Unabridged), p. 450 (2nd ed. 1987). The Board may take judicial notice of dictionary evidence. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

⁹ Applicant's Brief, p. 10.

therefore, similar for purposes of determining likelihood of confusion.

C. The similarity or dissimilarity and nature of the goods.

Applicant is seeking to register its mark for "general purpose non-metal storage units for use in hanging cards (sic), namely, stretch cords, electrical cords and bungee (sic) cords." In addition to its use of the mark LE CORDON BLEU in connection with cooking schools, André Cointreau, opposer's President, testified regarding opposer's use of the mark in connection with other goods and services.

A full-scale and comprehensive program was established for expanding the use of LE CORDON BLEU trademarks to a wide variety of goods and services. The trademark was used in relation to LE CORDON BLEU products and services, including the cookbooks and videos featuring the school's recipes, gourmet food products, as well as *Arts de la Table* items (tableware, crockery, table linen, china, cooking utensils, household appliances, professional clothing).¹⁰

In addition to educational services in the field of cooking, opposer has registered variations of LE CORDON BLEU in connection with the following goods:

1. Tobacco products;¹¹
2. Clothing;¹²

¹⁰ Cointreau Affidavit, p. 6 and Exhibits 33-37

¹¹ Registration No. 1633357, issued January 29, 1991; renewed.

¹² Registration No. 1635545, issued February 19, 1991; renewed.

3. Herb teas; watches and clocks; towels and cloth napkins; teddy bears;¹³
4. Kitchen and household furniture; picture frames;¹⁴
5. Non-electric cooking utensils, namely, sauce pans, skillets, Dutch ovens, casserole cookers, cooking racks and cups to fit the racks, strainers, and covers;¹⁵
6. Heat sensors;¹⁶
7. Gas ovens, ranges and cookers;¹⁷
8. Food products;¹⁸ and
9. Household items, such as photographs, adhesives, paint brushes, paper cutters, recipe cards, plastic bags for cooking and household use, wrapping paper; notebooks and note pads, pencils, pens, calendars, napkins, and paper towels;¹⁹

While applicant's goods and opposer's goods and services are different, it is not necessary that the goods and/or services of applicant and opposer be similar or competitive to support a holding of likelihood of confusion, it being sufficient for the purpose that the respective goods and/or services are related in some viable manner, and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarities

¹³ Registration No. 1641838, issued April 23, 1991; renewed.

¹⁴ Registration No. 1908491, issued August 1, 1995; renewed.

¹⁵ Registration No. 2149920, issued April 14, 1998; renewed.

¹⁶ Registration No. 2325047, issued March 7, 2000; renewed.

¹⁷ Registration No. 2667457, issued December 31, 2002; Sections 8 and 15 affidavits accepted and acknowledged.

¹⁸ Registration No. 2826804, issued March 30, 2004; Sections 8 and 15 affidavits accepted and acknowledged.

¹⁹ Registration No. 2837534, issued May 4, 2004; Sections 8 and 15 affidavits accepted and acknowledged.

of the marks used therewith, give rise to the mistaken belief that they emanate from or are in some way associated with the same source. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 (TTAB 1989); *Chemical New York Corp. v. Conmar Form Systems, Inc.*, 1 USPQ2d 1139, 1143 (TTAB 1986). Because of the fame of opposer's LE CORDON BLEU mark in connection with cooking schools and because opposer has capitalized on that fame by selling a wide variety of goods under its mark, we find that consumers will logically suppose that applicant's goods are associated with, sponsored by, licensed by or somehow affiliated with opposer.

D. The similarity or dissimilarity of likely-to-continue trade channels and classes of consumers.

Because the goods identified in the application and the goods and services identified in opposer's registrations are not restricted or limited in any way, we must assume that applicant's general purpose storage units will be sold in all of the normal channels of trade to all of the normal purchasers for such goods and that opposer's cooking school services and consumer products will also be sold in all normal channels of trade to all of the normal consumers for such goods and services. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987); *Toys R Us v. Lamps R Us*, 219 USPQ 340,

343 (TTAB 1983). Because applicant's general purpose storage units and opposer's products and services are general consumer items, they are available to all consumers.

Applicant argues that its general purpose storage unit does not move in the same channels of trade as opposer's products and services.

Applicant's CORD ON BLUE product is and will continue to be sold in stores such as sporting good (sic) stores and motorcycle shops (for helmets), hardware stores (for extension cords), riding tack shops (horse riding gear), military usage (for gas masks) and the like. It is highly unlikely any LE CORDON BLUE (sic) product or products will be side-by-side in these types of venues.²⁰

However, applicant's website indicates that its product is appropriate for use in the home²¹ and many of opposer's products fall within the category of housewares.

Accordingly, we find that applicant's general purpose storage units and opposer's consumer products may move in the same channels of trade and applicant's products and opposer's products and services may be sold to the same classes of consumers.

²⁰ Applicant's Brief, p. 9.

²¹ Opposer's Notice of Reliance on applicant's response to request for admission No. 7.

E. The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.

An article appearing in the November 17, 2003 issue of *Anchorage Daily News* reports that Eric Hughes, applicant's manager, "said that he will stick with the name even if he cannot get the trademark, hoping it will trigger impulse purchases in the checkout line, giving the product a chance to win fans."²² Because applicant's product is considered by applicant itself as an impulse purchase item and because opposer's mark is famous, there is a greater likelihood of confusion because not only are impulse purchases subject to less care in general, but when a trademark or service mark is famous, consumers will exercise even less in making their purchasing decision. *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 22 USPQ2d at 1456, citing *Specialty Brands v. Coffee Bean Distributors*, 223 USPQ at 1284.

F. Balancing the factors.

In view of the facts that opposer's LE CORDON BLEU mark used in connection with cooking school services is famous, and that the marks of the parties are similar, the goods and services of the parties are related, may move in the same channels of trade and may be sold to the same classes of consumers, and applicant's goods can be the subject of impulse purchase, we find that applicant's registration of

²² Hughes Affidavit, Exhibit A.

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the mark CORD ON BLUE for "general purpose non-metal storage units for use in hanging cards (sic), namely, stretch cords, electrical cords and bungie (sic) cords" is likely to cause confusion with opposer's LE CORDON BLEU marks.

Because we have found that there is a likelihood of confusion, we do not decide the dilution claim.

Decision: The opposition is sustained and registration to applicant is refused.