THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: January 3, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Viker Manufacture Co Ltd.

v.

Jiangnan Li

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Opposition No. 91187766
to application Serial No. 77511164
filed on June 30, 2008

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Venkat Balasurbramani of Focal PLLC for Viker Manufacture Co Ltd.

Bruno Tarabichi of Owens Tarabichi LLP for Jiangnan Li.

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Before Seeherman, Taylor, and Wellington,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Jiangnan Li, an individual, seeks registration of SANGEL (in standard character form) for "natural herbal supplements" in International Class 5.[1]

[1] Serial No. 77511164, filed on June 30, 2008, alleging a bona fide intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

Opposer, Viker Manufacture Co Ltd., has opposed registration of applicant's mark based on opposer's allegation of common law rights in the mark SANGEL for "a variety of services and goods, including herbal supplement[s]" and that its use of the mark is "prior to the [subject application's] filing date of June 30, 2008."[2] In the notice of opposition, as amended, opposer alleges that "in view of...the related nature of the goods, Applicant's mark is identical to opposer's SANGEL mark and is likely to cause confusion, or to cause mistake, or to deceive as to the origin [of the goods]..."

Applicant filed an answer denying the salient allegations of the notice of opposition.

Only opposer presented evidence at trial and filed a trial brief. Aside from filing an answer and a motion to dismiss, which was denied by the Board, there is no indication that applicant thereafter actively defended his application; nevertheless, we are cognizant that the burden remains with opposer and that it must establish its pleaded case (in this instance, its standing and Section 2(d) ground

[2] In the notice of opposition, opposer also pleads ownership of an application; however, the application number it references and the USPTO database printout attached to the complaint identify the opposed application. With its notice of reliance, opposer submitted a copy of a USTPO database printout for an application that it does own (Application Serial No. 77576992). In view of the submission of this application, and the fact that applicant has made no objection thereto, we treat the reference to applicant's serial number in the amended notice of opposition as

of opposition) by a preponderance of the evidence. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1848 (Fed. Cir. 2000).

By operation of the rules, the evidence of record in this case consists of the file of applicant's involved application and the pleadings. In addition, opposer submitted a notice of reliance upon printouts from a USPTO database for its application (see footnote 2) as well as various other Canadian and U.S. governmental documents pertaining to opposer's importation of goods, a Canadian trademark registration, and other official documents relating to opposer's business activities. In addition, opposer filed a copy of the testimony, with exhibits, of its witness, Dr. Fang Fang, opposer's owner and president.[3]

Standing

A party has standing to oppose if it can demonstrate a real interest in the proceeding. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). "The purpose in requiring standing is to prevent litigation where there is no real controversy between the parties, where a plaintiff, petitioner or opposer, is no more than an intermeddler." *Id.* To establish a reasonable

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a typographical error, and deem the pleaded application to be Serial No. 77576992 for opposer's application.

[3] Applicant did not attend the deposition of Dr. Fang and thus no cross-examination took place.

basis for a belief that one is damaged by the mark sought to be registered, an opposer may assert a likelihood of confusion which is not wholly without merit. *Id.* In this proceeding, opposer has established it has a real interest in this proceeding because it sells dietary herbal supplements under the mark SANGEL.[4] Opposer has a real interest in preventing the registration of the same mark for the same or closely-related goods.

Priority

Applicant filed his intent-to-use application on June 30, 2008. Inasmuch as we have no testimony or other evidence from applicant regarding his use of the SANGEL mark, we consider June 30, 2008 to be applicant's priority date.[5] *Mason Engineering v. Mateson Chemical,* 225 USPQ 956, 961 (TTAB 1985) (in the absence of evidence regarding its date of first use, the earliest date on which applicant can rely is the filing date of its application).

Because opposer has not registered its pleaded SANGEL mark, it must show that it began using said mark prior to

[4] Fang dep. 7:1-14.

[5] At one point in his deposition, Dr. Fang responded "yes" to the question "As far as you know has [applicant] ever made any sales in the U.S. of any products bearing the Sangel mark?" Fang dep. 54:11-13. However, he responded "no" to the following question, "In the United States has [applicant] ever sold any Sangel products?" Fang dep. 54:14-16. Even if we were to construe this testimony, which appears to be contradictory, in a light most favorable to applicant, it does not serve to establish an earlier priority date for applicant; at most it shows only that applicant had made sales in the United States as of the time of Dr. Fang's

the filing date of applicant's application. *Miller Brewing Co. v. Anheuser-Busch Inc.*, 27 USPQ2d 1711, 1714 (TTAB 1993). Opposer began using its SANGEL mark on dietary supplements in the United States on March 22, 2004.[6] The record, in particular the testimony of Dr. Fang and related exhibits, demonstrates that opposer has continuously sold its dietary supplements in various geographic areas throughout the United States by way of its distributors or agents since 2004.[7] Accordingly, we find that opposer has established its use of SANGEL prior to the filing date of applicant's application.

Likelihood of Confusion

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). In considering the evidence of record on these factors, we keep in mind that "[t]he 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." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

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deposition, which obviously was taken during this proceeding, and thus after the filing date of applicant's application.

[6] Fang dep. 14:4-8.

We turn first to the *du Pont* factor involving the similarity of the parties' marks. Our focus is on whether the marks are similar in sound, appearance, meaning, and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). Here, applicant seeks to register the mark SANGEL, the very same mark that opposer has previously used. They are identical in sound and appearance. Dr. Fang has testified that SANGEL has no particular meaning or connotation, except that he coined the term as an abbreviation of its ingredients (described later). Again, we have no evidence from applicant or brief explaining any other possible meaning of the term. Therefore, to the extent that SANGEL has any connotation, we must assume that it would be attributed equally to the goods sold by applicant and those sold by opposer. The marks also convey the same commercial impression. Accordingly, this d*u Pont* factor weighs heavily in favor of finding a likelihood of confusion.

We turn next to the similarity of applicant's goods, i.e., "natural herbal supplements," vis-à-vis the goods for which opposer has established priority in the mark SANGEL. Dr. Fang has testified that opposer uses the SANGEL mark on "dietary supplements," and more specifically describes the

[7] See, in general, Fang dep. pp. 20-32 and Exhibits 13-34.

goods as an "herbal supplement...for woman's menopause."[8] Opposer's SANGEL-branded dietary supplements contain natural ingredients, such as "concentrated amount safflower angelica root, ginseng, poria, epimedium herb, semen ziziphi psinosae and lyceum fruit."[9] Based on this information and the entire record before us, we conclude that applicant's goods are, in part, identical to opposer's goods, i.e., they are both natural herbal supplements. Moreover, because the parties' goods are identical and in the absence of any limitation as to channels of trade in applicant's identification of goods, we must presume that the parties' natural herbal supplements would be sold in the same channels of trade to the same classes of consumers.

Accordingly, the *du Pont* factors of the similarity of the goods, channels of trade and classes of purchasers all favor opposer in finding a likelihood of confusion. As noted, applicant has not submitted any evidence or argument that would indicate that any other *du Pont* factors favor his position.

In sum, applicant seeks registration of a mark that is identical to opposer's previously-used mark and for goods that are deemed to be, in part, legally identical. We have

[8] Fang dep. 7:1-8. Dr. Fang further described the purported benefits of opposer's SANGEL supplements as "provides nutrition to the ovaries, keep ovaries healthy and regulate the hormone and the release of menopause symptoms." Fang dep. 8:5-6

[9] Fang dep. 8:10-12.

no doubt that the use of the identical mark for legally identical goods is likely to cause confusion.

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