

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
December 10, 2010

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**  
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General Motors LLC  
v.  
Jim M. Sweeney  
\_\_\_\_\_

Opposition No. 91188584  
to application Serial No. 77458970  
filed on April 27, 2008  
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Timothy G. Gorbatoff, Esq. for General Motors LLC.

Jim M. Sweeney *pro se*.

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Before Walsh, Bergsman and Wellington  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Jim M. Sweeney (applicant) filed an intent-to-use application for the mark CORVOLTTE, in standard character form, for goods ultimately identified as "electric vehicles, namely, automobiles" in Class 12.

General Motors LLC (opposer) opposed the registration of applicant's mark on the ground of priority of use and likelihood of confusion.<sup>1</sup> Specifically, opposer alleged, so

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<sup>1</sup> Also, opposer attempted to plead dilution pursuant to Section 43(c) of the Trademark Act of 1946, 15 U.S.C. §1125(c). However, opposer did not properly plead that claim because it failed to allege that its CORVETTE mark became famous prior to the filing date of the application at issue. In addition, as discussed more fully below, opposer failed to prove that its CORVETTE mark is

far as pertinent, that it has been continuously using the mark CORVETTE to identify automobiles since 1952, that it is the owner of several registrations, including Registration No. 1495033 for the mark CORVETTE, in typed drawing form, for automobiles, and that applicant's use of the mark CORVOLTTE for automobiles so resembles opposer's CORVETTE trademark for automobiles as to be likely to cause confusion.

Applicant, in his answer, admitted that opposer has been continuously using the mark CORVETTE to identify automobiles since 1952 and that opposer is the owner of Registration No. 1495033 for the mark CORVETTE for automobiles, but denied that there is a likelihood of confusion.

#### The Record

By operation of Trademark Rule 2.122, 37 CFR §2.122, the record includes the pleadings and the application file for applicant's mark. The only other evidence is a notice of reliance filed by opposer with the following evidence:

1. Copies of several pleaded registrations for the mark CORVETTE prepared and issued by the United States Patent and Trademark Office showing both the current status of and current title to the registrations, but not

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famous. In view of the foregoing, we give the dilution claim no further consideration.

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Registration No. 1495033 for the mark CORVETTE for automobiles;<sup>2</sup>

2. An excerpt from Corvette Illustrated Encyclopedia, pp. 217-303 (2004);

3. An excerpt from Corvette America's Sports Car, pp. 6-7 (2007);

4. The *Wikipedia* entry for Corvette.

Only opposer filed a brief.

#### Standing and Priority

Because applicant admitted that opposer has been continuously using the mark CORVETTE to identify automobiles since 1952, opposer has established its standing and priority of use.

#### 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).

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<sup>2</sup> Despite the fact that at the time of trial, the Board had liberalized its practice for admitting proof of opposer's pleaded registrations by permitting the submission of the electronic records of USPTO records through a notice of reliance, applicant did not take advantage of the new practice and failed to make its most relevant registration of record. *See Research In Motion Ltd. v. NBOR Corp.*, 92 USPQ2d 1926, 1928 (TTAB 2009).

A. The fame of opposer's CORVETTE mark.

In view of the extreme deference that is accorded to a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, we think that it is the duty of a plaintiff asserting that its mark is famous to clearly prove it. *Blue Man Productions Inc. v. Tarman*, 75 USPQ2d 1811, 1819 (TTAB 2005), *rev'd on other grounds*, Civil Action No. 05-2037 (D.D.C. April 3, 2008).

There is no evidence of sales, advertising or the extent of the mark's renown. To the extent that opposer has relied on the *Wikipedia* evidence to establish the fame of the CORVETTE mark, an Internet entry is admissible for the limited purpose of demonstrating what has been printed, not for the truth of what has been printed. *Safer Inc. v. OMS Investments Inc.*, 94 USPQ2d 1031, 1040 (TTAB 2010). Suffice it to say, opposer's evidence falls far short of establishing the fame or renown of its CORVETTE mark.

B. The similarity or dissimilarity and nature of the goods as described in the application and by opposer's use.

Applicant is seeking to register its mark for "electric vehicles, namely automobiles" and opposer uses its CORVETTE mark to identify automobiles. Opposer's automobiles are so closely related to electric automobiles as to be legally identical.

C. The similarity or dissimilarity of established, likely-to-continue trade channels and buyers to whom sales are made.

Because the goods at issue are legally identical, we must presume that the channels of trade and classes of purchasers are the same. See *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade"); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers").

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

We now turn to the *du Pont* factor focusing on the similarity or dissimilarity of applicant's mark CORVOLTTE and opposer's mark CORVETTE in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. Where, as in this case, applicant's mark and opposer's mark appear on legally identical goods, the degree of similarity between the marks necessary to support a finding of

likelihood of confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

The marks are similar, particularly in regard to their appearance and sound. Both marks consist of two syllables starting with "Cor" and followed by a second syllable starting with the letter "v" and ending with the letters "tte." Exact similitude is not required to conclude that two marks are similar. *Hercules Inc. v. National Starch and Chemical Corp.*, 223 USPQ 1244, 1246 (TTAB 1984). In this case, we find that the appearance and sound of the marks CORVETTE and CORVOLTTE are more similar than dissimilar.

A "corvette" is "a lightly armed, fast ship used mostly for convoy escort and ranging in size between a destroyer and a gunboat."<sup>3</sup> Thus, the commercial impression engendered by opposer's mark is a fast and maneuverable vehicle. When used in connection with a land vehicle it is an arbitrary term. On the other hand, applicant's mark CORVOLTTE is a coined term suggesting a connection with electricity by virtue of its "voltte" suffix.

In comparing the marks CORVETTE and CORVOLTTE, we find that the points of similarity outweigh the dissimilarities

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<sup>3</sup> The Random House Dictionary of the English Language (Unabridged), p. 456 (2<sup>nd</sup> 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, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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such that the similarities of both marks would be apparent to anyone exposed to them.

E. Balancing the factors.

In weighing the likelihood of confusion factors present in this case, we find that the applicant's mark CORVOLTTE for electric vehicles, namely, automobiles" is likely to cause confusion with opposer's mark CORVETTE for automobiles.

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