

This Opinion is Not a
Precedent of the TTAB

Mailed: September 26, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Aktas Hava Suspansiyon Sistemleri Sanayi Ve Ticaret AS

v.

Pin Hsiu Rubber Co., Ltd.
—

Opposition No. 91204375
against Serial No. 85415388
—

L. Jeremy Craft and Andrew W. Chu of Craft Chu PLLC,
for Aktas Hava Suspansiyon Sistemleri Sanayi Ve Ticaret AS.

Nicole B. Rackiewicz and Morton J. Rosenberg of Rosenberg Klein & Lee,
for Pin Hsiu Rubber Co., Ltd.

—
Before Bucher, Cataldo and Wolfson,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Pin Hsiu Rubber Co., Ltd. (hereinafter “Applicant”), a Taiwanese corporation,
seeks registration on the Principal Register of the following mark:



for goods identified as follows:

hydraulic circuits for motor cars; hydraulic circuits for motorcycles; brakes for motor cars; brake discs for motorcycles; hydraulic circuits for vehicles; shock absorbing springs for automobiles; shock absorbing springs for motorcycles; shock absorbers for motorcycles; vehicle parts, namely, shock absorbers; automobile bumpers; air springs for vehicle suspension components for cushioning driver's seats and cabs; suspension systems for automobiles; suspension systems for motorcycles; land vehicle suspension parts, namely, coil springs; land vehicle suspension parts, namely, leaf springs, in International Class 12.¹

Aktas Hava Suspansiyon Sistemleri Sanayi Ve Ticaret AS, a Turkish corporation (hereinafter "Opposer"), alleges that Applicant's mark so resembles Opposer's previously used and registered mark **AIRTECH** for "air springs for vehicle suspension and for cushioning driver's seats and cabs" in International Class 12,² that when used in connection with Applicant's identified goods, it is likely to cause confusion, to cause mistake, or to deceive, under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

Applicant, in its answer, denied the salient allegations of likelihood of confusion. The parties have fully briefed the issues involved in this proceeding.

I. The Record

The record includes the pleadings and the file of the opposed application. Trademark Rule 2.122(b). In addition, the parties proffered the following:

¹ Application Serial No. 85415388 was filed on September 6, 2011, based upon Applicant's claim of a *bona fide* intention to use the mark in commerce. According to the application, the mark consists of the term "AirREX" in stylized font, with the upper-case letter "R" having a swirl beginning from the top of the letter that reaches back to the letter "A," and continuing from the bottom of the lower-case letter "r" and becoming part of the letter "X."

² Registration No. 3360514 issued on December 25, 2007; Section 8 affidavit accepted (six-year) and Section 15 affidavit acknowledged.

A. Opposer's Evidence

Opposer filed with its notice of opposition a status and title copy of its claimed registration, and has submitted and relies upon Applicant's Responses to Opposer's First Set of Requests for Admissions to Applicant, namely, Response Nos. 4, 8-10, and 15-22, and Applicant's Responses to Opposer's First Set of Interrogatories to Applicant, namely, Response Nos. 1, 4, 16, and 17; and dictionary definitions for "Air," "Rex," and "Tech" drawn from www.Merriam-Webster.com.

B. Applicant's Evidence

Applicant filed a Notice of Reliance on items including the prosecution history of Opposer's pleaded registration; copies of third-party registrations for various "Air-" formative marks in the field of vehicle components; and Opposer's Supplemental Response to Applicant's First Set of Document Requests, namely Response Nos. 17, 18 and 19, and Opposer's Supplemental Response to Applicant's First Set of Interrogatories, namely Response Nos. 8 and 9.

II. The Parties

Opposer is organized in Turkey and is a manufacturer of air suspension systems. Opposer claims a wide-ranging presence on the Internet and sales in eighty-seven countries across six continents. Opposer produces more than 700 different types of air springs and suspension systems for use on land vehicles in varying terrain and climate conditions. The involved **AIRTECH** registration identifies "air springs for vehicle suspension and for cushioning driver's seats and cabs."

Applicant is based in Taiwan and manufactures rubber suspension and cushioning components for land vehicles including cars, buses, trucks and motorcycles.

III. Standing and Priority

Because Opposer has made its pleaded registration properly 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). Furthermore, because the registration is properly of record, priority is not in issue as to the goods identified therein. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Moreover, Applicant does not contest Opposer's priority.

IV. Likelihood of Confusion

Our likelihood of confusion determination under Section 2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the well-established likelihood of confusion factors. *See 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, 1205 (Fed. Cir. 2003) (“... mistaken belief that [a good or service] is manufactured or sponsored by the same entity ... is precisely the mistake that Section 2(d) of the Lanham Act seeks to prevent”).

The parties presented evidence and argument on the *du Pont* factors focused on the relationships of the goods and their respective channels of trade, the number and nature of similar marks in use on related goods, the similarities and

dissimilarities of the marks, and the conditions under which and buyers to whom sales are made.

A. The Parties' Goods and their Channels of Trade

Applicant's identification of goods includes, *inter alia*, "air springs for vehicle suspension components for cushioning driver's seats and cabs." The entirety of Opposer's identification of goods is "air springs for vehicle suspension and for cushioning driver's seats and cabs." As identified, these suspension and cushioning components for vehicles are necessarily construed as legally identical goods. Additionally, Applicant seeks to register the broad category of all types of "suspension systems for automobiles" into which Opposer's listed air springs fall. Applicant also lists a narrower set of suspension components than Opposer's listed goods, such as "shock absorbing springs," "shock absorbers" for vehicles, "coil springs" and "leaf springs," all of which are related to, if not directly competitive with, Opposer's identified goods.

In response to an interrogatory, Applicant responds that its mark is used for aftermarket modifications to vehicles, while Opposer's mark is used on products which are included as original equipment manufactured devices in new vehicles. However, neither identifications of goods is limited in this manner, *see, e.g., Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990),

Applicant fails to rebut Opposer’s overall position on this factor, and Applicant does not continue this argument in its brief, other than by pointing to other *du Pont* factors such as the differences in the marks and the alleged sophistication of the purchasers.

Accordingly, we find that the goods are in part, legally identical, and otherwise competitive or closely related, and that the respective goods will travel through the same channels of trade to the same classes of consumers. Hence, these *du Pont* factors favor a finding of likelihood of confusion.

B. Number and nature of similar marks in use on other goods

In addition to Opposer’s registered **AIRTECH** mark, Applicant points to the following third-party marks that include the word “Air” that coexist on the Principal Register for related goods in International Class 12. From this fact, Applicant argues that consumers in this field are readily able to recognize and appreciate the differences among composite marks containing the word “Air” despite their association with highly similar, if not identical, goods.

AIR LIFT	for “spring controls and spring control assemblies, also known as spring boosters” in International Class 12; ³
AIR RUNNER	for “vehicle parts, namely, shock absorbers, air suspensions systems, springs, and bumpers, motorcycles and bicycles and their parts and fittings” in International Class 12; ⁴

³ Registration No. 0665307 issued on August 5, 1958; third renewal.

⁴ Registration No. 2975600 issued on July 26, 2005; Section 8 affidavit accepted (six year) and Section 15 affidavit acknowledged.



for “automobile suspension system components namely, air pumps” in International Class 12;⁵

AIRCRUISE

for “land vehicle suspension parts, namely, air springs; shock absorbing springs for motor cars and land vehicles; suspension springs for motor cars and land vehicles; vehicle suspension components for cushioning driver’s seats and cabs” in International Class 12;⁶

SimilAir

for “suspension systems for land vehicles” in International Class 12;⁷



for “automotive accessories and parts used in the repair and modification of automobiles, namely, suspension systems and shock absorbers as well as integrated air compressor for adjusting the suspension system or shock absorbers, all sold as a unit” in International Class 12;⁸

AIRFLOW

for “aero-dynamic fairings for vehicles” in International Class 12;⁹

AIRHAWK

for “vehicle seats, namely, truck and motorcycle seat cushions and parts and fittings therefor” in International Class 12;¹⁰



for “motorcycle shock absorbers, front forms for motorcycles, shock absorbers for automobiles, vehicle parts, namely, shock absorbers, shock absorbing springs for motor cars” in International Class 12;¹¹ and

AIR-CHASSIS

for “land vehicle suspensions for use in supporting axles carrying wheels of trailers, trucks, vans and automobiles” in International Class 12.¹²

⁵ Registration No. 3207166 issued on February 13, 2007; Section 8 affidavit accepted (six year) and Section 15 affidavit acknowledged.

⁶ Registration No. 3474025 issued on July 22, 2008; Section 8 affidavit accepted (six year) and Section 15 affidavit acknowledged.

⁷ Registration No. 3500100 issued on September 9, 2008.

⁸ Registration No. 3587580 issued on March 10, 2009.

⁹ Registration No. 3997499 issued on July 19, 2011.

¹⁰ Registration No. 4009225 issued on August 9, 2011.

¹¹ Registration No. 4129618 issued on April 17, 2012.

¹² Registration No. 4360345 issued on July 2, 2013.

However, the record contains no direct evidence relating to the actual use of these “Air” formative marks in association with suspension and cushioning components for vehicles. *See, e.g., AutoZone Parts, Inc. v. Dent Zone Cos.*, 100 USPQ2d 1356, 1364-65 (TTAB 2011) (third-party uses of **ZONE** marks, with no evidence of extent of use or promotion, did not prove **AUTOZONE** weak); *cf. Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.*, 77 USPQ2d 1492, 1510 (TTAB 2005), *aff’d*, 479 F.3d 825, 81 USPQ2d 1919 (Fed. Cir. 2007) (testimony from a dozen third parties established a crowded healthcare field for the descriptive terms “care” and “first”).

Hence, we cannot conclude that the record contains sufficient probative evidence that the marketplace of suspension and cushioning components for vehicles is so crowded with “Air” formative marks that consumers for highly-related goods are accustomed to distinguishing among them based upon relatively small differences in the marks. Additionally, notwithstanding Opposer’s previous legal opinion (offered up during the *ex parte* prosecution of the cited registration and arguably contrary to its position herein), we do not regard these statements as conclusive on the issue of the diluted nature of its mark. *See Top Tobacco, L.P. v. North Atlantic Operating Co.*, 101 USPQ2d 1163, 1172 (TTAB 2011). Hence, we cannot make conclusions as to the *commercial* strength or weakness of the cited mark.

On the other hand, as to the *conceptual* strength of the cited mark, based upon the dictionary definition of the word “Air” submitted by Opposer, along with the information gleaned from these third-party registrations, we find that the word

“Air” certainly has suggestive significance with respect to both Opposer’s, Applicant’s, and these third parties’ goods, namely, suspension, cushioning and wind-protection devices. That is, the proffered third-party registrations serve as a reference source (much like a dictionary) for the usual connotation of the word “Air” with respect to the goods in this field. *See Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 198 USPQ 151 (CCPA 1978); *The Conde Nast Publications, Inc. v. Miss Quality, Inc.*, 507 F.2d 1404, 184 USPQ 422 (CCPA 1975).

In view of the foregoing discussion, we find that this *du Pont* factor is neutral.

C. Similarities of the marks

Opposer argues that because the leading syllable “Air” is the dominant element of both Opposer’s and Applicant’s marks, followed by second syllables including the same vowel, the letter “E,” the marks are similar as to appearance. By contrast, Applicant contends that the second syllables of the respective marks, “TECH” and “REX,” are quite dissimilar in appearance.

Opposer also argues that these marks create a confusingly similar impression when heard or spoken aloud. In addition to the identical first syllable, Opposer posits that the second syllable of each of the marks includes the same “ek” sound, with the only perceptible difference in sound being a distinction between the letter “T” and the letter “R.” In short, Opposer alleges that in the case of spoken advertisements or word-of-mouth recommendations, aural confusion between these marks is “inevitable.” By contrast, Applicant concludes that the overall phonetic distinctions between “Tech” and “Rex” are not trivial, would readily be appreciated

by consumers, and these dissimilarities cannot be so easily ignored as argued by Opposer.

As to the connotations created by the respective marks, Opposer argues that to the extent Applicant's "Rex" syllable conveys the idea of royalty, and Opposer's "Tech" syllable conveys the idea of technological advancement, both project the idea of "the high quality and skill involved in manufacturing and designing the goods." By contrast, Applicant finds Opposer's contentions on this comparison unpersuasive. To the contrary, Applicant points out that there is no evidence in the record to suggest that these second syllables convey similar sentiments at all.

Based on Opposer's arguments as to the marks' strikingly similar meanings, nearly identical sounds and several visual similarities, Opposer concludes, in turn, that they create the same overall commercial impression such that potential consumers acquainted with Opposer's **AIRTECH** mark would believe that Applicant's **AIRREX** products originate with Opposer. By contrast, Applicant contends that Opposer's arguments are based upon an improper dissection of Applicant's mark. In addition to its design features, Applicant points to the weakness of the shared "Air" prefix in this field, and the differences in appearance, sound and meaning of the two marks when compared in their entireties.

As seen above, the word "Air" has suggestive significance with respect to Opposer's goods. Similarly, the word "Tech" is also suggestive of the level of technology incorporated into Opposer's suspension and cushioning components.

Accordingly, we find that Opposer's mark is not a strong one, and we cannot agree with Opposer that "Air" is the dominant portion of the combined term, **AIRTECH**.

We find that visually and aurally, the dissimilarities outweigh the similarities. More importantly, we find the respective connotations to be quite different. On this point, both parties seem to agree that Applicant's **AIRREX** mark connotes something like "king of the air." By contrast, Opposer's **AIRTECH** mark connotes air springs employing the latest technologies. While some may agree with Opposer that the overall commercial impression of Opposer's **AIRTECH** mark might be "the high quality and skill involved in manufacturing and designing the goods," we have been unable to tease this commercial impression from Applicant's **AIRREX** mark.

Especially in light of the relative weakness of Opposer's mark, we are persuaded by Applicant's argument that the dissimilarity of the marks is a decisive factor in our finding of an absence of a likelihood of confusion. *See Kellogg Co. v. Pack'em Enterprises, Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd* 951 F.3d 330, 21 USPQ2d 1142 (Fed. Cir. 1991) (dissimilarity of marks **FROOT LOOPS** and **FROOTIE ICE** resulted in finding of no likelihood of confusion despite very close relationship between goods and trade channels). Hence, this critical *du Pont* factor favors a finding of no likelihood of confusion.

D. Sophistication of Purchasers


Applicant argues that both its mark and Opposer's mark are associated with specialized, technical goods. Applicant takes the position that based solely upon the listing of the parties' goods, because they are designed for very specific purposes,

purchasing decisions must be made carefully in order to ensure that the appropriate products are obtained. Generally, Applicant argues, such purchases are not made casually or impulsively by ordinary consumers, but rather by well-informed specialists in the field after considerable deliberations. We disagree with this generalization.

Among the listed goods involved in this proceeding are goods that we conclude, by their mere naming, cannot be found to be highly technical and hence cannot be presumed to be purchased only by well-informed specialists. Ordinary owners of cars, trucks and motorcycles may well be involved in the purchase and DIY installation of components such as brakes, for example. Hence, we find that this *du Pont* factor is also neutral.

E. Determination

Despite the overlap in the goods and their respective channels of trade, we find that the dissimilarity in the marks (combined with the relative weakness of Opposer's mark) is a decisive factor in our finding of an absence of a likelihood of confusion herein.

Decision: The opposition is dismissed and the  application will proceed in due course to issuance of a Notice of Allowance.