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Mailed:
July 10, 2003
Paper No. 13
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Thomson Multimedia Inc.

Serial No. 75/939,305

Scott J. Stevens of Woodard Emhardt Naughton Moriarty &
McNett for Thomson Multimedia Inc.

Stephanie M. Davis, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Hohein, Bucher and Drost, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Thomson Multimedia Inc. seeks registration on the
Principal Register for the mark GLOW KEYS for goods
identified, as amended, as "remote control transmitters for
consumer electronic products, namely, television receivers,
VCRs, DVD players, satellite receivers, cable TV decoders,
and audio receivers," in International Class 9.¹

¹ Application serial no. 75/939,305 was filed by Thomson
Consumer Electronics, Inc. on March 9, 2000 based upon
applicant's claim of a *bona fide* intention to use the mark in
commerce. This application was later assigned to Thomson
Multimedia Inc., and this transfer was recorded with the

This case is now before the Board on appeal from the final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has held that applicant's mark, when used in connection with the identified goods, so resembles the mark GLOW CONTROL (with the word CONTROL disclaimed apart from the mark as shown) which is registered by Jasco Products Co. for "remote control devices," also in International Class 9,² as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney have fully briefed this appeal but applicant did not request an oral hearing.

We affirm the refusal to register.

Applicant contends that a review of the federal register shows that the word "glow" is "non-distinctive." As a result, applicant argues that the terms CONTROL and KEYS are really the dominant elements in these respective marks, and that given the different meanings of the words "control" and "keys," these two composite marks create different overall commercial impressions. Applicant also

Assignment Division of the United States Patent and Trademark Office at Reel 2222, Frame 0402.

² Registration No. 2,065,560, issued on May 27, 1997; Sections 8 and 15 filed May 27, 2003.

argues that in light of registrant's broad identification of goods,³ it is impossible to determine whether the goods of applicant are related to those of registrant.

By contrast, the Trademark Examining Attorney takes the position that the respective marks create substantially similar overall commercial impressions; that the goods are closely related, if not identical; and that applicant has failed to demonstrate the weakness of GLOW-formative marks in the field of remote controls.

Our determination under Section 2(d) is based upon an analysis of all of the 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 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relationship of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Despite applicant's arguments to the contrary, we find that applicant's remote control transmitters for consumer

³ "... [Registrant's identification of goods] does not specify in what field those devices apply. If, for example, Registrant used its GLOW CONTROL goods as remote controls for blasting and mining operations, or as remote controls for ceiling fans, such goods would obviously be different than Applicant's goods..." [Applicant's appeal brief, p. 6].

electronic products are closely related, if not identical, to registrant's remote control devices. Although it is not clear exactly what devices these remote controls are actually used with, we must presume them to include universal, multi-device remote controls suitable for use with consumer electronic products such as those enumerated by applicant. Hence, for purposes of this critical du Pont factor, we find the goods to be legally identical.

Moreover, turning to the du Pont factors dealing with the similarity or dissimilarity of established, likely-to-continue trade channels as well as the conditions under which and buyers to whom sales are made, we must presume that applicant's goods and registrant's goods will move through all of the normal channels of trade to all of the usual purchasers for goods of the type identified. See Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). Hence, in looking to these two related du Pont factors, we conclude that the channels of trade and classes of purchasers will be the same.

Accordingly, then, we turn to the question of whether the respective marks are sufficiently similar such that their use in connection with these legally identical

consumer electronic accessories would be likely to cause confusion.

Despite applicant's arguments about the overall dissimilarity of the marks, the Trademark Examining Attorney continues to emphasize the similarity of the marks based upon the common GLOW portions of the respective marks.

Of course, it is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark ... provided the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). The proper test for determining the issue of likelihood of confusion is the similarity of the general commercial impression engendered by the marks - not specific differences one can identify when the marks are subjected to a side-by-side comparison. See Johann Maria Farina Gegenuber Dem Julichs-Platz v. Chesebrough-Pond, Inc., 470 F.2d 1385, 176 USPQ 199, 200 (CCPA 1972).

When comparing the marks as to sound and appearance, it is often the first part of a mark that is most likely to

be impressed upon the mind of a purchaser and subsequently remembered. We find that would be the case herein. Presto Products Inc. v. Nice-Pak Products Inc., 9 USPQ2d 1895, 1897 (TTAB 1988). GLOW is obviously the first term of both of these marks, and we cannot easily dismiss its source-indicating significance, as applicant would have us do.

Specifically, applicant argues that the word "GLOW" in the cited mark is a weak term⁴ and, therefore, should be afforded very little protection. As support for this position, applicant has submitted a copy of an advertising brochure showing a single example of an RCA universal remote control having a "glow-in-the-dark" keypad. We conclude from this ad, as well as the generally understood meaning of this term, that the word "glow" may well be suggestive of a feature of a remote control device have backlit keys.

In arguing against applicant's position that "GLOW" is weak in registrant's mark, the Trademark Examining Attorney has demonstrated that the only registered mark for remote controls containing the word GLOW is the cited registration for GLOW CONTROL. Contrary to applicant's arguments, the

⁴ "... [T]he word "glow," when applied to remote controls, is not distinctive, but is rather viewed by consumers as a *descriptive term* associated with a back-lit display." (*Emphasis supplied*) Applicant's request for reconsideration of January 2, 2002.

Trademark Examining Attorney contends that the word GLOW is strong as applied to these goods, and is the dominant term in both registrant's mark and applicant's mark. In this context, we specifically note that the cited registered mark is on the Principal Register and, hence, is entitled to the statutory presumptions under Section 7(b) of the Act (e.g., it is *prima facie* evidence of the validity of the registration and of registrant's exclusive right to use the mark in connection with the goods specified). Applicant's argument that the registered mark is entitled to severely limited protection actually appears to be a collateral attack on the validity of the registration that cannot be entertained in the context of an *ex parte* proceeding. Accordingly, we find that based on this record, applicant has failed to demonstrate that the cited mark is weak as applied to remote control devices.

Then, totally apart from these specific electronic accessories, applicant has argued consistently during the prosecution of this application that the term "glow" is "non distinctive" by referencing the United States Patent and Trademark Office's general treatment over the years of composite marks containing the word "GLOW":

The propensity of the Trademark Office in granting registrations to different marks which contain the term "glow," for similar or identical goods

demonstrates that the Trademark Office does not view the term "glow" as being particularly distinctive when it appears as an adjective modifying a noun as the other term in a mark..."

(Applicant's appeal brief, p. 6). Applicant then proceeds to highlight a variety of "couplets" of federal registrations for similar or identical goods where both registered marks contain the leading word GLOW. These third-party registrations placed into the record by applicant do indeed show the term "glow" registered as part of composite trademarks used in conjunction with a variety of luminous goods. However, the noted registrations all involve goods unrelated in any manner to remote control devices, and most of the identifications of goods contain words such as "glitter," "adhesive-backed wall decorations of celestial bodies," "glow in the dark stickers," "phosphorescent marking compounds," "decorating materials," etc. In composite marks for such goods, it seems that the word "glow" immediately conveys information about a significant feature of the involved goods, and was correctly disclaimed in many of these registrations.

We turn from a discussion of the first word (GLOW) in each of these marks to the second word in each mark. As to sound, "control" and "keys" both begin with a similar "k" sound. As to meaning, in the cited mark, the generic word

"CONTROL" (used on remote *controls*) is correctly disclaimed. While there is no disclaimer of the word "KEYS" in the instant application, it is clear from the information submitted by applicant that "keys," "keypad," etc., occur frequently in the descriptions of features of remote control devices or transmitters. Hence, in looking closely at applicant's mark, arguably the words "glow" and "keys" are both suggestive of remote *controls* with keypads having *glow-in-the-dark* buttons (or *keys*). In looking closely at registrant's mark, arguably the word "glow" is suggestive while the word "control" is generic. Accordingly, in determining whether these marks are confusing similar, we find that the word "KEYS," coming as it does at the tail end of applicant's mark, is unlikely sufficiently to distinguish it from registrant's mark having the generic word "CONTROL" at the end.

Due to the fallibility of memory and the consequent lack of perfect recall by members of the consuming public, in determining whether confusion as to source or sponsorship is likely, the proper emphasis is on the likely recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks. *Spoons Restaurants, Inc. v. Morrison, Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd*. No. 92-1086 (Fed.

Cir. June 5, 1992); In re United States Distributors, Inc., 229 USPQ 237, 239 (TTAB 1986); and In re Steury Corporation, 189 USPQ 353 (TTAB 1975). Accordingly, we also conclude that as applied to remote *controls* having *glow-in-the-dark keys*, the marks, when viewed in their entirety, have quite similar connotations.

Considering the marks GLOW CONTROL and GLOW KEYS in their entirety, we are of the view that they are similar in sound and appearance, and are substantially similar in connotation. Hence, when compared in their entirety, the two marks create similar overall commercial impressions.

In conclusion, inasmuch as the goods are legally identical, we assume that the remote control devices of registrant and of applicant will move in similar channels of trade to the same class of ordinary consumers. The marks GLOW CONTROL and GLOW KEYS create similar overall commercial impressions, particularly as applied to these goods. Based upon these key considerations, we conclude that consumers would be likely to believe mistakenly that registrant's remote control devices, sold under the mark GLOW CONTROL, and applicant's remote control transmitters for consumer electronic products, sold under the mark GLOW KEYS, originated with, or are somehow associated with, or sponsored by, the same entity.

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Decision: The refusal to register applicant's mark under Section 2(d) of the Act is affirmed.