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Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Pisces-Print Imaging Sciences Inc.*

Serial No. 76/068,892

Norman P. Soloway of Hayes Soloway P.C. for *Pisces-Print Imaging Sciences Inc.*

Rebecca A. Smith, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

Before Hanak, Hohein and Bottorff, Administrative Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark JETPLATE for goods identified in the application, as amended, as "desktop ink jet equipment for

imaging printing plates, namely plate processors, and production raster image processor software therefor.”¹

At issue in this appeal is the Trademark Examining Attorney’s final refusal to register applicant’s mark on the ground that the mark, as applied to the goods identified in the application, so resembles the mark PLATEJET, previously registered for “graphic arts film recorders and platesetter for use in the printing industry,”² as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

The appeal has been fully briefed,³ but no oral hearing was requested. We affirm the refusal to register.

Initially, we note that we have given no consideration to the third-party registration evidence submitted (for the first time) with applicant’s reply brief. Such evidence is untimely. Trademark Rule 2.142(d).

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the

¹ Serial No. 76/068,892, filed June 12, 2000. The application is based on applicant’s asserted bona fide intention to use the mark. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

² Registration No. 2,106,991, issued October 21, 1997.

³ The Trademark Examining Attorney’s late-filed brief is accepted, good cause having been shown and no objection thereto having been raised by applicant.

probative facts in evidence that are relevant to the likelihood of confusion 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).

We first determine whether applicant's mark and the cited registered mark, when compared in their entireties in terms of appearance, sound and connotation, are similar or dissimilar in their overall commercial impressions. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Moreover, where, as in the present case, the marks would

appear on virtually identical goods, the degree of similarity between the marks which is necessary to support a finding of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

We find that applicant's mark JETPLATE is similar to the cited registered mark PLATEJET. Both marks are comprised of the words JET and PLATE, compressed into a single compound word. The mere transposition of these words in the respective marks does not suffice to distinguish the respective connotations or overall commercial impressions of the marks. See *In re Wine Society of America Inc.*, 12 USPQ2d 1139 (TTAB 1989); *In re Nationwide Industries Inc.*, 6 USPQ2d 1882 (TTAB 1988); *In re General Tire & Rubber Co.*, 213 USPQ 870 (TTAB 1982). Although, in certain cases, the transposition of the terms in a mark can change the overall commercial impression of the mark sufficiently to avoid a finding of confusing similarity, we cannot conclude that this is such a case.

As applied to the goods at issue, the connotation and overall commercial impression of the marks is similar, regardless of whether the word JET or the word PLATE appears first. Applicant has not identified any change in meaning which results from the transposition of the words,

and we see none. Viewing the marks in their entirety, and keeping in mind the imperfect recollection of purchasers, we find that the basic similarity between the marks which results from the presence in both marks of the identical words JET and PLATE outweighs the slight dissimilarity between the marks which results from the mere transposition of the two words. Therefore, we find that the marks are similar rather than dissimilar under the first *du Pont* factor, and that confusion is likely to result if the marks are used on similar or related goods. We have considered applicant's arguments to the contrary, but are not persuaded.

Turning now to a comparison of the goods, it is not necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods. See *In re Martin's Famous Pastry Shoppe*,

Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ2d 910 (TTAB 1978).

The goods identified in the cited registration include "platesetter for use in the printing industry." Although the word "platesetter" does not appear in applicant's identification of goods, we note that the product brochure submitted by applicant identifies applicant's product as "a desktop color platesetter." It thus appears that applicant's and registrant's goods are essentially identical, competitive and/or complementary products, to that extent. Both products are used to produce printing plates.

Additionally, the Trademark Examining Attorney has made of record several third-party registrations which include in their identifications of goods both the "platesetters" and/or "film recorders" identified in the cited registration and "raster image processors," which, we presume, would be closely related to the "production raster image processor software" identified in applicant's application. We note that one of these third-party registrations (Reg. No. 2,150,116) is a house mark registration owned by the owner of the cited §2(d)

registration in this case. Although these registrations are not evidence that the marks shown therein are in commercial use, or that the public is familiar with them, they nevertheless are probative evidence to the extent that they suggest that the goods or services identified therein are of a type which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467 (TTAB 1988).

Applicant argues that registrant's goods expressly are limited to those used in the printing industry, while applicant's goods instead are "desktop publishing" equipment used by "businesses that choose to perform their own printing in-house rather than using a commercial printer." (Brief at 7.) We are not persuaded, inasmuch as this argument appears to be premised on a mischaracterization or misapprehension of the nature of applicant's goods.

Specifically, applicant's identification of goods contains no restriction or limitation to in-house "desktop publishing" applications. Indeed, it does not appear that applicant's goods are "desktop publishing" equipment at all. According to the dictionary evidence submitted by applicant, "desktop publishing" is defined as "[t]he

creation of printed pieces, including words and pictures (such as ads, newsletters, magazines, brochures, and books), almost entirely on a computer. Desktop publishing programs convert normal text into professional-quality documents that can be printed on laser printers or imagesetters." Webster's New World Dictionary of Computer Terms (5th ed.), at 167. It appears from applicant's brochure, however, that applicant's goods are not used to create "documents that can be printed on laser printers," but rather are used to produce aluminum printing plates that are used on offset printing presses. Thus, the word "desktop" in applicant's identification of goods would appear to signify only that the unit sits on a desktop; it does not mean that applicant's goods are used in or for "desktop publishing."⁴ There is no evidence that "desktop publishing" involves or requires the production of aluminum printing plates used on offset printing presses, which is

⁴ We note as well that applicant's assertions regarding the "in-house" nature of applicant's goods appear to be not well-taken. The only reference to "in-house" in applicant's brochure relates not to a business doing its own printing "in-house" (as opposed to having the printing done by a commercial printer), as applicant contends in its brief, but rather to the commercial printer's ability, using applicant's product, to do all of his offset printing pre-press work in-house, instead of having to outsource such pre-press tasks as "film separations," "layout & strip," and "contact & develop."

what applicant's goods do, according to applicant's brochure.

Even if applicant's goods are assumed to be marketed to and used by businesses which do their printing in-house via desktop publishing, it is apparent from applicant's brochure that applicant also markets its goods to the printing industry, i.e., to commercial printers who use the goods to produce the aluminum printing plates which are used on offset printing presses. Applicant concedes as much in its brief: "Applicant's desktop system works with a Pentium PC or Macintosh G4 computer and may be used by anyone, not just those in the printing industry." (Brief at 4; emphasis added.) This overlap in the trade channels and potential purchasers of the respective goods supports a finding of likelihood of confusion.

Applicant argues that the goods at issue are expensive goods which are purchased by careful, sophisticated purchasers. There is no evidence in the record to support that contention. The cost of the goods is not apparent from the record, but we note that in its brochure, applicant refers to its goods as "inexpensive," "low-cost" and "affordable." Likewise, even if we assume that the "small printers" identified in applicant's brochure as the potential purchasers of applicant's goods are knowledgeable

about printing equipment and processes, there is no evidentiary basis for finding that they are knowledgeable or sophisticated with respect to trademarks, or that their knowledge of printing equipment and processes would protect them from source confusion when they encounter these related goods sold under confusingly similar marks. See *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). For these reasons, we are not persuaded by applicant's contention that the fourth *du Pont* factor weighs in its favor in our likelihood of confusion analysis; instead, we find that factor to be neutral, at best.

In summary, after careful consideration of the evidence of record pertaining to the relevant *du Pont* likelihood of confusion evidentiary factors, we conclude that a likelihood of confusion exists. Applicant's mark is confusingly similar to the cited registered mark, being a mere transposition thereof which does not create a new or different commercial impression. Applicant's goods are related to registrant's goods (if not also identical thereto insofar as both are "platesetters"), and they are marketed in the same trade channels to the same classes of purchasers. These facts warrant a finding that confusion is likely. Any doubts as to the correctness of such

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conclusion (and we have none) must be resolved against applicant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.