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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Medical Imaging Solutions, Inc.

Serial No. 76/158,788

Seth M. Nehrbass of Garvey, Smith, Nehrbass & Doody, L.L.C. for Medical Imaging Solutions, Inc.

Ronald McMorrow, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Chapman, Bottorff and Rogers, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On November 2, 2000, Medical Imaging Solutions, Inc. (a Louisiana corporation) filed an application to register on the Principal Register the mark shown below

for “medical imaging devices, namely, x-ray devices” in International Class 10. The application is based on applicant’s claimed date of first use and first use in commerce of April 2000.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant’s mark, when applied to its identified goods, so resembles the registered mark ANGIOVISION for “medical digital imagers for angiography investigation of retinal vascular and neural system in ophthalmology” in International Class 10,[1] as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed. Briefs have been filed, but applicant did not request an oral hearing.

We affirm the refusal to register. In reaching this conclusion, we have followed the guidance of the Court in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, In re Majestic Distilling Company, Inc., 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and

[1] Registration No. 2,042,273, issued March 4, 1997. See Section 8(c)(1) of the Trademark Act, 15 U.S.C. §1058(c)(1).

the similarities between the goods and/or services. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Turning first to a consideration of the involved marks, it is well settled that marks must be considered in their entireties as to the similarities and dissimilarities thereof. However, our primary reviewing court has held that in articulating reasons for reaching a conclusion on the question 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 or portion of a mark. That is, one feature of a mark may have more significance than another. See Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1845 (Fed. Cir. 2000); Sweats Fashions Inc. v. Pannill Knitting Co., 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987); and In re National Data Corporation, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985).

In this case, both applicant’s mark and registrant’s mark share the term ANGIOVISION. It is the cited registrant’s entire mark, and it is the dominant part of applicant’s mark. The slight stylization of applicant’s

mark, i.e., the upper/lower-case lettering and the addition of a design feature which is highly suggestive as applied to medical devices, does not detract from the dominance of the word ANGIOVISION in the commercial impression created by applicant's mark, and does not serve to distinguish applicant's mark from the cited registered mark.

We grant the Examining Attorney's request (brief, unnumbered p. 3) that we take judicial notice of The American Heritage Dictionary (Third edition 1992) definition of "angiography" as "examination of the blood vessels using x-rays following the injection of a radiopaque substance." See The University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc., 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). See also, TBMP §712.01. Given the meaning of "angiography," the word ANGIOVISION connotes essentially the same concept when considered in relation to the medical imaging process involved in both applicant's "medical imaging devices, namely x-ray devices" and registrant's "medical digital imagers for angiography investigation of retinal and neural system in ophthalmology."

The differences in the marks do not serve to distinguish the marks here in issue. That is, purchasers are unlikely to remember the specific differences between

the marks, focusing more on the word ANGIOVISION, due to the recollection of the average purchaser, who normally retains a general, rather than a specific, impression of the many trademarks encountered. Purchasers seeing the marks at separate times may not recall these differences between the marks. See Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); and Spoons Restaurants Inc. v. Morrison Inc., 23 USPQ2d 1735 (TTAB 1991), aff'd unpub'd (Fed. Cir., June 5, 1992).

We find that applicant's mark ANGIOVISION and design and registrant's mark ANGIOVISION are very similar in sound and connotation, somewhat similar in appearance, and create similar overall commercial impressions. See In re Azteca Restaurant Enterprises Inc., 50 USPQ2d 1209 (TTAB 1999).

Turning to the similarities/dissimilarities and the nature of the involved goods, the Board must determine the issue of likelihood of confusion on the basis of the goods and/or services as identified in the application and the registration, and in the absence of any specific limitations therein, on the basis of all normal and usual channels of trade and methods of distribution for such goods. See Octocom Systems Inc. v. Houston Computer Services, Inc., 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); Canadian Imperial Bank of Commerce, National

Association v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); and Squirtco v. Tomy Corp., 697 F.2d 1034, 216 USPQ 937 (Fed. Cir. 1983).

Further, it is well settled that goods or services need not be identical or even competitive to support a finding of likelihood of confusion, it being sufficient instead that the goods or services are related in some manner or that the circumstances surrounding their marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. See In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); and In re Opus One Inc., 60 USPQ2d 1812 (TTAB 2001).

In support of his position, the Examining Attorney submitted photocopies of a few third-party registrations, based on use in commerce, showing identifications of goods which broadly cover x-ray systems used in, inter alia, angiography examinations. (See, for example, Registration No. 1,317,926 issued to Continental X-Ray Corporation for "medical diagnostic x-ray equipment for radiographic and fluoroscopic examination, namely,... digital subtraction angiography systems, ..."; and Registration No. 2,506,647

issued to Cares Built, Inc. for “x-ray apparatus, namely, a radiology, fluoroscopy and angiography x-ray system for medical use.”)

Importantly, applicant’s goods, as identified, are broadly worded so as to encompass all types of x-ray devices, one type of which would be registrant’s system identified in the cited registration. That is, while registrant’s goods are limited to angiography in the field of ophthalmology, applicant’s “medical imaging devices, namely, x-ray devices,” are not restricted in any way as to the field(s) of medicine or type of imaging application in which these medical imaging devices are to be used. Applicant’s goods, as identified, are also not restricted as to trade channels or purchasers. Thus, applicant’s argument that its medical imaging devices are x-ray devices used by cardiologists, while registrant’s medical digital imagers use visible light to study blood vessels in the eyes and are used by ophthalmologists is unpersuasive. We note, in any event, that applicant submitted no evidence in support of its assertions.

Even assuming the purchasers and/or users of these goods are sophisticated, this does not mean that such consumers are immune from confusion as to the origin of the respective goods, especially when sold under similar marks.

See Wincharger Corporation v. Rinco, Inc., 297 F.2d 261, 132 USPQ 289 (CCPA 1962); In re Total Quality Group Inc., 51 USPQ2d 1474 (TTAB 1999); and In re Decombe, 9 USPQ2d 1812 (TTAB 1988). That is, even relatively sophisticated purchasers and users of these medical imaging devices could believe that these goods come from the same source, if offered under substantially similar marks. See Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990); and Aries Systems Corp. v. World Book Inc., 23 USPQ2d 1742, footnote 17 (TTAB 1992).

In this case, applicant's goods and those of registrant could be encountered by consumers in circumstances that would give rise to the belief that both parties' goods come from or are associated with the same source. For example, consumers might consider the ANGIOVISION products of applicant additions to the product line of registrant. See Dan Robbins & Associates, Inc. v. Questor Corporation, 599 F.2d 1009, 202 USPQ 100 (CCPA 1979).

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.