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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lori Childers, dba Blue Stone Press

Serial No. 76/160,227

John Maier, III, attorney for Lori Childers, dba Blue Stone Press.

Margery A. Tierney, Trademark Examining Attorney, Law Office 107 (Thomas Lamone, Managing Attorney).

Before Simms, Cissel and Bucher, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Lori Childers, dba Blue Stone Press (hereafter "applicant"), has appealed from the final refusal of the Trademark Examining Attorney to register the mark shown below

The Weekender

Hudson Valley Country Home Journal

for "a magazine featuring attractions and activities in the Hudson River Valley region of New York State."¹ The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 2,158,576, issued May 19, 1998, under Section 2(f) of the Act, 15 USC §1052(f), for the mark shown below

The logo features the word "Weekender" in a bold, black, sans-serif font. The letter "W" is significantly larger and more stylized than the other letters. To the right of "Weekender", the word "etc." is written in a smaller, black, cursive script font.

for a "newspaper, namely, Friday supplement to a daily newspaper giving local activities." The copy of the registration of record lists the owner as The Hearst Corporation dba The San Antonio Express-News. Applicant

¹ Application Serial No. 76/160,227, filed November 3, 2000, based upon allegations of use since Sept. 14, 2000, and use in commerce since Sept. 28, 2000. Pursuant to request, applicant has disclaimed the words "Hudson Valley Country Home Journal" apart from the mark as a whole.

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and the Examining Attorney have submitted briefs, but no oral hearing was requested.

With respect to the marks, it is the Examining Attorney's position that the dominant and distinctive part of both marks, which may be recognized as more significant in creating the commercial impressions of the marks, is the word "Weekender"; that the words "etc." in the registered mark and "The" in applicant's mark are relatively insignificant, and that the phrase "Hudson Valley Country Home Journal" in applicant's mark is descriptive and disclaimed, so that the matter added to applicant's mark is not sufficient to overcome the likelihood of confusion; that the public often abbreviates marks so that the word "etc." in registrant's mark and the words "Hudson Valley Country Home Journal" in applicant's are not likely to be pronounced in calling for the respective goods; and that consumers may not recognize the differences in the marks, especially considering the fallibility of memory over time. Concerning the goods, the Examining Attorney argues that they are virtually identical printed publications which would travel in the same channels of trade to the same class of purchasers; that registrant's description of goods does not specify a particular geographic location such that registrant may market its goods in any geographic area,

including applicant's. The Examining Attorney argues that supplements and inserts are used in both magazines as well as newspapers, and that, in any event, magazines and supplements are complementary items. In this regard, the Examining Attorney has submitted a number of third-party registrations showing that the same mark has been registered for both magazines, on the one hand, and inserts or supplements for newspapers and magazines, on the other.

In contesting the refusal, applicant argues that the marks must be compared in their entireties and that, when so compared, the marks differ by the word "etc." in the registered mark and the article "The" and the additional expression "Hudson Valley Country Home Journal" in applicant's mark; that this added expression in applicant's mark contributes to the differences in sound and appearance, and has significant weight in distinguishing applicant's mark from registrant's. Applicant also contends that the registered mark "relies upon a common language word" ("Weekender") that is "far from distinctive." Brief, 3. Further, applicant contends that the respective marks have differing commercial impressions, registrant's meaning the weekend and beyond, while applicant's mark signifies a publication for a specific geographic region. As to the goods, applicant maintains

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that registrant's product is a weekly insert for a daily paper, whereas applicant's magazine is distributed (free of charge) twice a year to second home owners in the Hudson Valley area, and covers numerous weekends over a long period of time. Applicant's attorney states that there have been no known instances of actual confusion. Finally, applicant argues that registration should not be refused if confusion is only possible, not likely.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the 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 [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Upon careful consideration of this record and the arguments of the parties, we agree with applicant that confusion is not likely. First, as applicant has pointed out, there are obvious differences in the marks, leading to

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differences in sound, appearance and suggestive meaning. Moreover, the term "weekender" for a publication listing weekend events and activities must be considered to be highly suggestive with a limited scope of protection. In this regard, Webster's Third New International Dictionary of the English Language Unabridged (1993), of which we take judicial notice, indicates that "weekender" means: "1: one that vacations for a weekend (~s in the country..) 2: one that comes to visit for a weekend." Certainly, for a Friday supplement that lists local activities, the term "Weekender" is, at the very least, highly suggestive.

The goods also have specific differences--registrant's goods being a Friday newspaper supplement, whereas applicant's publication is a magazine featuring attractions and activities in the Hudson River Valley region of New York State. While these goods may be considered related in the sense that they are both publications, the goods are specifically different. And, as applicant has argued, "We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal." *Witco Chemical Co. v. Whitfield Chemical Co.*, 418 F.2d 1402, 164 USPQ 43, 44-45 (CCPA 1969). Accordingly, and considering the

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cumulative differences in the marks and the respective goods, as well as the obvious weakness in the "Weekender" portion of the registered mark, we conclude that purchasers are not likely to be confused in the marketplace.²

Decision: The refusal of registration is reversed.

² In her brief, the Examining Attorney notes that we should consider what happens in the marketplace, that is, how the respective marks will be encountered by consumers. As a practical matter, it is unlikely that registrant's newspaper publication, undoubtedly local in nature, will be encountered by the same relevant consumers who would encounter applicant's publications in New York's Hudson River Valley region.