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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CE Distribution, LLC

Serial No. 76432582

Bennett Evan Cooper of Steptoe & Johnson LLP for CE Distribution, LLC.

Katherine Stoides, Trademark Examining Attorney, Law Office 110 (Chris Pedersen, Managing Attorney).

Before Hohein, Holtzman and Drost, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

CE Distribution, LLC has appealed from the final refusal of the trademark examining attorney to register the mark MOD for "audio speakers" in International Class 9.<sup>1</sup>

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles

<sup>1</sup> Application Serial No. 76432582, filed July 22, 2002, based on an allegation of first use and first use in commerce on January 17, 2002.

Serial No. 76432582

the mark ULTRAMOD for "audio processors for broadcasting and automatic gain controls, fidelity controls, bass, treble and loudness controls, clippers and density modulators," as to be likely to cause confusion.<sup>2</sup>

When the refusal was made final, applicant appealed. Briefs have been filed. An oral hearing was not requested.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and the differences in the marks.").

When the relevant factors in this case are considered, we find there is no likelihood of confusion.

Turning first to the marks, applicant argues that "ULTRA" is the dominant part of registrant's mark and that, as such, it serves to distinguish the marks in both sound and appearance. Applicant further argues that the word "MOD" has different

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<sup>2</sup> Registration No. 1873111 issued January 10, 1995; renewed.

Serial No. 76432582

connotations in relation to the respective goods. In the context of registrant's goods, the term "MOD" would be perceived, according to applicant, as an abbreviated form of "modulate" or "modulation." In support of this contention, applicant has submitted a dictionary definition of "mod" as "modulation"; a definition of "modulation" as meaning "[t]he process of sending a control signal to a sound source so as to change the character of the sound"; and definitions of "modulate" as "to adjust the pitch, tone, or volume of" and "to vary the frequency, amplitude, phase, or other characteristic of (electromagnetic waves)." Applicant also refers to printouts from registrant's website describing registrant's equipment as "[u]sable for just keeping into check any modulation overshoots, or to maximize modulation density"; providing "Modulation control"; and "maintain[ing] the modulation peak envelope at its maximum level."

Applicant maintains that its own mark, in contrast, is intended to suggest the slang meaning of "mod" as an abbreviation of "modern." To support its position, applicant refers to definitions of "mod" obtained from both standard and slang dictionaries; advertising materials describing applicant's speakers as "Modern with a Touch of English"; and its specimens depicting "MOD" in the distorted rounded letters associated with the 1960s "mod" style. Applicant has also submitted displays of

the Monkees guitar logo and the album cover design for the Beatles "Rubber Soul" record as examples of this "mod" style.

The examining attorney, on the other hand, argues that "MOD," as a term that is neither generic nor descriptive of the identified goods, "dominates the commercial impression communicated by the marks" and that "ULTRA," as a laudatory term, is of little trademark significance. The examining attorney contends that applicant's actual style of use is immaterial since applicant is seeking registration of its mark in typed form, and she concludes that, in any event, "MOD" has the same connotation of either "modulation" or the slang meaning of "modern" in relation to both applicant's and registrant's goods. The examining attorney has made of record a definition of "speaker" as "loudspeaker" and a definition of "loudspeaker" as "a device that converts electric signals to audible sound." She has also attached to her brief dictionary definitions of the terms "modulate" and "modulation"<sup>3</sup> with similar definitions to those provided by applicant.

We find that MOD and ULTRAMOD, both presented in typed form, are similar in sound and appearance. The term MOD is applicant's entire mark, and is visually and aurally a significant part of

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<sup>3</sup> *The American Heritage Dictionary of the English Language, Third Edition*, copyright 1992 (electronic version). The Board may properly take judicial notice of dictionary definitions, including online dictionaries which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1791 n.3 (TTAB 2002).

Serial No. 76432582

the registered mark. We disagree with applicant that "ULTRA" is the dominant part of registrant's mark. As a laudatory modifier of "MOD," indicating a superior quality or level of "MOD" products, the term "ULTRA" is of less significance than "MOD" and does not serve to distinguish the marks in sound or appearance.

On the other hand, we are not convinced that the marks convey the same meaning. The meaning of a mark must be determined in relation to the identified goods. Registrant's goods are audio processors for broadcasting and automatic gain controls, fidelity controls, bass, treble and loudness controls, clippers and density modulators. It is clear from the dictionary definitions, registrant's website materials and the identification itself, that "modulation" has a particular meaning in the context of registrant's goods, and, in particular, density modulators and audio processors used in the broadcasting field. Registrant's audio processors are devices that send signals to a sound source or regulate some characteristic of the signals or the sound. Thus, we find that the term "MOD," in the context of registrant's goods, would be perceived as a shortened form of "modulation" rather than a shortened form of "modern," and that the mark ULTRAMOD, as a whole, is more likely to suggest a level of performance rather than a degree of style.

However, the meaning of "MOD" in relation to applicant's goods is less apparent. There is nothing of record to indicate

Serial No. 76432582

that audio speakers modulate sound or that modulation has anything to do with speakers. The dictionary definitions provided by the examining attorney indicate that a "loudspeaker" (audio speaker) is a device that "converts" electric signals to audible sound rather than a device such as registrant's that sends a control signal to a sound source or regulates some characteristic of the sound. Thus, we are not convinced that the meaning conveyed by applicant's mark would be "modulate" rather than "modern," or that the overall commercial impressions of both marks would be the same.

Turning to the goods, applicant contends that its speakers are not finished consumer products but are, instead, raw frame speakers or loudspeakers used as parts for use in amplifiers by hobbyists and musicians. Based on the printouts from registrant's website which show, according to applicant, that registrant's products modulate radio signal levels for broadcasting, applicant argues that its speakers would have no function at all in the broadcast market for transmission purposes. Applicant further argues that the respective goods are expensive products sold, not to ordinary consumers, but to technically sophisticated and highly discriminating purchasers.

The examining attorney argues, on the other hand, that applicant's audio speakers are related to registrant's audio processors "because they are both used for sound processing

Serial No. 76432582

purposes." In support of this contention, the examining attorney relies on the previously mentioned dictionary definitions of "speaker" as "a loudspeaker" and of "loudspeaker" as "a device that converts electric signals to audible sound." Based on these definitions, the examining attorney reasons that "as the registrant identifies its goods in broad terms and has not restricted [the] type of audio processors, it is presumed that these goods include all types of audio processors to be used in all channels of trade." The examining attorney further argues that since applicant has not limited the channels of trade for its audio speakers, it must be presumed that applicant's goods "are offered everywhere that is normal for such audio speakers, including the broadcasting channels of trade in which the registrant's goods move" and that applicant's contentions regarding the sophistication of purchasers for registrant's goods "is unsubstantiated and speculative."

We must consider the issue of likelihood of confusion in the context of the identifications of goods in the respective application and registration, and in the absence of specific limitations, on the basis of all of the normal and usual channels of trade for the respective goods. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1493, 1 USPQ2d 1813 (Fed. Cir. 1987); and *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983).

Applicant's goods, as identified, are not restricted to a particular type of speakers, or to particular channels of trade or classes of purchasers for the speakers. Therefore, we must presume that applicant's speakers encompass all types of audio speakers, including finished speakers, that the speakers are used for all the usual purposes, including use for home music systems, and that the speakers would be sold in all the usual outlets and to all the usual purchasers for such goods, including ordinary consumers.

Registrant's identification of goods, on the other hand, does contain a restriction: its "audio processors" are "for broadcasting." It is clear that this restriction limits the market for registrant's audio processors. It is also clear that the restriction limits the type of audio processors to equipment that would be used in the broadcasting field. What is not clear to us from the description of the goods is whether audio speakers would be a type of audio processing equipment used in broadcasting. We take judicial notice of a definition of "broadcasting" as the "transmission of radio or television signals."<sup>4</sup> There is nothing in the definition of "broadcasting" itself and no other evidence of record to indicate that radio and television broadcast transmissions would involve the use of

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<sup>4</sup> See *Microsoft Encarta College Dictionary* (2001).

Serial No. 76432582

"audio speakers" or that those goods would form any part of a broadcast transmission system.

The Board's analysis in *In re Trackmobile, Inc.*, 15 USPQ2d 1152, 1153-54 (TTAB 1990) is instructive here:

"The terms 'mobile railcar movers' and 'light railway motor tractors' are somewhat vague to members of this Board who possess no special knowledge about such equipment. ... [W]hen the description of goods for a cited registration is somewhat unclear, as is the case herein, it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods has a specific meaning to members of the trade."

Registrant's audio processors are highly technical and specialized goods. It would be improper to find these goods related to applicant's speakers solely on the simplistic basis that they both "process sound." The evidence of record, including the dictionary definitions and registrant's website materials, certainly presents enough information to at least raise a question as to whether audio speakers would have any use or function in connection with audio processors for broadcast purposes. Therefore, it was incumbent on the examining attorney to present at least some evidence to support her position that the audio processing equipment used by broadcasters would be broad enough to include the specific type of audio processing equipment provided by applicant or to show that the respective goods are otherwise related.

The goods in the registration that appear to be the closest to audio speakers are "bass, treble and loudness controls." However, these goods are clearly not the same as speakers, and since the examining attorney has presented no evidence or even argument in this regard, we are left to speculate as to whether the goods are commercially related. The mere fact that both "audio speakers" and "bass, treble and loudness controls" may fall into the same broad category of sound processing equipment is insufficient to establish that the goods are so related.

In view of the cumulative effect of the differences in the marks and the differences in the respective goods, we find that there is no likelihood of confusion.<sup>5</sup>

**Decision:** The refusal to register is reversed.

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<sup>5</sup> We would also point out that the overlapping customers for registrant's audio processors for broadcasting and applicant's speakers would be those in the broadcasting field. These customers, contrary to the examining attorney's contention, must be presumed to have some degree of technical or specialized knowledge and therefore to be more sophisticated than ordinary consumers.