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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re GCC Management Limited

Serial No. 76449120

Kurt L. Grossman of Wood, Herron & Evans, L.L.P. for GCC Management Limited.

Kelley L. Wells, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Bucher, Grendel and Walsh, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark **QIMAGING** (in standard character form) for goods identified in the application, as amended, as "ink for printers and copiers; toner for printers and copiers; ink and toner cartridges and canisters for copiers and printers," in Class 2, and "photocopiers, printers; laser printers; inkjet printers; bubble jet printers; parts and fittings for all the aforesaid goods; drum units for

copiers and printers; rollers for copiers and printers; blades for copiers and printers," in Class 9.¹

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 applicant's goods, so resembles the identical mark **QIMAGING**, previously registered (in standard character form) for "high performance digital cameras," as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant and the Trademark Examining Attorney have filed main appeal briefs. No reply brief was filed, and no oral hearing was requested. We affirm the refusal to register.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d

¹ Serial No. 76449120, filed September 13, 2002. The application is based on Trademark Act Section 44(d), and applicant claims a Section 44(d) priority date of August 8, 2002 based on Hong Kong Registration Nos. B14805 and B14806.

1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Under the first *du Pont* factor, we find that applicant's mark, QIMAGING, is identical to the cited registered mark in terms of appearance, sound, connotation and overall commercial impression. Contrary to applicant's arguments, it is not relevant in this appeal, even assuming it is true, that registrant uses its QIMAGING mark "interchangeably" as "shorthand" for its trade name Quantitative Imaging Corporation, or that applicant regards its QIMAGING mark as one of a family of "Q-formative" registered marks (i.e., QPRINT, QCOPY, QFAX and QJET).² The mark at issue here is QIMAGING, which we find to be a highly distinctive and unusual-looking mark. The identical nature of applicant's and registrant's marks weighs heavily in favor of a finding of likelihood of confusion, under the first *du Pont* factor.

The sixth *du Pont* factor requires us to consider evidence of third-party "use of similar marks on similar

² Regarding applicant's "family of marks" argument, see *In re Lar Mor International, Inc.*, 221 USPQ 180 (TTAB 1983); *In re U.S. Plywood-Champion Papers, Inc.*, 175 USPQ 445 (TTAB 1972); cf. *Baroid Drilling Fluids, Inc. v. Sun Drilling Products*, 24 USPQ2d 1048 (TTAB 1992).

goods." For the first time with its appeal brief, applicant submitted numerous third-party registrations of "Q-formative" marks which include "cameras" in their identifications of goods. The Trademark Examining Attorney has not objected to this evidence on the ground of untimeliness, see Trademark Rule 2.142(d), 37 C.F.R. §2.142(d), but instead has treated the registrations as if they were properly of record. Accordingly, we also shall consider the registrations. We find, however, that they do not suffice to establish that the mark at issue in this case, i.e., QIMAGING, is at all weak or anything other than unique and distinctive. Third-party registrations are not entitled to any probative weight under the sixth *du Pont* factor. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). We find that the sixth *du Pont* factor is neutral in this case.

We turn next to a consideration of the second, third and fourth *du Pont* factors, i.e., the similarity or dissimilarity of the goods, the similarity or dissimilarity of the trade channels, and the conditions of purchase. It is settled that it is not necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. That is, the issue is not whether consumers would confuse the goods

themselves, but rather whether they would be confused as to the source of the goods. It is sufficient that the goods be related in some manner, or that the circumstances surrounding their use be 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); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

Moreover, the greater the degree of similarity between the applicant's mark and the cited registered mark, the lesser the degree of similarity between the applicant's goods or services and the registrant's goods or services that is required to support a finding of likelihood of confusion. Where the applicant's mark is identical to the registrant's mark, as it is in this case, there need be only a viable relationship between the respective goods or services in order to find that a likelihood of confusion exists. See *In re Opus One Inc.*, 60 USPQ2d 1812 (TTAB

2001); *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001); *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

Applicant argues that the "high performance" digital cameras identified in the cited registration constitute a specific category or specialized type of digital camera, used only for highly specialized scientific applications. Applicant has made of record the website of the owner of the cited registration, from which it appears that the registrant's goods, in actuality, are highly specialized digital cameras used in highly specialized scientific applications. Applicant also has made of record the website of a retailer of registrant's goods, which shows that the goods are quite expensive, retailing from between \$4,000 and \$40,000.

However, it is settled that our likelihood of confusion determination must be made on the basis of the goods as identified in the cited registration, regardless of what the extrinsic evidence of record might show to be the nature of the registrant's actual goods. *See, e.g., In re Bercut-Vandervoort & Co.*, 229 USPQ 763 (TTAB 1986). The evidence of record, including registrant's website, does not persuade us that "high performance" digital cameras constitute a specific class of digital cameras. Rather, we

agree with the Trademark Examining Attorney's contention that the words "high performance" in registrant's identification of goods must be construed to have their ordinary descriptive or laudatory meaning, i.e., they indicate that the registrant's goods are digital cameras which perform exceptionally well or are of very high quality. This interpretation is supported by registrant's website itself, which uses the words "high performance" not as the name of a product category, but in their ordinary sense to describe the quality of registrant's goods, i.e., "Since 1999, QImaging has designed its cameras for high performance and ease of use."³

Thus, we find that registrant's goods, for purposes of our likelihood of confusion analysis, are simply "digital cameras," albeit of assertedly high quality. Applicant's extrinsic evidence showing the specialized nature and high

³ In appropriate cases, where the nature of the goods is not apparent from the identification of goods, the Board may look to extrinsic evidence to determine what the goods are in an effort to aid its likelihood of confusion determination. See *In re Trackmobile*, 15 USPQ2d 1152, 1153-54 (TTAB 1990). However, we find that this is not such a case. Unlike the unusual and indeterminate goods at issue in *Trackmobile* ("mobile railcar movers" and "light railway motor tractors"), we have no trouble in this case determining what "digital cameras" are. Moreover, as noted above, even if we look in this case to the extrinsic evidence from registrant's website, that evidence does not establish that "high performance" is the name of a category or type of digital cameras; the words are used in their ordinary sense to describe the quality of registrant's goods, not their type.

price of registrant's actual goods cannot be used in this case to limit the scope of the goods as identified in the cited registration. Registrant's goods as identified in the registration are not limited as to trade channels or classes of purchasers, and we therefore presume that they are marketed in all normal trade channels for such goods and to all normal classes of purchasers for such goods. *In re Elbaum*, 211 USPQ 639 (TTAB 1981).

The Trademark Examining Attorney has made of record four third-party registrations which include in their identifications of goods both digital cameras and printers and/or copiers. Although such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under a single mark. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).⁴ The Trademark Examining Attorney also has submitted evidence from three third-party websites (Ritz Camera,

⁴ Three more registrations submitted by the Trademark Examining Attorney appear to be of marks used as house marks on a wide variety of goods; they are of little or no probative value under *Trostel* and *Mucky Duck*.

Amazon.com, and Hewlett-Packard), which show that digital cameras are offered for sale together with photo printers. We agree with the Trademark Examining Attorney's contention that digital cameras, on the one hand, and printers and copiers, on the other hand, are complementary products which could be purchased and used together by the same classes of purchasers.

As noted above, where the marks are identical, the degree of similarity between the respective goods which is required to support a finding of likelihood of confusion necessarily declines. We find that the evidence of record in this case establishes that applicant's goods are sufficiently related to registrant's goods that confusion is likely to result from both parties' use of the identical (and highly distinctive) QIMAGING mark.

Considering all of the evidence of record as it pertains to the du Pont evidentiary factors, we conclude that a likelihood of confusion exists. To the extent that any doubts might exist as to the correctness of this conclusion, we resolve such doubts against applicant. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous*

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Pastry Shoppe, Inc., supra.

Decision: The refusal to register is affirmed.