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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tracy Nixon

Serial No. 76456865

Cory M. Baker of Tucker & Latifi, LLP for Tracy Nixon.

Robert Coggins, Trademark Examining Attorney, Law Office
115 (Tomas Vlcek, Managing Attorney).

Before Hanak, Hohein and Rogers, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Tracy Nixon (applicant) seeks to register PASSPORT
TRAVEL SPA and design in the form shown below for
"operating beauty salons and rendering spa services." The
intent-to-use application was filed on October 4, 2002, and
it included a disclaimer of the exclusive right to use SPA
apart from the mark as shown. On October 31, 2002
applicant filed an Amendment to Allege Use with a specimen
showing use of her mark for her services.



Citing Section 2(d) of the Trademark Act, the Examining Attorney refused registration on the basis that applicant's mark, as applied to applicant's services, is likely to cause confusion with the mark PASSPORT and design (shown below), previously registered for "therapeutic massage services." Registration No. 2,232,086.



When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities 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 differences in the marks.").

Considering first the services, we find that the record demonstrates that the term "operating beauty salons and rendering spa services" (applicant's services) encompasses massage services (registrant's services). In this regard, the Examining Attorney has made of record numerous newspaper and magazine articles showing that beauty salons, spas and combination beauty salons/spas routinely offer massage services. Moreover, applicant's own specimen of use is a brochure which, beneath applicant's service mark, has the following wording:

"Nails - Massage - Hair." Inside the brochure there is a more detailed description of the services (with prices) broken down into these same three categories, including specifically "massage." Moreover, applicant's other literature states the following: "Passport Travel Spa offers a full range of professional spa services to air travelers and airport personnel, including nail care, hair styling and massage." (emphasis added).

In short, we find that applicant's description of her services (operating beauty salons and rendering spa services) includes massage services, and that therefore the services of the applicant and the registrant are, in part, legally identical.

Turning to a consideration of the marks, we note at the outset that when the services of the parties are legally identical as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

In considering the marks, we recognize that we are obligated to compare the marks "in their entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 750 (Fed. Cir. 1985). However, in comparing the marks in their entireties, it is completely appropriate to give more weight to the more prominent portions of a mark. With regard to the registered mark, the most prominent portion is the single word PASSPORT. The word PASSPORT dominates over the background design. Moreover, it need hardly be said that only the PASSPORT portion of the registered mark would be spoken. In other words, consumers would not refer to the registered mark as "PASSPORT and design."

Turning to a consideration of applicant's mark, the most prominent portion of applicant's mark is also the word PASSPORT, which, of course, is identical to the only word in the registered mark. Not only is PASSPORT set apart from TRAVEL SPA, but in addition PASSPORT, an arbitrary

term for spa services, is "the first word" in applicant's mark and the only word in the registered mark, a factor which makes "the marks similar." Palm Bay Imports, Inc. v. Veuve Clicquot, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). See also Presto Products v. Nice-Pak Products, 9 USPQ2d 1825, 1897 (TTAB 1988) (The fact that two marks share the same first word is generally "a matter of some importance since it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered.") Of course, this proposition would not apply if the first word was "the," "a" or the like, or if the first word was generic or descriptive of the relevant goods or services. Palm Bay Imports, 73 USPQ2d at 1690. As for the terms TRAVEL SPA, we note that the word SPA is generic for applicant's services, and has quite properly been disclaimed. This word has no source identifying capability. Indeed, even the entire term TRAVEL SPA in applicant's mark has little source identifying significance in that it simply indicates that the spa is located in an airport, as applicant acknowledges at page 6 of her brief in the following manner: "Applicant's mark PASSPORT TRAVEL SPA plus logo is aptly named as its only location can be found in the Indianapolis International Airport." (emphasis added).

Finally, as for the background design of applicant's mark, we find it to be very nondescript in that it merely consists of two circles imposed upon a rectangle. Circles and rectangles are common geometric shapes which generally have little source significance. 1 J. McCarthy, McCarthy on Trademarks and Unfair Competition, Section 7:33 at page 7-56 (4th ed. 2004). We recognize that within the circles there appear again the words PASSPORT TRAVEL SPA, as well as for the first time the initials PTS. If consumers were to even notice this wording, it is just a mere repetition of the primary wording previously presented in a larger, easier to read horizontal fashion in applicant's mark (i.e. PASSPORT TRAVEL SPA), coupled with the initials PTS which in this context would be understood to mean PASSPORT TRAVEL SPA. To the extent that the circles enclosing PTS and PASSPORT TRAVEL SPA are noticed, they would bring to mind a "passport stamp," thereby only reinforcing the dominance of the word PASSPORT.

In short, consumers familiar with registrant's PASSPORT massage services, upon seeing PASSPORT TRAVEL SPA massage services in an airport, would readily be of the view that registrant has now expanded its massage services from a traditional location to an airport, and has merely

added, to use applicant's own words, the "aptly named" term TRAVEL SPA to indicate the location of the spa.

Given the fact that the services of the applicant and registrant are in part legally identical, and the additional fact that when considered in their entireties, the two marks are quite similar in that applicant's mark features in the most prominent fashion the only word found in the registered mark, we find that the contemporaneous use of both marks would result in a likelihood of confusion.

Decision: The refusal to register is affirmed.