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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re SonRise Homes, Inc.

Serial No. 76619651

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Before Drost, Zervas, and Walsh, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On November 8, 2004, applicant, SonRise Homes, Inc.,
applied to register the mark SONRISE HOMES and design shown
below on the Principal Register for the services of "home
building, building and development of residential
communities" in Class 37. Serial No. 76619651. Applicant
has disclaimed the term "Homes."



The application lists the date of first use anywhere and in commerce as July 19, 2002.

The examining attorney has refused to register applicant's mark on the ground that it is confusingly similar under Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) to a prior registration for the mark SUNRISE (in typed or standard form) for "construction, maintenance and/or repair of residential homes and communities and custom construction of residential homes" in Class 37.¹

The examining attorney argues that the "word, SONRISE, in applicant's proposed mark, and the word, SUNRISE, in registrant's marks, are essentially phonetic equivalents and are thus similar sounding." Brief at 3. The examining attorney also argues that the services of applicant and registrant overlap.

Applicant has responded by maintaining (Brief at 2) that:

¹ Registration No. 1,197,002, issued June 1, 1982, renewed.

The consumer of Applicant's services is a purchaser of a multi-thousand dollar home, a purchase that for most consumers takes place no more than two or three times during the consumer's lifetime. The consumer of such a large purchase is clearly sufficiently sophisticated to be able to recognize the difference between "SonRise Homes" and "Sunrise."

Further, unlike "Sunrise," "SonRise" carries a religious connotation that is not present in the "Sunrise" mark. "SonRise" refers to the rise of Jesus from the dead while "Sunrise" refers to the rise of the sun. To believers then "SonRise" has a connotation of honesty and fair dealing and this is lacking in the term "Sunrise."

Brief at 2.

After the examining attorney made the refusal final, this appeal followed.

In a case involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000) and *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In considering the evidence of record on these factors, we must 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).

We begin our discussion by comparing the services in the application and registration to determine if they are related.

It is a well settled principle of trademark law that it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient for purposes herein that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could because of the similarity of the marks used therewith, give rise to the mistaken belief that they originate from or are in some way associated with the same producer.

In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

In this case, the relationship between the services of applicant and registrant is direct and clear. Applicant provides home building services and building and development of residential communities services. Registrant's services include, inter alia, the construction of residential homes and communities.² Therefore, because both applicant and registrant construct or build homes and

² With the final Office action, the examining attorney included numerous registrations to show that home building, custom construction of homes, real estate development, and similar services are registered by the same entity under a common mark. See, e.g., Registration Nos. 2,880,082; 2,844,640; 3,023,699; and 3,031,888. See also Denial of Request for Reconsideration, Internet attachments (custom home and residential development services).

residential communities, these services are at least in part identical. "When marks would appear on virtually identical goods or services, the degree of similarity 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, 1701 (Fed. Cir. 1992). Furthermore, we must assume that these services are provided to the same purchasers in the same channels of trade. *In re Sawyer of Napa Inc.*, 222 USPQ 923, 924 (TTAB 1983) ("Moreover, neither the application nor the registration limits the channels of trade through which the goods move. In the absence of such a limitation we must assume that the goods move through the normal channels for such goods, and that with respect to these particular goods, these channels are the same"). *See also Morton-Norwich Products, Inc. v. N. Siperstein, Inc.*, 222 USPQ 735, 736 (TTAB 1984). ("Since there is no limitation in applicant's identification of goods, we must presume that applicant's paints move in all channels of trade that would be normal for such goods, and that the goods would be purchased by all potential customers").

The next factor that we will consider concerns the similarities and dissimilarities of applicant's and registrant's marks. Applicant's mark consists of the words

"SonRise Homes" and a design. Registrant's mark is for the word SUNRISE without any stylization. A typed drawing indicates that the party is not limiting its mark to any particular style. "[T]he argument concerning a difference in type style is not viable where one party asserts rights in no particular display. By presenting its mark merely in a typed drawing, a *difference* cannot legally be asserted by that party. [Applicant] asserts rights in [its mark] regardless of type styles, proportions, or other possible variations. Thus, apart from the background design, the displays must be considered the same." *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). *See also Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000) ("Registrations with typed drawings are not limited to any particular rendition of the mark and, in particular, are not limited to the mark as it is used in commerce"). Therefore, applicant's and registrant's mark cannot be distinguished based on the stylization of the words in applicant's mark.

Another difference in the marks is the presence of the word "Homes" and the design of a home in applicant's mark. The term "Homes" is disclaimed and disclaimed matter is often "less significant in creating the mark's commercial impression." *In re Code Consultants, Inc.*, 60 USPQ2d 1699,

1702 (TTAB 2001). Indeed, the highly descriptive or generic term "Homes" as well as the representation of a home would not have much significance in distinguishing marks that are used in association with home building services. "Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.'" *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), quoting, *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985). See also *M2 Software Inc. v. M2 Communications Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1948-49 (Fed. Cir. 2006) ("When comparing the similarity of marks, a disclaimed term, here 'COMMUNICATIONS,' may be given little weight, but it may not be ignored").

Next, we consider the terms SONRISE and SUNRISE. The marks are similar in appearance inasmuch as both marks have the identical letters except for the initial vowel. Furthermore, as the examining attorney points out, both marks would be pronounced identically inasmuch as the words "son" and "sun" are pronounced the same in English. See

Brief at 3.³ However, applicant maintains that its mark may have a religious connotation inasmuch as its spells the familiar term "Sunrise" as "SonRise." We agree that some buyers may take notice of this difference and assume that the mark has a religious meaning. However, we cannot hold that this would be the only conclusion that consumers may draw. Many consumers, to the extent that they notice the difference, may simply conclude that this is a misspelling of the term "Sunrise." Indeed, the commercial impression of the marks is similar since these consumers may view the design in applicant's mark as suggesting a sunrise.

When we view the marks SONRISE HOMES and design and SUNRISE as a whole, we conclude that they are similar. Both marks are dominated by the phonetically identical term "Sunrise" or "SonRise" and the differences are not sufficient to result in dissimilar marks. See *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (Federal Circuit held that the mark THE DELTA CAFÉ and design was similar to registrant's DELTA mark)

Applicant also has submitted pages from several websites and argues that "'Sunrise Homes' is a fairly

³ We take judicial notice of these dictionary entries in the examining attorney's brief. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

common name for home builders." Brief at 2.⁴ These printouts show that there are homebuilders or developments that are referred to as "Sunrise Homes" in Brunswick county (state unknown), Arizona, Pennsylvania, Connecticut, and Florida. This evidence, which appears to show some local use of the term Sunrise, is not sufficient to convince us that the registered mark is so weak that it is entitled to virtually no protection. See, e.g., *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1562 (TTAB 1996) ("The search of company names in the American Business Directory found more than 575 entities whose names contain the term BROADWAY and which offer restaurant services and/or related services or goods." BROADWAY CHICKEN not confusingly similar to BROADWAY PIZZA). We add that even if the mark was weak, it would still be entitled to protection when a very similar mark is used on identical services. *In re The Clorox Co.*, 578 F.2d 305, 198 USPQ 337, 341 (CCPA 1978) (ERASE for a laundry soil and stain remover held confusingly similar to

⁴ Applicant also refers to the number of hits the word "Sunrise" returned as a result of a search of USPTO records. We sustain the examining attorney's objection to considering this statement as evidence inasmuch as it is not supported by copies of the actual registrations. *In re Carolina Apparel*, 48 USPQ2d 1542, 1542 n.2 (TTAB 1998) ("The Board does not take judicial notice of third-party registrations, and the mere listing of them is insufficient to make them of record"); and *In re Hub Distributing, Inc.*, 218 USPQ 284, 285 (TTAB 1983) ("[W]e do not consider a copy of a search report to be credible evidence of the existence of the registrations and the uses listed therein").

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STAIN ERASER, registered on the Supplemental Register, for a stain remover).

Finally, applicant argues that the purchasers of its services are "sufficiently sophisticated to be able to recognize the difference between 'SonRise' and 'Sunrise.'" Brief at 2. While purchasers of homes would include ordinary purchasers, we agree that the purchase of home building services, because of the cost, would normally be a purchase made after careful consideration. We note however that "even careful purchasers are not immune from source confusion." *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1477 (TTAB 1999). In this case, even careful purchasers of applicant's and registrant's services are likely to believe that there is some association between the marks SUNRISE and SONRISE HOMES and design.

We conclude that the marks, despite some differences, are similar and the services are at least overlapping, and confusion is likely.

Decision: The examining attorney's refusal to register applicant's mark for the identified services on the ground that it is likely to cause confusion with the cited registered mark used in connection with the identified services under Section 2(d) of the Trademark Act is affirmed.