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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Iron Horse Bicycle Company LLC

Serial No. 76621444

Myron Amer of Myron Amer, P.C. for Iron Horse Bicycle Company LLC.

Margery A. Tierney, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).

Before Quinn, Grendel and Holtzman, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark SINISTER (in standard character form) for goods identified in the application as "bicycles."[1]

[1] Serial No. 76621444, filed November 22, 2004. The application is based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), and January 1, 2001 is alleged in the application as the date of first use of the mark anywhere and the date of first use of the mark in commerce.

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 the "bicycles" identified in the application, so resembles the mark depicted below,

previously registered on the Principal Register for goods identified in the registration as "bicycle parts, namely BMX style bicycle forks,"[2] as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d). In the registration, the words STEERING SYSTEMS are disclaimed, and the following description of the mark appears: "The mark consists in part of a stylized eye."

The appeal is fully briefed; no oral hearing was requested. We affirm the refusal to register.

The evidence of record includes printouts of numerous third-party registrations and printouts from various

[2] Registration No. 2397927, issued October 24, 2000.

Internet websites, all made of record by the Trademark Examining Attorney with her final Office action.[3]

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 Fondee En 1772*, 396 F.3d 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 must compare applicant's mark and the cited registered mark in their entireties in terms of appearance, sound, connotation and overall commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under

[3] Applicant's contention, in its reply brief, that the Trademark Examining Attorney's Internet evidence is untimely because it was not submitted "prior to the final refusal" is without merit. Trademark Rule 2.142(d) requires that the record be complete prior to appeal, not prior to the final refusal.

the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In terms of appearance, sound, and connotation, we find that applicant's mark and the cited registered mark are similar, indeed identical, to the extent that the word SINISTER comprises all of applicant's mark and is the dominant source-indicating feature of the cited registered mark. The wording STEERING SYSTEMS in the registered mark is generic and disclaimed, and therefore is entitled to less weight in our comparison of the marks. The design feature in the registered mark likewise contributes relatively less to the mark's commercial impression. We find that, in terms of overall commercial impression, the similarity between the marks which results from the presence in both marks of the arbitrary term SINISTER far

outweighs any dissimilarity between the marks which results from the presence in the registered mark of the design feature and the generic wording STEERING SYSTEMS. We find that the marks are similar, and that the first *du Pont* factor weighs in favor of a finding of likelihood of confusion.

We turn next to consideration of the second and third *du Pont* factors, i.e., the similarity or dissimilarity of the goods and the similarity or dissimilarity of the trade channels for such goods. 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).

The Trademark Examining Attorney has made of record eleven third-party registrations which include, in their identifications of goods, both "bicycles" and bicycle "forks."[4] 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). Also of record are printouts from several Internet websites which show that bicycles and bicycle parts, including forks, are offered for sale by the same retailers, including REI, Performance,, Citybikes and Bestbikebuys.com.

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[4] These are Registration Nos. 2320011, 2938538, 2996143, 2656595, 2527653, 2917964, 2883000, 2986184, 3003564, 2963254 and 2995264. We have not relied on the other third-party registrations made of record by the Trademark Examining Attorney because they are either for house marks or do not appear to be based on use in commerce.

Based on this evidence, we find that applicant's goods and the goods in the cited registration are similar and related. Bicycle forks are components of bicycles, and can be purchased either as part of an assembled bicycle or as a separate or replacement part. See, e.g., the article of record from consumeraffairs.com which reports on a recall of RockShox forks: "Bicycle dealers nationwide sold these forks with bicycles and separately from July 2000 through October 2000."

Applicant contends:

> ...it is known from common experience that its [applicant's] trademark-identified "bicycles" are sold in a retail store and that registrant's trademark-identified "bicycle forks" are delivered to bicycle manufacturing facilities other than a retail store, or if delivered on a rare occasion to a combination manufacturing and retail selling entity, that the bicycle fork is stripped of its trademark and marked otherwise when assembled into a bicycle. The assembled bicycle is then affixed with the retailer's private label trademarks.

(Appeal brief at 2.)

Applicant similarly contends:

> What the consumer encounters at the retail store is the fork in assembled relation into a bicycle, which is fixed with the retail store owner's private label trademark. If the fork happens to have been supplied by the cited registrant, the mark SINISTER STEERING SYSTEMS would have been removed since it is not known to be a trade

> practice for a multi-component bicycle to be offered for sale with its separate components identified by trademarks of the supplier.

(Appeal brief at 3.)

There is absolutely no evidentiary support in the record for these speculative assertions of applicant's, and we give them no credence or probative value.

The evidence of record shows that bicycle replacement parts, including forks, are available from bicycle retailers. The record also shows that bicycles and bicycle components, separately, are sold by a single source under a single mark. We find that purchasers are likely to assume that a bicycle fork bearing the registered SINISTER STEERING SYSTEMS is manufactured by, sponsored or approved by, or otherwise connected to the maker of SINISTER bicycles. An owner of a SINISTER bicycle who needs a replacement fork (due to an accident, for example) is likely to assume that SINISTER STEERING SYSTEMS bicycle forks are designed to be suitable replacement components for his or her SINISTER bicycle, manufactured and marketed by the same company. SINISTER is an arbitrary designation as applied to bicycles and bicycle forks, and its presence in both applicant's and registrant's marks is likely to cause source confusion.

Considering all of the evidence of record, we conclude that a likelihood of confusion exists. Applicant's arguments to the contrary are wholly unsupported by evidence in the record, and are unpersuasive in any event. To the extent that any doubts might exist as to the correctness of our likelihood of confusion determination (and we have none), 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 Pastry Shoppe, Inc.,* 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.