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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CA Links, Inc.

Serial No. 76633890

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Dominic J. Ferraiuolo, Trademark Examining Attorney, Law Office 102 (Karen M. Strzyz, Managing Attorney).

Before Hairston, Walters and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

CA Links, Inc. ("applicant") filed a use based application to register the mark 6 TIME ZONE, in standard character form, for "watches, watch cases, watch backs, watch bands and watch clasps; jewelry and accessories, namely, charms, pendants, chains, and bracelets," in Class 14. During the prosecution of the application, applicant amended the application to the Supplemental Register.

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's mark 6 TIME ZONE,

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for the goods set forth in the application, is likely to cause confusion with the mark TIME ZONE and design, shown below, for "electronic watches and electronic clocks," in Class 14.¹



Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by §2(d) goes to the cumulative effect of

¹ Registration No. 1227379, issued February 15, 1983. Section 8 and 15 affidavits accepted and acknowledged; renewed. The registrant disclaimed the exclusive right to use the word "time."

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differences in the essential characteristics of the goods and differences in the marks").

A. The similarity or dissimilarity and nature of the goods.

In an *ex parte* appeal, likelihood of confusion is determined on the basis of the goods as they are identified in the application and the goods as they are recited in the registration. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); *In re William Hodges & Co., Inc.*, 190 USPQ 47, 48 (TTAB 1976). *See also Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed"); *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (the Board cannot consider any restrictions or limitations to the applicant's goods unless the restrictions or limitations appear in the application).

As indicated above, applicant is seeking to register its mark for "watches, watch cases, watch backs, watch

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bands and watch clasps; jewelry and accessories, namely, charms, pendants, chains, and bracelets." The registrant has registered its mark for "electronic watches and electronic clocks." The watches identified in applicant's description of goods are broad enough to incorporate the electronic watches in the cited registration.

The fact that some of applicant's goods are either identical or closely related to the registrant's goods is sufficient to support a finding of likelihood of confusion. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 209 USPQ at 988 (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods in the application).

In view of the foregoing, we find that the goods of the applicant and the goods of the registrant are closely related.

B. The similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers.

Because the issue of likelihood of confusion must be decided on the basis of the goods as they are identified in the application and the cited registration, "where the goods in a cited registration are broadly described and there are no limitations in the identification of goods as

to their nature, type, channels of trade or classes of purchasers, it is presumed that the scope of the registration encompasses all goods of the nature and type described, that the identified goods move in all channels of trade that would be normal for such goods, and that the goods would be purchased by all potential customers." *In re Elbaum*, 211 USPQ at 640. There are no limitations or restrictions in the applicant's description of goods or the registrant's description of goods. Accordingly, it must be presumed that applicant's watches and the registrant's electronic watches and electronic clocks could be sold in the same channels of trade and purchased by the same classes of consumers. If the same purchasers were to encounter the highly related products of the applicant and the registrant in the same retail outlets, it would not be unreasonable for them to assume, mistakenly, that they originated from the same source.

C. The conditions under which and buyers to whom sales are made (i.e., impulse vs. careful, sophisticated purchasing).

Applicant contends that because watches may be considered jewelry, consumers exercise a high degree of consumer care.²

² Applicant's Brief, pp. 6-7.

Both the Applicant's and the Registrant's goods are watches. Purchasers of goods designed for the purpose of personal adornment, or to give as special gifts, such as watches, are particularly mindful of the products they buy. Applicant believes that such purchasers are generally acutely aware of minor differences, and of the look, feel, and design of such products. They are unusually sensitive to such factors because jewelry and watches are considered a direct reflection of the wearer. Such awareness and interest, and the resultant focus on products and brand differences, makes consumers of such goods "sophisticated" purchasers, who are not likely to confuse the Registrant's goods with the Applicant's goods merely because the descriptive phrase "time zone" appears in both marks.

The problem with this argument is that applicant is attempting to restrict the definition of "watches" to watches that are personal decoration ("personal adornment") that consumers consider jewelry and gifts to the exclusion of inexpensive, simple, utilitarian time pieces. As indicated above, the question of likelihood of confusion must be determined by an analysis of the marks as applied to the goods identified in the application and the registration, rather than what extrinsic evidence shows the goods to be. Accordingly, the argument that the products at issue are designed for personal adornment or as gifts can be given no consideration because there is no

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restriction in the application or the registration limiting the watches to items of personal adornment or gifts. The determination of likelihood of confusion must be made on a comparison of the marks as they are used in connection with all watches and all electronic watches and electronic clocks. This includes not only watches for personal adornment and gifts but also more simple, utilitarian and inexpensive watches.

Also, we note that applicant provides only argument. It does not provide any evidence regarding the decision making process used by these purportedly careful and sophisticated purchasers, the role trademarks play in their decision making process, or how observant and discriminating they are in practice. See *In re Vsesoyuzny Ordena Trudovogo Krasnogo Znameni*, 219 USPQ 60, 70 (TTAB 1983) ("Unfortunately we have no evidence of record to this effect and assertions in briefs are normally not recognized as evidence").

Thus, applicant's contention that the relevant purchasers are sophisticated is not supported by the record.

D. The strength of the registered mark.

Applicant contends that the registered mark TIME ZONE and design is a weak mark, entitled to a narrow scope of

protection or exclusivity of use. According to applicant, the term "time zone" describes watches that maintain time in multiple time zones.³ To show that the term "time zone" is commonly used by others in the field of watches, applicant submitted the following evidence in its September 27, 2007 Request for Reconsideration:

1. An excerpt from the TimeZone.com website, "the world's watch information source";
2. A reference to a retail store in Bountiful, Utah named "The Time Zone";
3. Excerpts from the Dual-Time Watches.com, Amazon.com, eBay, J&R.com, Bladeart.com, DaddyThePimp.com and NexTag.com websites advertising "dual time zone," "2 time zone," or "3 time zone" watches;
4. An excerpt from the TIMEZONEWATCHES.com website that appears to provide links to other websites that sell "time zone watches";
5. An excerpt from the TimeZone Watch School website (timezonewatchschool.com) that appears to be a website regarding watch repair;
6. An excerpt from the BahrainiHotels.com website advertising a multiple time zone watch;

³ Applicant's Brief, p. 2.

7. An excerpt from the eBay website advertising an ARMANI brand "two time zone men (sic) watch";
8. An excerpt from the Dexigner.com website advertising a line of "Five Time Zone" luxury watches for men and women;
9. An excerpt from the eBay website advertising a "Bernouli Eternal Automatic 6 Time Zone Watch";
and,
10. The Jacob & Co. category on the ClickToWear.com website advertising watches that feature 5 time zones.

In its April 28, 2006 Response, applicant submitted excerpts from the Shopzilla.com and BizRate.com websites advertising dual time zone watches.⁴

The record supports applicant's contention that the term "time zone" describes a feature of a watch that keeps time for multiple time zones. Thus, in the likelihood of confusion analysis, a descriptive term such as "time zone" is entitled to less weight than if the registered mark were an arbitrary term. *Exxon Corp. v. U.S. Industries, Inc.*, 213 USPQ 393, 395 (TTAB 1982); *Plak-Shack, Inc. v.*

⁴ Applicant also submitted copies of applications and registrations for marks consisting, in part, of the word "zone" for watches. Because the relevant marks at issue are TIME ZONE and design and 6 TIME ZONE, the applications and registrations submitted by applicant have little probative value.

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Continental Studios of Georgia, Inc., 204 USPQ 242, 248 (TTAB 1979). Nevertheless, the registered mark TIME ZONE and design has the presumption of validity. Section 7(b) of the Trademark Act of 1946, 15 U.S.C. §1057(b), provides that "[a] certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate." Therefore, in an *ex parte* appeal proceeding, the registered mark must be protected from another confusingly similar mark. Even though the registered mark may be weak, it is still entitled to be protected sufficiently to prevent confusion as to source from arising. *Vita-Pak Citrus Products Co. v. Cerro*, 195 USPQ 78, 81 (TTAB 1977); *Maybelline Company v. Matney*, 194 USPQ 438, 440 (TTAB 1977).

E. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont*

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De Nemours & Co., supra. In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 9 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1988). In comparing the marks, we are mindful that 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 so that confusion as to the source of the goods offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The marks are similar in appearance because applicant's mark, 6 TIME ZONE, incorporates the entire word

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portion of the registered mark, TIME ZONE and design.⁵ Likelihood of confusion is often found where the entirety of one mark is incorporated within another. *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (BENGAL LANCER and BENGAL are similar); *Johnson Publishing Company, Inc. v. International Development Ltd., Inc.*, 221 USPQ 155, 156 (TTAB 1982) ("likelihood of confusion has frequently been found where contested marks used on related products involve one mark which consists of a single word and another which is comprised of that same word followed by a second term"). Moreover, because the number "6" has descriptive significance (*i.e.*, indicating that applicant's watches can monitor time in six time zones), the addition of the number "6" to applicant's mark does not provide a sufficient basis upon which to distinguish it from the registered mark. See *In re Xerox Corp.*, 194 USPQ 449, 449 (TTAB 1977) (6500 and 6500 LINE, with "line" disclaimed, are "substantially alike"); *Yasutomo & Co. v. Commercial Ball Pen Co., Inc.*, 184 USPQ 60, 62 (TTAB 1974) ("applicant's mark 'UNI-GRAPHIC' is nothing more than

⁵ The term "time zone" is the dominant portion of the registered mark because the design elements of the mark are insignificant.

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opposer's mark 'UNI' with the addition of a non-distinctive term").

The marks are aurally similar and have a similar connotation to the extent that they share the term "time zone."

The term "time zone" in the marks when used in connection with watches engender similar, if not identical, commercial impressions relating to the various longitudinal divisions of the Earth's surface by which time is kept.⁶ Applicant's addition of the descriptive number "6" to its mark is likely to create the impression that applicant's 6 TIME ZONE watches are a variation of the registrant's TIME ZONE and design electronic watches.

In view of the foregoing we find that the similarities of the marks outweigh their differences and, therefore the marks are similar.

F. Balancing the factors.

We are cognizant that we must consider the marks in their entireties and that the registered mark TIME ZONE and design is weak mark entitled to a narrow scope of protection or exclusivity of use. However, because both

⁶ The American Heritage Dictionary of the English Language (4th ed. 2000) (www.Bartleby.com) attached to the February 7, 2007 Office Action; Webster's New Universal Unabridged Dictionary attached to applicant's April 28, 2006 Response.

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marks feature the term "time zone" and "time zone" is the dominant portion of the registered mark, and in view of the close similarity of the products and the identity of the trade channels, consumers encountering applicant's mark who are familiar with the registered mark are likely to believe that applicant's watches are somehow associated or affiliated with registrant's electronic watches and electronic clocks. Accordingly, we find that applicant's mark 6 TIME ZONE for "watches, watch cases, watch backs, watch bands and watch clasps; jewelry and accessories, namely, charms, pendants, chains, and bracelets" is likely to cause confusion with the registered mark TIME ZONE and design for "electronic watches and electronic clocks."

Decision: The refusal to register is affirmed.