

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
April 2, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Marketing Association

Serial No. 76649035

Nathan E. DeBaun of Ungaretti & Harris LLP for American Marketing Association.

Steven W. Jackson, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

Before Hairston, Bucher and Grendel, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant, American Marketing Association, has filed an application seeking registration on the Principal Register of the mark **M LEARNING** (in standard character form; LEARNING disclaimed) for services recited in the application as "educational and training services, namely

conducting marketing training workshops and seminars," in Class 41.¹

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that the mark, as applied to the services recited in the application, so resembles the mark **I M LEARNING**, previously registered (in standard character form; LEARNING disclaimed) for services recited in the registration as "educational services, namely, conducting classes and seminars in the field of business management training, customer service training and leadership training" in Class 41,² as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant has appealed the final refusal. After careful consideration of the evidence of record and the arguments of counsel, 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

¹ Serial No. 76649035, filed on October 24, 2005. The application is an intent-to-use application filed under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

² Reg. No. 2617117, issued on September 10, 2002.

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 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 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).

The first *du Pont* factor requires us to determine the similarity or dissimilarity of the marks when viewed in their entireties in terms of appearance, sound, connotation and commercial impression. *Palm Bay Imports, Inc., supra*. The test, under the first *du Pont* factor, 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 or services offered under 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 and service marks. 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 Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004); *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applicant's mark is M LEARNING. The cited registered mark is I M LEARNING. The word LEARNING is descriptive and disclaimed in both marks, and we accord it less significance in our comparison of the marks. However, the evidence of record does not support applicant's contention that the word LEARNING is so commonly used in connection with Class 41 educational services that marks which include that word should be given a minimal scope of protection. We sustain the Trademark Examining Attorney's objection to the evidence submitted for the first time with applicant's brief, and we will not consider that evidence. See Trademark Rule 2.142(d), 37 C.F.R. §2.142(d).

Applicant's and registrant's marks are identical in terms of appearance and sound but for the presence of the initial "I" in the cited registered mark. In terms of connotation, we find that the word LEARNING would have the same meaning in both marks. The letters I M in the cited registered mark, if they have any meaning at all, could be understood to connote the words "I Am," giving the whole

mark the connotation "I Am Learning." However, the "M" in applicant's mark also could be understood to connote the word "Am" and give the entire mark the connotation "Am Learning," with the pronoun "I" implied as the subject of the sentence. We are not persuaded that the evidence of record supports applicant's argument that the "M" in its mark necessarily would be understood as connoting the word "marketing." In terms of commercial impression, we find that the two marks are similar in that they both would be viewed as the word LEARNING preceded by single letters, including the letter "M" in both marks.

On balance, we find that the marks are similar when viewed in their entireties in terms of appearance, sound, connotation and commercial impression. The dissimilarities between the marks which result from the presence of the initial letter "I" in the cited registered mark are outweighed, in our view, by the points of similarity between the marks. We find that these marks are sufficiently similar that source confusion is likely to result if the marks were to be used on similar and related services. The first *du Pont* factor weighs in favor of a finding of likelihood of confusion.

The second *du Pont* factor requires us to determine the similarity or dissimilarity of the services as identified

in the application and in the cited registration, respectively. It is settled that it is not necessary that the respective services be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. That is, the issue is not whether consumers would confuse the services themselves, but rather whether they would be confused as to the source of the services. See *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984). It is sufficient that the services 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 services. 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).

Applicant's services are identified as "educational and training services, namely conducting marketing training workshops and seminars." The services identified in the

cited registration are "educational services, namely, conducting classes and seminars in the field of business management training, customer service training and leadership training." The respective services obviously are similar in that they both focus on educational and training services offered to businesses.

Applicant argues that the services are not identical, because they involve different subject matter areas. According to applicant, applicant trains businesses in the subject of marketing, which pertains to a business' relationship with entities external to the business, i.e., to the business' customers and potential customers. Registrant, on the other hand, trains businesses in business management, customer service, and leadership, subjects which go to a business' internal practices and processes. We are not persuaded by this argument. "Customer service" obviously is an important part of a business' marketing efforts; in applicant's formulation, customer service by definition pertains to persons "external" to the business itself.

Moreover, as noted above, the respective services need not be identical or even competitive in order to be sufficiently related to cause confusion when offered under similar marks. The issue is not whether purchasers would

be able to distinguish the specific services themselves, but rather whether they would be likely to assume that there is some source, sponsorship or other affiliation between the services.

In this regard, the Trademark Examining Attorney has made of record persuasive evidence showing that marketing training services like applicant's, and business management, customer service and/or leadership training services like registrant's, could be and are marketed by a single source under a single mark. Of record are over twenty use-based third-party registrations which include in their identifications of services both applicant's type of services and registrant's type of services. 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 or services 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). Applicant's contrary argument dismissing the probative value of this evidence is unpersuasive. Also of record are printouts of numerous Internet webpages and NEXIS excerpts of news stories which

show that companies providing business training often provide training both in business management and in marketing.

Based on this evidence, we find that applicant's services, even if not identical to registrant's services, are sufficiently closely related that confusion as to source, sponsorship or other affiliation is likely to occur if the respective services are offered under confusingly similar marks. The second *du Pont* factor accordingly weighs in favor of a finding of likelihood of confusion.

The third *du Pont* factor requires us to consider the similarity or dissimilarity of the trade channels in which the respective services are marketed, including the similarity or dissimilarity of the classes of purchasers of the services. Neither applicant's services as identified in the application nor registrant's services as identified in the registration are limited or restricted in any way as to trade channels or classes of purchasers. We therefore must assume that the respective services are marketed in all normal trade channels for such services and to all normal classes of purchasers for such services. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). We find that applicant's training services and registrant's training services would be marketed to the same potential purchasers, i.e.,

business owners, in the same or similar trade channels. Nothing in the record supports a contrary conclusion.

The fourth *du Pont* factor requires us to consider the conditions of purchase. Applicant argues that the educational services involved in this case would be purchased carefully by knowledgeable and sophisticated purchasers. We disagree that this is necessarily so. The business owners who are potential customers of the respective services would include businesses of all sizes and types, including small business owners who would have varying degrees of sophistication. Moreover, it is settled that even sophisticated purchasers are not immune to source confusion which would result from the use of similar marks in connection with similar goods or services. See *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988). We find that the fourth *du Pont* factor is essentially neutral in this case.

Considering all of the evidence of record as it pertains to the relevant *du Pont* 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,

Ser. No. 76649035

6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc. supra.*

Decision: The refusal to register is affirmed.