

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pet Center, Inc.

Serial No. 76667082

Thomas I. Rozsa of Rozsa Law Group LC for Pet Center, Inc.

Paul A. Moreno, Trademark Examining Attorney, Law Office 103  
(Michael Hamilton, Managing Attorney).

Before Bucher, Zervas and Taylor, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Pet Center, Inc. seeks registration on the Principal  
Register of the mark **PORKYCHEWZ** (*in standard character  
format*) for goods identified in the application, as amended,  
as follows:

"edible chews for animals, namely, pork rind  
hides for dogs" in International Class 31;<sup>1</sup>

This cases is before the Board on appeal from the final  
refusal of the Trademark Examining Attorney to register this  
mark based upon Section 2(d) of the Trademark Act, 15 U.S.C.

<sup>1</sup> Application Serial No. 76667082 was filed on October 6, 2006  
based upon applicant's allegation of a *bona fide* intention to use  
the mark in commerce.

§ 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles **PORK CHEWZ** registered in for "edible pig skin treats in assorted shapes and sizes, for dogs," also in International Class 31,<sup>2</sup> as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney fully briefed the appeal. We affirm the refusal to register.

Applicant contends that there is no likelihood of confusion given that "reconstituted pork-based bones for dogs ... have nothing whatsoever to do with intact pork rinds ... "; that the respective marks are not confusingly similar as to sound, meaning or appearance when considered in their entirety; that the Trademark Examining Attorney has improperly dissected applicant's mark into its component parts; and finally, that these two marks can peacefully coexist in this field inasmuch as the cited mark is registered on the Supplemental Register, the registration contains a disclaimer of the right to use the word "Chews" (or its phonetic equivalent, "Chewz") and there cannot be

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<sup>2</sup> Registration No. 2833387 issued on the Supplemental Register on April 13, 2004. No claim is made to the right to use the word "Chews" apart from the mark as shown.

any exclusivity as to the word "Pork" in the pet food industry.

By contrast, the Trademark Examining Attorney argues that the applied-for mark is confusingly similar to the registered mark because the marks create similar commercial impressions; that even if we should conclude that the cited mark is "weak," such marks are still entitled to protection against registration by a subsequent user of the same or similar mark for the same or closely-related goods or services; that the goods are related; and that applicant's and registrant's respective goods will move in all normal channels of trade for such goods, and will be available to all the same classes of potential customers.

### **Preliminary Matter**

Three of the four exhibits that applicant has attached to its reply brief purport to be copies of "printouts" of registered marks for goods in International Class 31 having some form of the words "Pork," "Porky" or "Chew" within them. Inasmuch as the evidentiary record in an application should be complete prior to the filing of an *ex parte* appeal to the Board, this new evidence filed with the reply brief has been given no consideration. 37 CFR § 2.142(d).

### **Likelihood of Confusion**

We turn then to a consideration of the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key, although not exclusive, considerations are the similarities between the marks and the relationship between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

### **The marks**

We turn first to the *du Pont* factor that focuses on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

Applicant is correct in contending that we must consider the marks in their entireties. However, in weighing the confusing similarity of these two marks, our focus should be placed on the recollection of the average consumer who normally retains a general rather than a specific impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

As for the appearance of the marks, applicant has inserted the letter "Y" where registrant has a space. This does add a third syllable to applicant's mark, creating a slightly different sound. As to connotation, the first portion of both marks is dominated by the idea of "flesh of hogs," while the final portion is an identical misspelling (e.g., "Chewz") of the category of goods involved herein, namely, dog "chews." The commercial impressions of both of these composite marks draws upon the idea of an edible dog chew made from pigskin.

On balance, then, we find that applicant's mark is similar to registrant's mark as to appearance and sound, and that both marks create the same connotations and commercial impressions. Hence, this critical *du Pont* factor favors a finding of likelihood of confusion.

**The Goods, their Trade Channels and Conditions of Purchase**

In its appeal brief, applicant argues as follows:

It is respectfully submitted that the goods as discussed in the '387 Registration have nothing whatsoever to do with edible pig skin treats in assorted shapes and sizes, for dogs. The '387 Registration is for edible products for dogs having an ingredient of pork skin which is deconstructed and reformed with other ingredients in the shape of bones to be eaten by dogs. Absolutely none of these goods has anything to do with a completely different type of pork rind treats which are whole, intact pieces of pork rind prepared and cut into appropriate sizes for dogs. Therefore, even though both products relate to the general area of dog treats, it is respectfully submitted that they are totally different because the cited '387 Registration is used specifically for reconstituted pork-based bones for dogs that have nothing whatsoever to do with intact pork rinds.

While applicant's counsel has made an argument as to the difference in the goods (e.g., "bones" versus "intact pork rinds"), this alleged difference is certainly not drawn from the goods as identified in the application and registration. In any case, as noted by the Trademark Examining Attorney, even if the goods are not identical in formulation and appearance, and even if they should prove not to be directly competitive products, they are related in that both are edible treats for dogs, with both products having their origins in pigskins.

We presume both would be marketed through the same channels of trade, and would be encountered by the same classes of ordinary purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source. These items are presumably inexpensive enough that their purchase would not be subjected to a heightened degree of care.

Accordingly, all of these related *du Pont* factors favor the position taken by the Trademark Examining Attorney.

**Conclusion**

In view of the confusing similarity of these two marks and the relatedness of the respective goods - with the understanding that both identified goods would be marketed through the same channels of trade to the same classes of ordinary consumers, we find that applicant's mark for its identified goods is likely to cause confusion with the cited registration.

*Decision:* We hereby affirm the refusal to register based upon Section 2(d) of the Lanham Act.