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OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tricom Media Holdings, Inc.

Serial No. 76668320

Myron Amer of Myron Amer, P.C. for Tricom Media Holdings,
Inc.

Caryn Glasser, Trademark Examining Attorney, Law Office
108 (Andrew Lawrence, Managing Attorney).

Before Holtzman, Taylor, and Wellington, Administrative
Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Tricom Media Holdings, Inc., applicant, filed an
application to register the mark 24 HORAS USA (in standard
character form) on the Principal Register for goods
identified as "newspapers, magazines, namely, general
feature magazines" in International Class 16.¹ The
application contains a disclaimer of USA. Applicant also

¹ Application Serial No. 76668320 is based on a statement of
first use in commerce and anywhere on June 1, 2006.

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submitted a statement that the English translation of the word "horas" is "hours."²

The examining attorney has refused registration of applicant's mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the previously registered mark 24HOURS (in typed characters) for "magazine dealing with nighttime human interest stories and sources of goods and services" in International Class 16,³ that, as used on applicant's identified goods, applicant's mark is likely to cause confusion or mistake or to deceive.

Applicant appealed the final refusal and briefs were filed.⁴ We affirm the refusal to register.

² The translation was provided in applicant's July 12, 2007 response; however, the statement does not appear to have been entered into the database for the application.

³ Registration No. 1590841 issued April 10, 1990; renewed.

⁴ The examining attorney also issued a final refusal based on applicant's failure to comply with a requirement for a clarification of the goods, i.e., specify the subject of the magazines. On July 28, 2008, two weeks after filing its appeal, applicant filed an amendment to the identification of goods (to read as stated in the first paragraph of this decision). Applicant's amendment was not filed with the Board. In her brief, the examining attorney noted and accepted the amendment. Accordingly, that refusal is not an issue before us. Nonetheless, we would be remiss if we did not point out to counsel for applicant that post-appeal amendments to applications in ex parte proceedings are to be filed with the Board. See TBMP § 1205 (2d ed. rev. 2004). It would behoove counsel to familiarize himself with the Board rules and procedure (available on Office website, www.uspto.gov).

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *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 similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We first consider the *du Pont* factor involving the similarity of the marks. Our focus is on whether the marks are similar in sound, appearance, meaning, and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). Again, our analysis here involves applicant's mark, 24 HORAS USA, versus the registered mark, 24HOURS.

Upon review of the marks as a whole, we find that they have nearly identical meaning and create the same commercial impression. Under the doctrine of "foreign equivalents" foreign words from common languages are

translated into English in order to determine their confusing similarity to English word marks. *In re Ithaca Industries, Inc.*, 230 USPQ 702 (TTAB 1986); see also J.T. McCarthy, *McCarthy on Trademarks and Unfair Competition*, §23:36 (4th ed. 2006). In this case, there is no dispute that the term HORAS in applicant's mark is the Spanish word for "hours," which we add is not an obscure word and may even be understood by even those with limited knowledge of Spanish. As a result, the initial and dominant portion of applicant's mark has the same meaning as registrant's mark, namely, "24 hours." This same meaning in turn creates the same connotation in relation to the respective goods, i.e., suggesting that the subject matter of the magazines involves stories covering "the whole day" or "both night and day." The fact that the marks have the same meaning, resulting in a highly similar overall commercial impression, is sufficient for us to conclude that confusion is likely, despite the differences in their sound. See *In re American Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987).

The marks are also very similar visually. Although there is a space between 24 and HORAS in applicant's mark, whereas registrant combines the terms 24 and HOURS, such difference is insignificant. Visually, there is also not a

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radical difference between the Spanish word "horas" and "hours."

We consider the marks as whole, as we must, and have taken into consideration the addition of the term USA in applicant's mark. However, we note that this geographically descriptive (and therefore disclaimed) term is placed at the end of applicant's mark. Thus, for two reasons, the term USA is accorded less weight in our evaluation as to the overall similarity of the marks. First, descriptive and disclaimed components of marks are generally given less weight than non-descriptive elements in reaching a conclusion on the likelihood of confusion. *See, e.g., In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often "less significant in creating the mark's commercial impression"). Second, it is the initial, non-descriptive terms (in this case, 24 HORAS and 24HOURS) that are most likely to be impressed upon the mind of a purchaser and will be remembered and used when calling for the goods. *See Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988).

Even if we were to allow for a slight difference in the appearance of the marks and applicant's addition of the

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term USA, we find that, on balance, the *du Pont* factor of the similarity of marks weighs strongly against applicant.

We now turn to the *du Pont* factors regarding the goods, trade channels and classes of purchasers. 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 cited registration. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); *In re William Hodges & Co., Inc.*, 190 USPQ 47, 48 (TTAB 1976). Applicant and registrant's goods are nearly identical inasmuch as they both cover magazines. The subject matter of applicant's magazines is identified as "general feature magazines," whereas registrant's magazines involve "nighttime human interest stories and sources of goods and services." As the examining attorney correctly pointed out, there is certainly a potential for overlap in the content of the respective magazines because "general feature magazines encompass subjects such as human interest stories and sources for goods and services." Brief, (unnumbered) p. 14.

We further find that applicant's newspapers are closely related to registrant's magazines. Applicant's newspapers are not limited at all as to subject matter.

Thus, we must presume that at one point or another, or in one particular section of applicant's newspapers, they will contain the same types of articles or stories as registrant's magazines, e.g., nighttime human interest stories and/or sources for goods and services. Also, in support of her contention that magazines and newspapers are related, the examining attorney submitted copies of several use-based, third-party registrations covering magazines and newspapers. Copies of use-based, third-party registrations may serve to suggest that the goods are of a type which may emanate from a single source. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993).

In view thereof, we conclude that applicant's goods, in part, are legally identical to registrant's goods inasmuch as they both cover magazines that could possibly contain the same type of articles or stories. Otherwise, applicant's newspapers are substantially related to registrant's magazines. This factor therefore weighs strongly in favor of finding a likelihood of confusion.

Because the goods in the application and the cited registration both cover magazines with subject matter that effectively does not restrict either's trade channels, we must presume that the channels of trade and classes of purchasers at least in part are the same. *Genesco Inc. v.*

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Martz, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade"); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers"). Even where the goods are not identical, namely, newspapers vis-à-vis magazines, the common trade channels for these goods may be the same, e.g., newsstands. Likewise, the classes of purchasers for both applicant's newspapers and registrant's magazines will also be the same, including the ordinary consumer exercising an ordinary amount of care. Thus, the *du Pont* factors involving trade channels and classes of purchasers also favor a finding of likelihood of confusion.

When we consider the record and the relevant likelihood of confusion factors, we conclude that potential purchasers of applicant's and registrant's goods, upon encountering the marks 24 HORAS USA and 24HOURS for the respective goods, are likely to believe that the sources of

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these goods are in some way related or associated. As a result, there is a likelihood of confusion.

DECISION: The refusal to register the mark under Section 2(d) of the Trademark Act in view of Registration No. 1590841 is affirmed.