

**THIS OPINION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

Mailed: July 27, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Trianon International Investments Ltd.

Serial No. 78235185

Victoria Newland of McColloch & Campitiello, LLP for
Trianon International Investments Ltd.

Christopher L. Buongiorno, Trademark Examining Attorney,
Law Office 102 (Thomas V. Shaw, Managing Attorney).

Before Quinn, Drost and Cataldo, Administrative Trademark
Judges.

Opinion by Cataldo, Administrative Trademark Judge:

An application was filed by Trianon International
Investments Ltd. to register the mark shown below on the
Principal Register for the following services, as amended:
"restaurants, cafes, cafeterias, catering services" in
International Class 43.¹

¹ Application Serial No. 78235185 was filed April 8, 2003, based on applicant's allegation of a bona fide intent to use the mark in commerce, and with a claim of priority under Section 44(d) of the Trademark Act. Applicant subsequently added Section 44(e) as a filing basis by submitting a copy of Swiss Registration No. 505781, registered on December 11, 2002. In response to a requirement by the trademark examining attorney, applicant disclaimed the exclusive right to use "ROYAL CONFECTIONARY," "SINCE 1683," and "DANISH BAKERY" apart from the mark as shown.



The trademark examining attorney refused registration as to the services recited in International Class 43 under Section 2(d) of the Trademark Act on the ground that applicant's mark, as intended to be used in connection with applicant's services, so resembles the mark, TRIANON PALACE, previously registered in standard character form, for "restaurants, hotels, bars, beauty salons and health spas," in International Class 42² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs. An oral hearing was not requested.

The application previously contained the following goods in International Class 30, as amended: "coffee, grain based coffee substitutes, and preparations made of coffee, namely coffee infused with chocolate, caramel, vanilla and other flavors, dough, rolls, pies, muffins, cookies, candies, bakery desserts, bread, pastries, biscuits, cakes, farinaceous food pastes, pizzas, tomato paste, flour for food, ice creams; all of the above being of Danish origin." ITU Divisional Unit subsequently granted applicant's request to divide these goods into child application Serial No. 78976107.

² Registration No. 1862954, issued November 15, 1994, also recites "physical fitness facilities," in International Class 41. Section 8 affidavit accepted; Section 15 affidavit acknowledged, first renewal.

Applicant contends that consumers will encounter its mark "exactly as they see it and hear it in its entirety, and do not normally stop to analyze it" (applicant's brief, p. 2); that consumers will not discriminate between disclaimed material and "dominant portions or distinguishing features" (Id.); that, as a result, the totality of applicant's mark will create "the commercial impression upon potential customers" (Id.); and that, when viewed as a whole, applicant's mark is dissimilar from registrant's mark in sight, sound and meaning. Applicant further contends that it intends to offer small cafes and restaurants in which to make its Danish foodstuffs available to consumers; that, by contrast, registrant's restaurant and bar services are only offered at a luxury hotel in Versailles, France; and that, due to the differences in trade channels, there is no likelihood of confusion as to the source of the services.

The examining attorney maintains that applicant's mark is highly similar to the mark in the cited registration. Specifically, the examining attorney argues that applicant's mark shares the distinctive term, TRIANON, with the mark in the cited registration; that the remainder of the wording in applicant's mark is disclaimed and, moreover, is displayed in smaller size than the term

TRIANON; and that, as a result, consumers of both applicant's and registrant's services will perceive the term TRIANON as the source identifier therefor. The examining attorney further argues that both applicant and registrant provide restaurant services; that as recited in the involved application and cited registration, the services are not restricted as to trade channels; and that applicant may not attempt to limit the trade channels for registrant's services by extrinsic evidence.

As a preliminary matter, we note that with his brief, the examining attorney has submitted an encyclopedia entry regarding the term "TRIANON." We grant his request that we take judicial notice of the reference. The Board may take judicial notice of dictionary entries and other standard reference works. *See University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *In re Broyhill Furniture Industries Inc.*, 60 USPQ2d 1511 (TTAB 2001). However, we find that the submitted encyclopedia entry does not change the outcome of our decision, and we have not relied upon it in our determination of the matter currently on appeal.

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 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). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We begin by comparing applicant's proposed services with those of registrant. In making our determination under the second *du Pont* factor, we look to the services as identified in the involved application and cited registration. See *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.") See also *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods.")

In this case, the recitation of both applicant's and registrant's services include restaurants. As such, applicant's proposed services are identical in part to those provided by registrant. In addition, we find that applicant's proposed "cafes" and "cafeterias" are types of eating establishments and thus are closely related to registrant's restaurant services. We further find that "catering services" are commonly understood to include supplying prepared food and thus are closely related to restaurant services. We are not persuaded by applicant's argument that the asserted differences between its proposed small cafes and restaurants featuring Danish food products and registrant's luxury restaurant services will overcome a likelihood of confusion as to the source of those services. First, neither the identification of services in the involved application nor the cited registration contains any such limitations. Thus, and as noted above, we must base our determination with regard to the relatedness of the parties' services upon the recitation of services in

the involved application and the cited registration. See *Octocom Systems, Inc. v. Houston Computers Services Inc.*, *supra*. Further, inasmuch as the recitation of services in the cited registration is not limited to any specific channels of trade, we presume an overlap and that the services would be offered in all ordinary trade channels for these services and to all normal classes of purchasers. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

Turning to our consideration of the marks at issue, we note initially that, "[w]hen marks would appear on virtually identical ... services, the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." See *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 1034 (1994). See also *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443, 449 (TTAB 1980). 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. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

In this case, we note that applicant's mark displays the term TRIANON in large sized font, along with the remaining, disclaimed, wording in a much smaller font as well as the design of a crown. 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 this case, the dominant portion of applicant's mark, that is to say, the portion that is most likely to be remembered by consumers, is the wording TRIANON. The term TRIANON, which comprises the most visually prominent portion of applicant's mark, is identical to the first word in the cited mark, TRIANON PALACE. We also note that the term TRIANON is the most prominent portion of the mark in the cited registration. In addition, the term TRIANON appears to be arbitrary and distinctive as applied to the parties' services. Thus, we find that the similarities in sound, appearance, meaning and commercial impression of the marks

outweigh the dissimilarities so that confusion as to source is likely to result if used in connection with the parties' identical and otherwise related services. See *In re Chatam International Incorporated*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004).

In considering the involved marks, we have taken into account the third-party registration of the mark TRIANON COMPANY and design.³ The registration covers the following services: "hospitality industry services offered to travelers and guests, namely, temporary accommodations." This evidence is of limited probative value. Firstly, the registration is not evidence of use of the mark shown therein and it is not proof that consumers are familiar with said mark so as to be accustomed to the existence of similar marks in the marketplace. See *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462 (CCPA 1973); and *Richardson-Vicks, Inc. v. Franklin Mint Corp.*, 216 USPQ 989 (TTAB 1982). Secondly, the registration covers services which are not as closely related to those in the cited registration as applicant's proposed services. We accordingly find that the registered mark TRIANON PALACE is

³ Applicant submitted a printed copy of this registration from the United States Patent and Trademark Office's Trademark Electronic Search System (TESS) as an exhibit to its response to the examining attorney's April 27, 2004 Office action.

entitled to more than a narrow scope of protection, particularly in the field of restaurant services. See *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1740 (TTAB 1991), *aff'd unpub.*, (Appeal No. 92-1086, Federal Circuit, June 5, 1992).

Neither applicant nor the examining attorney has discussed any of the remaining *du Pont* factors. We note, nonetheless, that none seems to be applicable, inasmuch as we have no evidence with respect to them.

In light of the foregoing, we conclude that consumers familiar with registrant's services sold under its above-referenced mark would be likely to believe, upon encountering applicant's services rendered under its mark that the services originated with or are somehow associated with or sponsored by the same entity.

Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. See *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 165, 223 USPQ 1289 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.