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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re R-Vision, Inc.

Serial No. 78257849

James D. Hall of Botkin & Hall, LLP for R-Vision, Inc.

Laura Gorman Kovalsky, Trademark Examining Attorney, Law
Office 110 (Chris A. F. Pedersen, Managing Attorney).

Before Seeherman, Quinn and Hohein, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

R-Vision, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register TRAIL-AIRE as a trademark for "recreational vehicles, namely travel trailers and motor homes."¹ Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles

¹ Application Serial No. 78257849, filed June 3, 2003, and asserting a bona fide intention to use the mark in commerce.

the mark TRAILAIR, previously registered for "vehicle hitches,"² that, if used on applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed appeal briefs. Applicant had originally requested an oral hearing, but subsequently withdrew that request.

We turn first to an evidentiary issue. In its appeal brief, applicant listed information from what it described as third-party registrations. The Examining Attorney has objected to this listing, both as to form and to timeliness. The Examining Attorney's objections are well taken on both grounds. Providing a listing of certain information about third-party registrations, i.e., mark, registration number, goods and owner, is not the proper way to make such registrations of record. See *In re Duofold, Inc.*, 184 USPQ 638 (TTAB 174). In addition, Trademark Rule 2.142(d) provides that the record must be complete as of the filing of the appeal. Thus, even if applicant had submitted copies of the third-party registrations taken from USPTO records, such evidence would have been untimely. Applicant's listing of these third-party registrations, and its arguments made in connection with them, have not been considered.

² Registration No. 2494388, issued October 2, 2001.

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.*, 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).

With respect to the marks, they are identical in pronunciation, and highly similar in appearance. Although applicant's mark contains a hyphen, and ends in an "E," these very minor differences are not likely to be noted or remembered by consumers, and therefore they are not sufficient to distinguish the marks. Under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections. *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255 (TTAB 1980). The marks also have similar connotations. Both appear to

be plays on the word "trailer." Moreover, in the case of both marks, there is a suggestion that the respective goods make for an easy or non-bumpy ride when "on the trail." Applicant has argued that the differences between the goods "creates such a sufficiently different commercial impression, so that there is no likelihood of confusion between the marks." Brief, p. 3. To the extent that applicant means to argue that the connotations of the marks are different because of the goods on which they are used, we have already addressed this. To the extent that applicant is simply arguing that the goods themselves are different, this goes to the du Pont factor of the similarity of the goods, not the marks. We conclude that the marks convey similar commercial impressions, and that the du Pont factor of the similarity of the marks favors a finding of likelihood of confusion.

Turning to the factor of the similarity of the goods, we reiterate the well-established principle that it is not necessary that the goods at issue be similar or competitive, or even that they move in the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they

would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

In this case, there is no question that the goods are complementary in nature, in that they can be used together. Applicant has acknowledged that "there is no question that hitches are intended to be used with vehicles for attachment to trailers or to be connected to motorhomes for the purpose of allowing motorhomes to pull trailers." Response filed June 29, 2004. The Examining Attorney has made of record two use-based third-party registrations which show that various entities have adopted single marks for both hitches and recreational vehicles of the sort identified in applicant's application. See Registration No. 2394684 for, inter alia, travel trailers and trailer hitches for land vehicles; Registration No. 2374643 for, inter alia, travel trailers, campers, mini motor homes and trailer hitches.³ Third-party registrations which individually cover a number of different items and which

³ The Examining Attorney has also submitted third-party registrations which include hitches but not recreational vehicles.

are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). Although two such third-party registrations is a limited number, it does serve to rebut applicant's statement that it "knows of no U.S. recreational vehicle, travel trailer, or motor home company that also manufactures vehicle hitches." Brief, p. 4. It is not clear if applicant is couching its assertion on the manufacturing practices of U.S. companies, rather than companies headquartered elsewhere in the world, or it meant to assert more broadly that companies that manufacture motor homes do not also manufacture hitches. We point out that, in determining the relatedness of goods, we look to third-party registrations which are based on use in commerce, and it is irrelevant whether the registrants are located in this country or abroad. Thus, the registrations provide some evidence that recreational vehicles and vehicle hitches can emanate from a single source. We also note that one of the two relevant third-party registrants is listed as being located in Pennsylvania.

We also note that applicant has acknowledged that the classes of consumers for both recreational vehicles and

hitches are the same. "Vehicle hitches are a specialty product and likely purchased separately by the user of a recreational vehicle or motor home." Brief, p. 4.

Applicant has made this statement as part of its argument that the goods are sold in different channels of trade, but even if we were to accept that argument as true, the fact remains that the consumers of the goods are the same.

Because consumers may purchase both recreational vehicles, namely travel trailers and motor homes, and vehicle hitches, they may encounter both types of goods, regardless of the channels of trade, and therefore may be confused by seeing the highly similar marks TRAIL-AIRE and TRAILAIR on them. Moreover, the evidence submitted by the Examining Attorney shows that recreational vehicles and hitches may travel in the same channels of trade. The website for PPL states that it is an RV consignment dealer, and it sells motorhomes and travel trailers. It also sells RV parts, including various trailer hitches. The website for Lazydays states that it is "Number One in RV's," and also indicates that it has a parts and accessories inventory that includes tow hitches.

Applicant also argues that because recreational vehicles are expensive items, buyers for such goods "are more discerning and sophisticated than when purchasing a

relatively inexpensive vehicle hitch." Brief, p. 4. We agree that the purchase of an expensive item like a recreational vehicle is not made on impulse, but would involve some degree of care. However, as applicant recognizes, vehicle hitches are relatively inexpensive items, and therefore the same degree of care may not go into the purchase of such goods. Therefore, someone who has purchased a recreational vehicle under the mark TRAIL-AIRE who later encounters a vehicle hitch sold under the mark TRAILAIR is likely to assume, without giving it much thought or analysis, that the vehicle hitches sold under this mark emanate from the same source. As a result, we cannot conclude that the du Pont factor of the conditions under which and buyers to whom sales are made favors applicant.

Applicant and the Examining Attorney have not discussed any of the remaining du Pont factors, and it does not appear to us, from the evidence of record, that any others are applicable to our determination. Based on the factors that have been discussed, we find that the Examining Attorney has established that applicant's use of TRAIL-AIRE for recreational vehicles, namely travel trailers and motor homes, is likely to cause confusion with the mark TRAILAIR, registered for vehicle hitches.

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Decision: The refusal of registration is affirmed.