

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

Mailed:
September 11, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Endeavors, Incorporated

Serial No. 78418326

Philip H. Gottfried of Amster, Rothstein & Ebenstein LLP
for Endeavors, Incorporated.

James W. Stein, Trademark Examining Attorney, Law Office
107(J. Leslie Bishop, Managing Attorney).

Before Grendel, Zervas and Bergsman, Administrative
Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Endeavors, Incorporated filed an intent-to-use
application (Serial No. 78418326) for the mark CUISINE, in
standard character form, for the following products, as
amended:

All-purpose cleaners; all-purpose cleaning
preparations; anti-bacterial soap; bath beads;
bath crystals; bath foam; bath gel; bath lotion;
bath oil; bath pearls; bath powder; body cream;
body emulsions; body oil; body powder; body
scrub; body sprays; bubble bath; cologne; dish
detergents; dish washing detergents; eau de
cologne; eau de parfum; eau de toilette;
essential oils for personal use; fragrant
emitting wicks for room fragrance; fragrances for

personal use; hair cleaning room fragrance; fragrances for personal use; hair cleaning preparations; hand cream; hand lotions; hand soaps; household cleaning preparations; incense; lip gloss; liquid soaps for hands, face and body; lotions for skin, hair, face and body; non-medicated bath salts; non-medicated hair care preparations; non-medicated lip balm; massage oil; perfume; perfume oils; potpourri; room fragrances; sachets; sachet-like eye pillows containing fragrances; scented body spray; scented ceramic stones; scented linen sprays; scented room sprays; shampoos; shampoo-conditioners; shower gel; skin lotion; skin moisturizer; skin soap; soaps; toilet soap; toilet water, in Class 3;

Candles and scented candles, in Class 4; and,

Air deodorant; air deodorizer; air fresheners; anti-bacterial hand wash; car deodorant; car deodorizer; disinfecting hand wash; insect repellent in candle form; household deodorant; household deodorizer; room deodorants; room deodorizing compositions, in Class 5.

During the prosecution of its application, applicant explained "CUISINE does not have any significance in the relevant trade or industry as applied to the goods listed in its Application."¹ However, "[a]s applied to Applicant's goods, the word CUISINE is clearly suggestive of the fact that some of Applicant's products carry the scent of food."²

¹ Applicant's June 1, 2005 Response to the December 12, 2004 Office Action, p. 14.

² Applicant's June 1, 2005 Response to the December 12, 2004 Office Action, p. 10.

The Examining Attorney has issued a final refusal of registration on the ground of likelihood of confusion under Section 2(d) of the Trademark Act of 1946, 15 U.S.C.

§1052(d), because applicant's mark, as applied to

applicant's goods, so resembles the mark BELLE CUISINE

(typed drawing) for the products set forth below as to be

likely to cause confusion:

Household kitchen utensils and containers of glass, porcelain and earthenware, namely, watering cans; candle rings; glass boxes, candle-holders; decorative glass balls; porcelain door knobs; cruets; busts of porcelain, terracotta or glass; flowerpot holders, non-electric candelabra; candlesticks; china ornaments; signboards of porcelain or glass; candle extinguishers; figurines of porcelain, terracotta or glass; mosaics of glass, not for buildings; flower pots; statuettes and statues of porcelain, terracotta or glass, epergnes; piggy banks, vases; sacred vessels; opal glass plates, butter dishes; tea caddies; bowls; carboys, namely a glass or plastic bottle encased in a protective basket; boxes for sweetmeats; glass stoppers; tea balls; bottles sold empty; insulated bottles for beverages; jugs; non-electric coffeepots; decanters; beer mugs; butter dish covers; cheese-dish covers; egg cups; baskets, for domestic use, drinking horns; fruit cups; dish covers; crystal; pitchers; cooking pots; demijohns, sold empty; coasters; trivets; basins, goblets, drinking flasks; tankards; cruet stands for oil; vegetable dishes; hand operated pepper mills; fitted picnic baskets; tea strainers; pipettes for tasting wine; trays for household purposes; dishes; pepper pots; menu card holders; knife rests; toothpick holders; pots; crumb scoops; drinking vessels; heat-insulated vessels; napkin rings; salad bowls; salt shakers; buckets for refreshing purposes; syringes for watering flowers and plants; coffee sets,

consisting of non-electric coffee pots, chocolate pots, creamers, and a sugar bowl; tea sets, spice sets comprised of spice rack, spice containers and spoons; liquor sets consisting of glasses, decanters and combs; siphons for carbonated water; saucers; soup bowls; sugar bowls; cups, teapots, shaving brushes, soap boxes, perfume burners, shoe horns; toilet paper holders; soap dispensers; flasks; toilet cases; sponge holders; soap holders; towel holders; chamber pots; powder compacts, perfume sprayers; book jacks; perfume vaporizers, in Class 21.³

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Co.*, 544 F.2d 1098, 192 UPSQ 24 (CCPA 1976); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

³ Registration No. 2907038, issued November 30, 2004. "The English translation of 'Belle Cuisine' is 'Fine Cuisine.'"

1. The similarity or dissimilarity and nature of the goods.

The Examining Attorney contends that the personal care products (e.g., cosmetic and bath products), candles, deodorizers, and hand wash listed in the application and the products listed in the registration are complementary because they may be used together. Accordingly, "there is a clear overlap or relationship" between the products in applicant's identification of goods and the description of goods in the cited registration, and that this "overlap or relationship" is evidenced by the third-party registrations that have been made of record.⁴ Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods are of a type that may emanate from a single source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-1786 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).⁵

The following third-party registrations purport to show a relationship between applicant's cosmetic and bath

⁴ Examining Attorney's Brief, p. 8.

⁵ We have not considered the seven (7) registrations based on foreign filings rather than use in commerce because they are based on Section 44 of the Trademark Act of 1946, and that section of the Trademark Act does not require use in commerce.

Serial No. 78418326

products and registrant's household products used in connection with applicant's cosmetic and bath products:⁶

Mark	Reg. No.	Goods
BACTISAN ⁷	2376655	Skin soap and hair care preparations, namely, shampoo and hair lotions, and body lotions, Class 3; and, Dispensing apparatus for soap, hair care preparations, namely shampoo and hair lotions, and body lotions, in Class 21
PURE SIMPLICITY	3029986	Face cleansers, face moisturizers, gel face washes, eye creams, lip balm, shower gels, body lotions, exfoliating scrubs for the face and body, body oils, lip gloss, and soaps in Class 3; and, Bathing sponges in Class 21
CASSOLETTE	3034184	Fragrances for personal use, in Class 3; and, Perfume burners, in Class 21
NOVELETTI	2979020	Skin soap, in Class 3; and, Soap holders, in Class 21

⁶ In the following tables, we have not included the entire description of goods for each of the subject registrations. Only the goods found in applicant's mark and registrant's mark are listed.

⁷ Although the application for this registration was based on a Benelux application and subsequent registration, and not use in commerce, a Section 8 affidavit has been accepted and a Section 15 affidavit has been acknowledged. Thus, registrant has stated under oath that its mark has been used in commerce.

Mark	Reg. No.	Goods
SONIA KASHUK	2881297	<p>Body cream, body powder, face creams, fragrances for personal use, lip balm, perfume, perfume oils, shower gel, in Class 3; and,</p> <p>Applicator sticks for applying makeup, cosmetic brushes, and eyebrow brushes, in Class 21</p>
DERMIGENE	2778300	<p>Soaps, hand creams, in Class 3; and,</p> <p>Soap dispensers, in Class 21</p>
URBAN SPA	3055789	<p>Massage oil, soaps, skin lotions, shampoos and conditioner, in Class 3; and,</p> <p>Soap dishes and soap holders, and towel holders, in Class 21</p>
NO WORRIES	2568242	<p>Bath beads, bath crystals, bath gel, bath powder, body creams, hair conditioner, hand cream, non-medicated bath salts, and non-medicated lip balm, in Class 3; and,</p> <p>Shaving brushes, in Class 21</p>
TRUE PASSION	2875718	<p>Bath and shower gel, body lotion, body powder, hand lotion, bath salts, soaps for personal use, in Class 3; and,</p> <p>Candleholders and candle rings, in Class 21</p>

Serial No. 78418326

Mark	Reg. No.	Goods
AURA CACIA PURE BOTANICAL ESSENCE	2815074	Body oils, body lotions, hand lotion, massage oil, bath and shower gels, bath salts, non-medicated lip care preparations, hair shampoo, hair conditioner, in Class 3; and, Aromatherapy vaporizers for essential oils sold empty and aromatherapy candle holders, in Class 21

The following registrations purport to show a relationship between applicant's candles and scented candles and registrant's household products used in connection with candles:

Mark	Reg. No.	Goods
ANJENETTE	3057488	Candles, in Class 4; and, Candle holders, in Class 21
HEMEI	3045249	Candles, in Class 4; and, Candle holders, in Class 21
FLORASENSE	3023222	Candles, in Class 4; and, Candle holders, in Class 21
AMBRI PETITELITES	2970296	Disposable candles, in Class 4; and, Candle holders, in Class 21

Mark	Reg. No.	Goods
SENSUAL LIVING	3053142	Candles, in Class 4; and, Candles holders, in Class 21
THE APPLESMITH ORIGINAL HANDCRAFTED DESIGNS	2881753	Candles, in Class 4; and, Candle holders, candle rings, candelabras, and candlesticks in Class 21
ILLUMINATIONS	2893431	Candles, in Class 4; and, Candle holders, in Class 21
AMERICAN MEADOWS	2931900	Candles, in Class 4; and, Candle holders, in Class 21
REPertoire	2907347	Candles, in Class 4; and, Candle holders, vases pots, flower pots , in Class 21
DISCOVER	2907328	Candles, in Class 4; and, Candle holders and vases, in Class 21
SOY BEADS	2907428	Candles, in Class 4; and, Candle holders and candle rings, in Class 21

The following registrations purport to show a relationship between applicant's anti-bacterial and disinfecting hand wash and registrant's household products used in connection with hand wash:

Mark	Reg. No.	Goods
BACTISAN	2376655	Anti-bacterial preparations, namely, hand wash, in Class 5; and, Dispensing apparatus for cleaning preparations, soaps, and anti-bacterial preparations, namely, hand wash, in Class 21
CYBER-CLENZ	2570982	Disinfecting hand wash, in Class 5; and, Soap dispensers, in Class 21

Applicant argues that the products in applicant's description of goods and the products in the cited registration "are sufficiently distinct to avoid confusion."⁸ While it is true that the goods at issue are different, the question is not whether purchasers would confuse them (soap vs. soap holders, candles vs. candle holders, and anti-bacterial hand wash vs. soap dispensers, etc.), but rather whether purchasers are likely to confuse the source of the goods. *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 (TTAB 1989); *In re Permagrain Products, Inc.*, 223 USPQ 147, 148 (TTAB 1984). See also *Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517, 520 (TTAB 1975) ("In determining whether products are identical or similar, the inquiry should be

⁸ Applicant's Brief, p. 7.

whether they appeal to the same market, not whether they resemble each other physically or whether a word can be found to describe the goods of the parties"). Thus, the products at issue need not be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from or are associated with a single source. *In re Albert Trostel & Sons Co.*, *supra* at 1785; *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

In considering the goods, we note that applicant's personal care products (in Class 3), candles (in Class 4), and hand wash (in Class 5) are complementary to the registrant's products because they could be used together and, thus, they appeal to the same consumers (e.g., soap/soap dispensers, perfume/perfume sprayers and vaporizers, candles/candle rings, holders, sticks, and candelabras, and hand wash/soap boxes, dispensers, and holders). Also, as noted above, the Examining Attorney has made of record a number of third-party registrations that

show various entities have adopted a single mark for products that are identified in both the application and the cited registration suggesting that purchasers would expect that goods sold under similar marks would emanate from the same source.

In view of the foregoing, we find that this *du Pont* factor favors finding that there is a likelihood of confusion.

2. The similarity or dissimilarity of likely-to-continue trade channels.

There are no restrictions or limitations in the identification of goods for the application or cited registration. Absent such restrictions or limitations, we must assume that the goods travel in "the normal and usual channels of trade and methods of distribution." *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983). See also *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 for 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

Serial No. 78418326

particular channels of trade or the class of purchasers to which the sales of goods are directed"). Accordingly, both applicant's and registrant's goods are presumed to move in all normal channels of trade and be available to all classes of potential consumers, including the general public. *Venture Out Properties LLC v. Wynn Resorts holding LLC*, 81 USPQ2d 1887, 1894 (TTAB 2007); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

In view of the foregoing, we find that the same consumers would purchase both applicant and registrant's goods and that they would be sold in the same channels of trade.

3. The similarity or dissimilarity of the marks in their entreties as to appearance, sound, connotation and commercial impression.

We now turn to the *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entreties as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co., supra*. Applicant's mark is CUISINE and the registrant's mark is BELLE CUISINE. As noted above, applicant stated that "Cuisine" does not have any significance in the relevant trade or industry. However, applicant also asserted that "cuisine" is suggestive

because some of its products are scented with the fragrance of familiar foods (e.g., applicant promotes its products by touting "aromas of fresh baked pastries and tantalizing confections," the "aromatic therapy of sophisticated desserts or exotic libations," and "comforting scents of pies and cookies fresh from the oven").⁹ As discussed above, we must determine the issue of registrability 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. Because applicant's description of goods is not limited to products with the scent of food, the mark must be considered in connection with all products, scented and unscented, listed in the description of goods.

Even if we were to accept applicant's position that "cuisine" is a suggestive term when used in connection with applicant's products, "cuisine" is not so highly suggestive that it would materially alter the breadth of protection to which registrant's mark is entitled. The nexus between the term "cuisine" and applicant's cosmetic and bath products, candles, and hand wash takes considerable thought or reasoning. Even if registrant's mark is suggestive, it is still entitled to protection against the registration of a

⁹ Applicant's June 2, 2005 Response, p. 10.

Serial No. 78418326

similar mark for closely related goods or services. See *Matsushita Electric Co. v. National Steel Co.*, 442 F.2d 1383, 170 USPQ 98, 99 (CCPA 1971) ("Even though a mark may be 'weak' in the sense of being a common word in common use as a trademark, it is entitled to be protected sufficiently to prevent confusion as to source from arising"); *King-Kup Candies, Inc. v. King Candy Co.*, 288 F.2d 944, 129 USPQ 272, 273 (CCPA 1961) (although opposer's mark is as weak a mark as can be found, it is still entitled to protection).

Nevertheless, applicant argues that CUISINE and BELLE CUISINE are not similar for the following reasons:

- A. CUISINE and BELLE CUISINE look different because applicant's marks is one word, not two, and the word "belle" in the registered mark will create the greatest impact on consumers because it is the is the first word of that mark;
- B. CUISINE and BELLE CUISINE do not sound similar because the first word of the registered mark is not part of applicant's mark;
- C. CUISINE and BELLE CUISINE do not engender the same commercial impression because applicant's mark is suggestive of the fact that applicant's products carry the scent of food whereas the use of the word "belle" in the registered mark call to mind the image of a "Southern Belle" thereby giving the registered mark a Southern impression.

With respect to BELLE CUISINE, "belle" modifies "cuisine" conveying to consumers a type of cuisine. Thus, the word "cuisine" is the dominant part of the registered mark, and consumers encountering both marks may perceive

the marks as being variations of one another used in connection with related product lines. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) ("in articulating the reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark"). While we are mindful of the differences in appearance and sound between CUISINE and BELLE CUISINE, we find that such differences do not distinguish the marks in light of their similarities due to the shared term CUISINE. Accordingly, we find that the marks CUISINE and BELLE CUISINE are visually and aurally similar.

The meaning and commercial impressions of the marks are also similar. "Cuisine" is defined as a style of cooking.¹⁰ "Belle" means "beautiful, lovely . . . fine."¹¹ The combined term "belle cuisine" means a "fine cuisine" as translated in the cited registration. We are not persuaded by applicant's contention that "belle" in the context of "belle cuisine" connotes a "Southern Belle" thereby

¹⁰ The American Dictionary of the English Language (4th ed. 2006). The Board may take judicial notice of dictionary definitions. *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).

¹¹ Webster's New World Dictionary: French Dictionary (1992).

conveying a Southern image. "Belle" is not limited to a "Southern Belle," and there is no support for applicant's argument and the purchasing public would not attribute this unnatural meaning to "belle" when juxtaposed next to "cuisine."

Ultimately, we must consider the marks in their entireties, keeping in mind that a side-by-side comparison is not the test. The "focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of the trademarks." *Baseball America Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1848 (TTAB 2004). Considering the marks in this context, we conclude that they are more similar than dissimilar. In view thereof, this *du Pont* factor weighs in favor of finding that there is a likelihood of confusion.

4. Balancing the factors.

The *du Pont* factors require to us to consider the thirteen factors made of record in likelihood of confusion cases. The CCPA has also observed that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA

Serial No. 78418326

1976). When we compare the marks CUISINE and BELLE CUISINE, the complementary nature of the goods identified by each mark, and the identity of trade channels, we conclude that there is a likelihood of confusion.

Decision: The refusal to register applicant's mark under Section 2(d) is affirmed.