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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Wilson Audio Specialties, Inc.

Serial No. 78459813

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Before Bucher, Holtzman and Drost, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Wilson Audio Specialties, Inc. to register the mark POLARIS (in standard character form) for goods ultimately identified as "stereo loudspeakers" in Class 9.¹

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that

¹ Serial No. 78459813, filed June 15, 2006, based on an allegation of a bona fide intention to use the mark in commerce.

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applicant's mark, when applied to applicant's goods, so resembles the marks in the following registrations, owned by different entities, as to be likely to cause confusion.

Registration No. 1825763 for the mark POLARIS (in typed form) for "audio cables and accessories therefor; namely, connectors, electrical jacks, plugs, and adapters" in Class 9;²

Registration No. 2712041 for the mark POLARIS (in typed form) for "radio equipment, namely, receivers, transceivers, tuners, amplifiers, microphones, speakers, antennas, remote control units and marine radios" in Class 9.³

When the refusal was made final, applicant appealed. Briefs have been filed.

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 issue. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, however, two key considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the goods. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

² Issued March 8, 1994 to Wireworld By David Salz, Inc.; renewed.

³ Issued April 29, 2003 to Uniden America Corporation.

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Applicant's mark POLARIS is identical to the marks in the cited registrations.⁴ When marks are identical it is only necessary that there be a viable relationship between the goods in order to support a holding of likelihood of confusion. See *In re Concordia International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). Here, there is more than a viable relationship between the respective goods. The goods in the application and Registration No. 2712041 are in part, legally identical. Applicant's "stereo loudspeakers" fully encompass the "speakers" for radios identified in that registration. Applicant's stereo loudspeakers are otherwise closely related to the audio products identified in each cited registration.

With regard to Registration No. 2712041, applicant argues that there are no similarities between its stereo loudspeakers and registrant's radio equipment. In particular, applicant argues that its goods are "high quality stereo loudspeakers" whereas registrant's goods are wireless marine radios and accessories; and that speakers for radios are usually attached to a radio or are inexpensive and provide very basic sound, whereas applicant's goods are very expensive, high quality, "professional reference speakers" that are purchased separately from other home

⁴ Applicant admits on page 3 of its brief that its mark "is identical to [the] two existing registrations" and then later states in passing that "these marks, when considered in relation to their respective goods, create different commercial impressions and connotations." (Brief, at 9.) However, applicant has not explained what the asserted differences are and moreover we can discern no such differences.

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theater components and "provide extremely accurate sound reproduction." Applicant has submitted portions of registrant's owner's manual for POLARIS marine radio transceivers to show that registrant's mark is actually only used for marine radio technology.

Applicant further argues that the trade channels for stereo speakers and marine radios are different; that unlike speakers sold as radio components, stereo loudspeakers are not sold in typical retail outlets or chain stores such as Wal-Mart and Circuit City; that applicant's stereo loudspeakers, due to their price and performance, are sold to small, specialty retailers with few lines and only expensive, high performance products; that registrant's marine radio speakers are sold only in marine specialty stores; and that speakers sold as general radio equipment, which typically are inexpensive and provide very basic sound, can be found in any retail electronics store. Applicant contends that the purchasers of its stereo loudspeakers are sophisticated consumers, and that because these goods are very expensive, purchasers will exercise greater care in their selection.

With regard to Registration No. 1825763, applicant argues that its stereo loudspeakers and registrant's audio cables and accessories are dissimilar and noncompetitive goods; that the goods "are marketed in such a way to prevent confusion"; that

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registrant "exclusively manufactures audio and video cable, much as Applicant exclusively manufactures stereo loudspeakers"; and that consumers of the respective products are sophisticated and are accustomed to purchasing products as separate components.

Applicant's arguments are not persuasive. First, the question is not whether purchasers can differentiate the goods themselves but rather whether purchasers are likely to confuse the source of the goods. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Thus, it is not necessary that the goods of the applicant and registrant be similar or even competitive to support a finding of likelihood of confusion. *Id.* It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that the goods 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 the goods emanate from or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Further, as the examining attorney points out, and a legion of cases have held, the likelihood of confusion must be determined on the basis of the goods as identified in the application and registrations, regardless of what extrinsic evidence may show the actual nature or purpose of the goods, or

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their actual channels of trade or classes of purchasers to be. See *J & J Snack Foods Corp. v. McDonalds' Corp.*, 932 F.2d 1460, 1464, 18 USPQ2d 1889, 1892 (Fed. Cir. 1991) and *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Thus, applicant's attempt to limit the scope of the goods identified in Registration No. 2712041 to marine radios, or to otherwise limit the nature of the goods or the channels of trade for the goods is unavailing.⁵ The identification of goods specifically and separately lists speakers for radios, and the speakers are not limited to use for marine radios.

Similarly, applicant's stereo loudspeakers, as identified, are not restricted to a particular type of speakers, or to a particular price point or quality, or to particular channels of trade or classes of purchasers. We take judicial notice of the dictionary definition of "speaker" as "loudspeaker," and the definition of "loudspeaker" as "an electronic or electromagnetic device used to convert electrical energy into sound energy, providing the audible sound in equipment such as televisions, radios, CD players, and public-address systems."⁶ (Emphasis

⁵ We note, in any event, that registrant's owner's manual covers just one of registrant's listed products.

⁶ Obtained from *The American Heritage Dictionary of the English Language, Third Edition*, copyright 1992 (electronic version) and *Microsoft Encarta College Dictionary* (2001) (printed version), respectively. The Board may properly take judicial notice of

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added.) Therefore, we must presume that applicant's "stereo loudspeakers" encompass all types of audio speakers, including registrant's speakers for radios; that applicant's and registrant's speakers are used for all the usual purposes, including, for example, home music systems and car radio systems; and that applicant's stereo loudspeakers, along with other audio components, would be sold in all the usual outlets, including the electronics stores where applicant claims registrant's goods would be sold, and to all the usual purchasers for such goods, including ordinary consumers. Further, the Internet evidence submitted by the examining attorney indicates that speakers are in fact available as separate components to be connected to radios. See, e.g., excerpts from *www.ebay.com* and *www.familyphotoandvideo.com*, *supra*. It is clear that loudspeakers include speakers for radios and that as we noted, the goods are legally identical.

In addition, applicant's stereo loudspeakers are closely related to the other radio components listed in Registration No. 2712041, which include receivers, transceivers, tuners, amplifiers, microphones, antennas and remote control units; and that applicant's goods are also closely related to the goods listed in Registration No. 1825763, which include audio cables

dictionary definitions, including online dictionaries which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1791 n.3 (TTAB 2002).

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and connectors. The examining attorney has submitted numerous third-party registrations which list both speakers as well as one or more of the items identified in each cited registration. For example, Registration No. 2857757 for the mark GET (and design) lists speakers, as well as amplifiers, microphones, FM and AM tuners and receivers, and electrical cable and connectors; Registration No. 2841560 for the mark RC ROYAL CABLE lists loudspeakers, as well as amplifiers, radio receivers and audio cables and connectors; Registration No. 2800284 for the mark BGW SYSTEMS (and design) lists speakers, as well as audio power amplifiers, radio tuners, microphones, and electrical cables and connectors; Registration No. 2853443 for the mark JBL SYNTHESIS (and design) lists speakers, as well as antennas, car radio receivers, tuners, transceivers, amplifiers, and electrical cables and connectors; and Registration No. 2888694 for the mark EASY ANSWERS for speakers as well as audio antennas, microphones, receivers, remote controls, amplifiers, and electrical cables and connectors to connect wireless radio products. Although the third-party registrations are not evidence of use of the marks in commerce, the registrations have probative value to the extent that they suggest that the respective goods are of a type which may emanate from the same source. See, e.g., *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988).

It is clear that audio cables and stereo loudspeakers and similarly radio equipment and stereo loudspeakers are all integral components of a complete home or car audio system. The complementary nature of applicant's and registrants' goods is demonstrated by the excerpts from Internet websites submitted by the examining attorney. The excerpts show, for example, that a receiver is used to power speakers, including radio speakers, and to adjust the settings of the speakers; that cables are used to connect receivers and speakers and can also affect the quality of the sound emanating from the speakers; and that speakers and other audio components, including radio components, can be found on the same retail websites under the same product category. Examples of these excerpts are reproduced below (bold in original).

www.ebay.com

Home Audio Buying Guide

Upgrade your home audio and set up a surround sound speaker system to bring your movies and music to life. From speakers,...and receivers to satellite radio tuners,...you'll find a large selection of the latest home audio components on eBay.

...

Choose Receivers, Amps, and Equalizers

Receivers power speakers and allow you to adjust settings such as bass and treble. You can connect them to multiple home entertainment devices, and most include a built-in AM/FM radio tuner. ...

...With two channels of amplification, stereo receivers output stereo audio from traditional CDs, cassettes, turntables, or radio to a set of speakers.

...

Play your music on Home Audio

...
Satellite radio tuners...
AM/FM tuners...

...
Get the right cables

...
Remember to buy speaker cables to connect your
speakers to your receiver...

www.stereotimes.com

Many audio cables today resemble anacondas. ...
Audience has gone in the opposite direction. ...their
interconnects and speaker cables are the same size,
about on-quarter to one-half the size of your average
lamp cord!

...
Well, How Do They Sound?

...
With all of the Audience cables in the system, the
sound took on a more subtle harmonic richness.

...
Bass was extended and tight right on down to my
speakers' limitations... .

www.magnan.com

Magnan Cables, Inc. has specialized in the design and
manufacturing of high end audio interconnects and
speaker cables since 1990. ...

In addition, the retail website *www.familyphotoandvideo.com*,
under the category "Audio," lists speakers, along with antennas,
and audio accessories; and under the category "Satellite Radio
tuners," lists speakers along with A/V receivers and AM/FM
tuners. Similarly, the retail website *www.vanns.com*, under the

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category "Audio," lists speakers along with amplifiers, radios and receivers.

As noted earlier, the purchasers of both applicant's and registrants' components used for home and car audio systems are ordinary consumers, and we disagree with applicant that such purchasers are necessarily sophisticated or knowledgeable about those products. Also, we have no evidence of the cost of these items, but even if we assume that an audio system purchased as separate components is more expensive than a self-contained system and that purchasers would therefore exercise some degree of care in selecting them, it would not convince us that there is no likelihood of confusion. Even careful purchasers of more expensive goods can be confused as to source where, as here, the marks are identical and are used on identical and/or closely related goods. See *In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) citing *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ("Human memories even of discriminating purchasers...are not infallible.").

We find that purchasers familiar with registrants' respective audio components provided under the mark POLARIS, would be likely to believe, upon encountering applicant's identical mark POLARIS for identical and/or closely related

stereo loudspeakers, that the goods originated with or are in some way connected with the same entity.⁷

We note applicant's argument that in view of the coexistence of the two cited marks on the register applicant's mark should be entitled to register as well. However, the question of whether the two cited marks are confusingly similar to each other is not before us. Each case must be decided on its own merits. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court."). We are not privy to the records in the cited registrations and have no information as to the facts or circumstances that allowed them both to register. Even assuming that the two registrations are confusingly similar does not justify permitting yet another confusingly similar mark to register. See *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA

⁷ Applicant appears to contend that the absence of evidence of fame of the registrants' marks should be treated as a factor in applicant's favor. Because this is an ex parte proceeding, we would not expect the examining attorney to submit evidence of fame of the cited marks. This *du Pont* factor, as is normally the case in ex parte proceedings, must be treated as neutral. See *In re Thomas*, 79 USPQ2d 1021 (TTAB 2006). Similarly, the asserted absence of evidence of actual confusion does not weigh in favor of applicant. We have no information regarding the nature or extent of applicant's and registrants' use or whether a meaningful opportunity for actual confusion ever existed. See *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768 (TTAB 1992). Thus, we consider this factor to be neutral as well. See *Blue Man Productions Inc. v. Tarmann*, 75 USPQ2d 1811 (TTAB 2005).

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1973) ("...nor should the existence on the register of confusingly similar marks aid an applicant to register another likely to cause confusion, mistake or to deceive.").

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.