

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing:
Aug. 21, 2007

Mailed:
Dec. 13, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mid-America Group, Ltd.

Serial No. 78462025

Edmund J. Sease of McKee, Voorhees & Sease, PLC for
Mid-America Group, Ltd.

Edward Nelson, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Grendel, Kuhlke and Taylor, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Mid-America Group, Ltd., applicant herein, seeks
registration on the Principal Register of the mark depicted
below



for services recited in the application as "real estate development services," in Class 37.¹ Applicant has disclaimed GROUP apart from the mark as shown. The application includes a "description of the mark" statement stating that "The mark consists in part of a stylized letter M."²

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that the mark, as used in connection with the recited services, so resembles the mark depicted below,



previously registered on the Principal Register for services recited in the registration as "real estate brokerage and management services" in Class 36,³ as to be

¹ Serial No. 78462025, filed on August 4, 2004. The mark is based on use in commerce, and June 4, 2004 is alleged in the application to be the date of first use anywhere and the date of first use in commerce.

² Although applicant's description of the mark in the application states that the design element in the mark is "a stylized letter M," we find that the design element just as easily could be perceived by purchasers as a stylized "MA," the letters with which the words "MID" and "AMERICA" begin. Applicant concedes as much in its reply brief, when it contends that the design element, "upon a second glance, creates the impression of an 'M' and 'A.'" (Reply brief at 6.)

³ Registration No. 2444425, issued April 17, 2001. Affidavits under Sections 8 and 15 accepted and acknowledged.

likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

The appeal is fully briefed, and an oral hearing was held on August 21, 2007. After careful consideration of the evidence of record and the arguments of counsel, we affirm the refusal to register.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The first *du Pont* factor requires us to determine the similarity or dissimilarity of the marks when viewed in their entireties in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imports, Inc.*, *supra*. 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 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). Furthermore, although the marks at issue must be considered in their entirety, 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 Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004); *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applying these principals in the present case, we find as follows. Initially, we find that the dominant feature in the commercial impression of each mark is the designation MID-AMERICA. Even though MID-AMERICA carries a somewhat geographical significance, we still find that it is what purchasers are most likely to perceive and recall as the primary source-indicating feature of the mark. The disclaimed word GROUP in applicant's mark is descriptive or even generic, and purchasers would accord it little or no

source-indicating significance. The "MA" design feature in each mark certainly appears prominently, but it is likely to be perceived in each mark as an abbreviation of the dominant source-indicating designation "MID-AMERICA."

While we do not ignore these other elements of the respective marks, we find that it is the designation MID-AMERICA which is most likely to be perceived and recalled by purchasers as the primary source-indicating feature of the respective marks. It is therefore MID-AMERICA which is entitled to greater weight in our comparison of the marks. *See In re Chatam International Inc. supra; In re National Data Corp. supra.*

In terms of appearance, we find that the marks are similar. Both prominently feature the hyphenated word MID-AMERICA, accompanied by a stylized "MA" design feature. Applicant's mark appears on three lines while the cited registered mark appears on only one, but that difference would be of little significance to purchasers looking to the marks as source indicators. The presence in small letters of the descriptive or generic word GROUP in applicant's mark likewise fails to distinguish the marks significantly in terms of appearance. The design elements in the respective marks are not identical in appearance upon side-by-side comparison, but they still look similar

to the extent that both would be seen as stylized representations of the letters "MA."

In terms of sound, we find that the marks are similar to the extent that they both include the designation MID-AMERICA. To the extent that the design elements would be vocalized at all, they would be vocalized in the same way in each mark, i.e., as the letters "MA." The marks sound different to the extent that the cited registered mark does not include the generic word GROUP, but we find that difference to be outweighed by the similarity in sound which results from the vocalization in each mark of the letters "MA" and the word MID-AMERICA.

In terms of connotation, we find that the marks are similar to the extent that the designation MID-AMERICA means the same thing in both marks. To the extent that the design elements in the respective marks have any connotation at all, they are similar in that both would be understood as standing for or reinforcing MID-AMERICA. The word GROUP in applicant's mark would be viewed merely as an entity designation or descriptor which lends little or nothing to the meaning of the mark as a whole.

In terms of overall commercial impression, we find that the marks are similar. Although the marks are not identical when viewed side-by-side, both marks create the

commercial impression of services rendered by a company calling itself MID-AMERICA. The "MA" design elements in the marks, although not identical in appearance, are nonetheless similar in that they reinforce the primary source-indicating significance of the designation MID-AMERICA in each mark. Applicant's addition of the descriptive or generic word GROUP does not significantly distinguish the marks in terms of overall commercial impression.

For the reasons discussed above, we find that the marks are similar rather than dissimilar when viewed in their entireties. The marks are not identical when compared side-by-side, but that is not the test. The similarity between the marks which results from the presence of the designation MID-AMERICA in both marks outweighs the points of dissimilarity between the marks. Purchasers encountering the marks are likely to assume, because of the presence of MID-AMERICA in both marks and notwithstanding the dissimilarities between the marks, that both marks signify a single or related source.

The second *du Pont* factor requires us to determine the similarity or dissimilarity of the services as identified in the application and in the cited registration. It is settled that it is not necessary that the services be

identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. That is, the issue is not whether consumers would confuse the services themselves, but rather whether they would be confused as to the source of the services. See *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984). It is sufficient that the services be related in some manner, or that the circumstances surrounding their use be such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective services. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

The Trademark Examining Attorney has made of record four use-based third-party registrations in which the recitations of services consist of both "real estate development services," the services recited in applicant's application, and "real estate brokerage and management services," the services recited in the cited registration.

Although such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the services listed therein are of a kind which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988). We find that this evidence suffices to establish that applicant's and registrant's services are related. A landowner seeking a real estate development company to develop its property also is likely to be in the market for the services of a real estate management company to manage the property once it is developed. The evidence of record shows that such a landowner can look to a single source for both services.⁴ For these reasons, we find that the second *du Pont* factor weighs in favor of a finding of likelihood of confusion.

Under the fourth *du Pont* factor ("conditions of purchase"), we find that the purchasers of the services

⁴ In response to questioning by the Board at the oral hearing in this case, applicant's counsel conceded that real estate development services and real estate management services can be and are offered and rendered by the same company. Respondent's counsel also conceded that the purchasers of the respective services could be the same. These concessions are not evidence, but they tend to corroborate the third-party registration evidence which is in the record which establishes the relatedness of the services.

involved in this case are likely to include purchasers such as commercial property owners who are engaged in large-scale projects. These purchasers are likely to be knowledgeable and careful, a fact which weighs against a finding of likelihood of confusion. However, neither applicant's recitation of services nor the recitation of services in the cited registration limits the purchasers of the respective services to those with large-scale real estate projects. In the absence of such a restriction, we must presume that the purchasers of the services also could include smaller-scale property owners with one-time projects, who are not necessarily as familiar with the real estate development and real estate management fields. However, on balance, we find purchasers of the real estate services involved in this case are likely to be at least somewhat knowledgeable and careful when making their purchasing decisions. The fourth *du Pont* factor accordingly weighs against a finding of likelihood of confusion.

To summarize, we find that the sophistication of purchasers weighs in applicant's favor, but that it is ultimately outweighed, in our likelihood of confusion analysis, by the similarity of the marks and the close relationship between the respective services. Taking into

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account all of the evidence as it pertains to the *du Pont* factors, we find that a likelihood of confusion exists. To the extent that any doubts might exist as to the correctness of our conclusion, we resolve such doubts against applicant. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *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.*, *supra*.

Decision: The refusal to register is affirmed.