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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Taylor Tate, Inc.

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Serial No. 78463524

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Brett A. North of Garvey, Smith, Nehrbass & North, L.L.C.  
for Taylor Tate, Inc.

Ingrid C. Eulin, Trademark Examining Attorney, Law Office  
111 (Craig D. Taylor, Managing Attorney).

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Before Seeherman, Kuhlke and Zervas, Administrative  
Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Taylor Tate, Inc. has filed an application to register  
the mark  for services ultimately identified as "spa  
services namely, providing massages, facials, body  
treatments, manicures, pedicures, waxing, and microderm  
abrasions" in International Class 44.<sup>1</sup> In response to a

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<sup>1</sup> Application Serial No. 78463524, filed August 6, 2004, alleging  
a bona fide intention to use the mark in commerce under Section  
1(b) of the Trademark Act. 15 U.S.C. §1051(b).

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request from the examining attorney, applicant disclaimed the wording DAY SPA & SHOP.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used with its identified services, so resembles the registered mark **LOVJOI** for "hair care preparations, hair conditioners, hair moisturizers, hair relaxers, hair shampoos, hair gel, hair lotions, hair pomades, hair curl activators, hair waving lotions, face cream, body cream, body oil, skin cleansing cream, fade cream, vanishing cream, disinfectant soap, deodorant soap, skin soap, toilet soap, liquid soap, after shave cream, after shave lotion, sun tan lotion, sun block preparations, sun block cream, liquid detergent, deodorants, anti-perspirant" in International Class 3, as to be likely to cause confusion, mistake or deception.<sup>2</sup>

When the refusal was made final, applicant appealed and briefs have been filed. We affirm the refusal to register.

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, 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 turn first to a consideration of the goods and services identified in the application and the cited registration. It is well settled that goods and services need not be similar or competitive in nature to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods and services themselves, but rather whether purchasers are likely to confuse the source of the goods and services. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider the cited registrant's goods as they are described in the registration and we cannot read limitations into those goods. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom*

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<sup>2</sup> Registration No. 2494050, issued October 2, 2001.

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Systems Inc. v. Houston Computer Services Inc., 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the cited registration describes goods broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration encompasses all goods of the type described, that they move in all channels of trade normal for these goods, and that they are available to all classes of purchasers for the described goods. See In re Linkvest S.A., 24 USPQ2d 1716 (TTAB 1992). Finally, it is well established that goods and services may be related. See In re United Service Distributors, Inc., 229 USPQ 237 (TTAB 1986) (mark for distributorship services in the field of health and beauty aids held likely to be confused with mark for skin cream).

The examining attorney argues that applicant's services and registrant's goods are complementary and registrant's goods could be sold along with or as part of applicant's services. The examining attorney has presented evidence in support of her position that applicant's spa services and registrant's hair and skin care products are related in the form of third-party registrations showing that entities have registered a single mark for both spa services and hair and/or skin care products. See, e.g., Reg. No. 2875262 for EGYPTIAN REVIVAL for, inter alia,

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providing day spa services, namely hair salon services, skin care services, massages, manicures, pedicures, and hand and body cleansers, moisturizers, anti-aging creams, lotions, creams, lotions, sun block soaps, shampoos, conditioners, and hairspray; Reg. No. 2674775 for JON'RIC for, inter alia, beauty salons and spas, and shampoo, conditioner, hair gel, hair spray and mousse; Reg. No. 2898731 for A NATURAL DIFFERENCE for, inter alia, skin care salons, health spa services, namely cosmetic body care services, and facial lotions, body lotions, skin cleansers, and soap; Reg. No. 2719430 for LIVING AYURVEDA for skin moisturizers, massage oils, skin masks, facial cleansers, shampoos, soaps, and skin creams, and health spa services, namely, cosmetic body care services featuring facials, body treatments, hand/foot treatments, scalp treatments; and Reg. No. 2942871 for THE SPA TORREY PINES (and design) for beauty salon services and health spa services, namely cosmetic body care services consisting of massages, manicures and pedicures, and hair shampoo, hair conditioner, day cream, body cream, skin care facial toner, and sunscreen. 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 and/or services are of a type which may

emanate from a single source. In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993). Applicant has presented no argument or evidence to dispute this contention.

In view of the above, we find that applicant's spa services are related to registrant's hair and skin care products and the du Pont factor of the similarity of the goods and services weighs in favor of a finding of likelihood of confusion. In addition, because the identification of goods in the registration is not limited to any specific channels of trade, we presume an overlap in trade channels, at least to the extent that an ordinary channel of trade for registrant's types of goods includes spas, and that the goods and services would be offered to all normal classes of purchasers.

We turn now to the first du Pont factor, i.e., whether applicant's mark  and registrant's mark **LOVJOI** are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. The analysis is not whether the marks can be distinguished when compared side-by-side. Rather, we must determine whether the marks are sufficiently similar that there is a likelihood of confusion as to source and, in making this determination, we must consider the

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recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106, 108 (TTAB 1975).

We agree with the examining attorney that the word LOVEJOY in applicant's mark dominates over the descriptive wording DAY SPA & SHOP and the minimal decorative design elements. Applicant argues that the mark as a whole "should be reviewed and not a parsing of the mark into pieces." While it is correct that we must view the mark in its entirety, Kangol Ltd. v. KangaROOS U.S.A. Inc., 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992), it is also well settled that "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable." In re National Data Corp., 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).

We find that the word LOVEJOY in applicant's mark is similar in sound and appearance to registrant's mark LOVJOI. Applicant argues that "'LOV' does not sound like 'LOVE' as the 'O' in 'LOVE' is pronounced as 'luv' (having a short 'U' sound) and the 'O' in 'LOV' has a short 'O'

vowel sound...[and] 'JOY' does not sound like 'JOI.'" Br. p. 2. While it is possible that LOVJOI could be pronounced differently from LOVEJOY, there is no correct pronunciation of a non-standard term. See *Kabushiki Kaisha Hattori Tokeiten v. Scutto*, 228 USPQ 461 (TTAB 1985). Moreover, the examining attorney submitted excerpts from various newspapers retrieved from an electronic database where the word "love" is written as "lov," indicating that consumers are accustomed to pronouncing "lov" as "love." See, e.g., "Bears schedule separates fans from realists," Chicago Tribune (April 17, 2004) ("As a Bears fan for life, I want Lovie Smith to go 12-4, not 4-12. Love to luv ya, Lov."); "Skywriter spells religious messages over region," The News-Press (Fort Myers, FL) (August 26, 2003) ("Jesus Loves You, Love God and Lov U Jesus."); and "Watering cases pour into courts," St. Petersburg Times (June 15, 2001) (Every Friday, water violators congregate in Courtroom 14 for 'LoveCourt'-as in LOV, or local ordinance violations.") Here, because LOVJOI can be pronounced as "LOVEJOY," the shared terms LOVEJOY and LOVJOI must be considered identical in sound. *RE/MAX of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980). In addition, the terms, depicted in similar fonts, are very similar in appearance, only differing by the addition of the "E" and

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the substitution of a "Y" for an "I" in applicant's mark. As to connotation, at a minimum, when pronounced both evoke the words LOVE and JOY.

We find that the overall commercial impression of the marks is similar in view of the similarity of the words LOVEJOY and LOVJOI and that the descriptive wording and minor design elements in applicant's mark are not sufficient to distinguish the marks in the mind of the consumer who, as noted above, retains only a general impression of trademarks. Thus, the factor of the similarity of the marks also favors a finding of likelihood of confusion.

In conclusion, we find that because the marks are similar, the goods and services are related, and the channels of trade overlap, confusion is likely between applicant's mark and the cited registration.

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