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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Stephen A. Robbins

Serial No. 78465212

Thomas M. Small of Birch Stewart Kolasch & Birch, LLP for
Stephen A. Robbins.

Steven W. Jackson, Trademark Examining Attorney, Law Office
107 (J. Leslie Bishop, Managing Attorney).

Before Bucher, Zervas and Cataldo, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Stephen A. Robbins seeks registration on the Principal
Register of the mark **A LANDMARK WEDDING EXPERIENCE** (*in
standard character format*) for goods and services identified
in the application, as amended, as follows:

"printed materials, namely, books, booklets, magazines,
manuals, note books, writing pads, brochures,
pamphlets, catalogues, posters, daily planners, desktop
planners, folders for papers, greeting cards,
postcards, decalcomanias, albums, charts, shopping bags
of paper or plastic, all featuring wedding planning" in
International Class 16;

"wedding planning services; special event planning,
namely, planning parties, meetings and receptions for
others concerning weddings" in International Class 41;

"hotel services; providing restaurant facilities for special receptions" in International Class 43; and

"wedding chapel services" in International Class 45.¹

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this mark based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the identified goods and services, so resembles the mark, **THE WEDDING EXPERIENCE** (*in standard character format*), registered for "event planning consultation, namely, wedding planning consultation; wedding planning consultation services; travel agency services, namely, making reservations and booking for temporary lodging" in International Class 42,² as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney have fully briefed the issues in the case. We affirm the refusal to register.

¹ Application Serial No. 78465212 was filed on August 10, 2004 based upon applicant's allegation of a bona fide intention to use the mark in commerce. Applicant makes no claim to the exclusive right to use the word "Wedding" apart from the mark as shown.

² Reg. No. 2688722 issued on February 18, 2003 based upon applicant's claim of first use anywhere and first use in commerce at least as early as June 8, 1999. Registrant makes no claim to the exclusive right to use the word "Wedding" apart from the mark as shown.

Although applicant concedes that its goods and services are related to registrant's services,³ applicant argues that these marks are not confusingly similar, especially in light of the weakness of registrant's cited mark. Rather, applicant argues that the leading term "A LANDMARK ..." is the dominant and distinctive part of the mark it seeks to register herein.

By contrast, the Trademark Examining Attorney argues that when the marks are compared in their entirety, they are similar as to appearance, connotation and commercial impression. He argues that the term "Wedding Experience" is the dominant element of applicant's mark, while the word "Landmark" has "a descriptive meaning when used in relationship to life altering events such as weddings." Trademark Examining Attorney's appeal brief, unnumbered p. 7.

Analysis: Likelihood of Confusion

Our determination under Section 2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of

³ " ... for admittedly related goods and services all pertaining to weddings and wedding receptions ... " Applicant's appeal brief, p. 2, *emphasis* supplied.

confusion analysis, two key considerations are the similarities between the marks and the relationship of the services and/or goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976) ["The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks"].

The services and goods

We begin by comparing the services and goods involved herein. The services are identical, in part. Furthermore, applicant has conceded that there is a relationship herein between those remaining services and goods that are not identical. Additionally, the Trademark Examining Attorney has provided third-party registrations showing that a variety of goods and services connected with weddings and wedding planning are commonly marketed under the same service marks and/or trademarks.

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for "wedding reception and planning consultation, namely, consultation regarding selecting and ordering invitations, wedding gowns, tuxedos, wedding accessories and decorations; catering services; floral arrangements; honeymoon planning, namely, making reservations and booking temporary lodging; and budget planning in connection

with all the aforementioned" in International Class 42;⁴

ONESOURCE

for *inter alia* "special event planning and management, namely, arranging, organizing and scheduling wedding[s], banquets, parties and social events" in International Class 41; and "hotel, restaurant, catering, bar and lounge services; making hotel accommodation reservations for others; and providing banquet and social function facilities for special occasions, namely, weddings, banquets, parties and social events" in International Class 42;⁵ and,

UTAHWEDDINGS

for *inter alia* "printed publications, namely, books featuring information in the field of honeymoons, preparations for marriage and marriage celebration" in International Class 16; "online information services, namely, providing information in the field of honeymoon travel" in International Class 39; and "online information services, namely, providing information in the field of wedding planning" in International Class 41.⁶

These third-party registrations, which are based on use in commerce, and which individually cover a number of different goods and services, provide some support for the Trademark Examining Attorney's position that the various goods and services connected with weddings and wedding

⁴ Registration No. 2346501 issued on May 2, 2000 claiming first use anywhere and first use in commerce at least as early as October 25, 1997; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

⁵ Registration No. 2670382 issued on December 31, 2002 claiming first use anywhere and first use in commerce in both classes at least as early as February 28, 2002.

⁶ Registration No. 2849867 issued on June 1, 2004 claiming first use anywhere in International Class 16 at least as early as September 15, 2000 and first use in commerce in International Class 16 at least as early as October 31, 2000, and claiming first use anywhere and first use in commerce in International Classes 39 and 41 at least as early as January 1, 2000.

planning are related because they show that these goods and services have been registered by the same source under the same mark. See In re Mucky Duck Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) [Although third-party registrations "are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may have some probative value to the extent that they may serve to suggest that such goods or services are the type which may emanate from a single source"]. See also In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1786 (TTAB 1993). Accordingly, this du Pont factor favors a finding of likelihood of confusion.

Channels of trade and classes of purchasers

Similarly, there is nothing in the record to suggest that the goods and services would not move in the same channels of trade and be encountered by the same classes of purchasers. On these two related du Pont factors -- the similarity of established, likely-to-continue trade channels and the conditions under which and buyers to whom sales will be made - it would seem to follow from the relationship of the services and goods that the same classes of ordinary consumers would find these goods and services offered through the same channels of trade, and hence, these two

factors also favor the position of the Trademark Examining Attorney.

The marks

The critical du Pont factor which the Trademark Examining Attorney and applicant discuss extensively in their briefs involves the similarities or dissimilarities in the appearance, sound, connotation and commercial impression of the respective marks. Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). The Trademark Examining Attorney argues that the words "Wedding Experience" comprise the dominant portion of applicant's mark:

It is the term, "Wedding Experience," in relation to wedding and wedding planning goods and services that consumers will look to as identifying the source of the goods and services and it is, therefore, the dominant element of the applicant's mark.

Trademark Examining Attorney's appeal brief, unnumbered p. 6. He goes on to posit that the first portion of applicant's four-word phrase is descriptive and hence not able to obviate a likelihood of confusion between these marks:

Applicant argues that LANDMARK should be given greater weight in determining likelihood of confusion, as it is not

descriptive in relationship to weddings. However, "landmark" does have a descriptive meaning when used in relationship to life altering events such as weddings. Specifically, "landmark" is defined as "an event marking an important stage of development or a turning point in history." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE: FOURTH EDITION (2000) [fn omitted]. The combination of "landmark" with WEDDING EXPERIENCE merely serves to reinforce the common impression that the wedding involves a new stage or turning point. Truly, a wedding is a landmark experience for the participants. Furthermore, the applicant has merely taken the registered mark, THE WEDDING EXPERIENCE, and merely added the term LANDMARK. It is a general rule that likelihood of confusion is not avoided between otherwise confusingly similar marks merely by adding or deleting a house mark or matter that is descriptive or suggestive of the named goods or services.

Trademark Examining Attorney's appeal brief, unnumbered pp. 7 - 8.

By contrast, applicant asserts that the respective marks are quite different when viewed in their entirety:

"A LANDMARK" is the dominant and distinctive part of the mark sought to be registered and "WEDDING EXPERIENCE" is a descriptive or generic portion that is subordinate to "A LANDMARK."

When "LANDMARK" is given the high degree of prominence that it deserves, the principle factors that the examining attorney has stated - appearance, sound, meaning and commercial impression - of the Applicant's mark, considered in its entirety, tilts the balance in favor of a finding that the marks in question are not confusingly similar, the term "LANDMARK" is not a descriptive term with regard to weddings, and its presence

lends a high degree of distinctiveness to the overall mark.

Applicant's appeal brief, p. 4.

Inasmuch as registrant has **THE WEDDING EXPERIENCE** registered on the Principal Register for a variety of wedding planning and lodging services, applicant cannot collaterally attack this registered mark by arguing that the term "Wedding Experience" is generic, or even merely descriptive. As noted by the Trademark Examining Attorney, applicant has essentially appropriated the registered mark in its entirety, and modified it with the word "Landmark." Notwithstanding any alleged weaknesses in the cited mark when used in connection with the recited services, even weak marks are entitled to protection against registration by a subsequent user of the same or a substantially similar mark for the same or closely-related goods or services. See Hollister Incorporated v. Ident A Pet, Inc., 193 USPQ 439 (TTAB 1976) [Likelihood of confusion between **IDENT-A-PET** for tattooing of pets for identification and **IDENT-A-BAND** for cards inserted into bands bearing identification].

Moreover, while the word "Landmark" comes earlier in the phrase than the words "Wedding Experience," as shown by the dictionary entries placed into the record by the Trademark Examining Attorney, the word "Landmark" does have

a meaning in connection with these goods and services making it laudatorily suggestive, if not descriptive. It clearly modifies the term "Wedding Experience," indicating the kind of wedding being promised. In the context of this phrase, it is not clear that the word "Landmark" would be perceived as a separate source indicator, independent of the words "Wedding Experience." Rather, it would seem to be lauding the quality of the type of wedding event that applicant will be proffering. Applicant has failed to put forward a convincing case for why the modifying word "Landmark," in the context of this composite phrase, should be considered to be an inherently distinctive component of its mark.

Accordingly, we find that applicant's mark has a similar connotation and commercial impression to registrant's cited mark. This du Pont factor too favors the position of the Trademark Examining Attorney.

Conclusion

Inasmuch as these two marks are quite similar as to connotation and commercial impression, and because, in addition to use with identical services, applicant's mark is to be used in connection with goods and services that are deemed to be otherwise related to registrant's extant services, we find a likelihood of confusion herein.

Finally, to the extent that the issue of likelihood of confusion is close, we are obligated to resolve any such doubts in favor of the registrant and prior user. In re Hyper Shoppes, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Decision: The Trademark Examining Attorney's refusal to register applicant's mark **A LANDMARK WEDDING EXPERIENCE** for a variety of goods and services connected with weddings and wedding planning under Section 2(d) of the Lanham Act is affirmed as to all four classes of goods and services remaining in this application.