

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sales U.S.A., LLC

Serial No. 78475939

Gerard T. Gallagher and Thomas J. Mauch of Baker & Daniels
LLP for Sales U.S.A., LLC.

Rebecca L. Gilbert, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Walters, Bucher and Bergsman, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Sales U.S.A., LLC seeks registration on the Principal
Register of the mark **GO-FOR** (*in standard character format*)
for the following goods, as amended: "low speed vehicles,
namely carts, marketed to the marine industry" in
International Class 12.¹

This case is now before the Board on appeal from the
final refusal of the Trademark Examining Attorney to

¹ Application Serial No. 78475939 was filed on August 30,
2004 based upon applicant's allegation of a *bona fide* intention
to use the mark in commerce.

register this designation 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, so resembles the mark **GO-4** (*in standard character format*) for "motorized three-wheeled land vehicles" also in International Class 12,² as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have fully briefed the case. We affirm the refusal to register.

In arguing for registrability, applicant contends that applicant's mark and the registered mark create different overall commercial impressions, that applicant's goods are different from registrant's goods, and that the respective goods will flow through different channels of trade.

By contrast, the Trademark Examining Attorney contends that the goods must be considered to be nearly identical inasmuch as both marks share the same dominant

² Registration No. 1756696 issued to Westward Industries Ltd. on March 9, 1993 and then was subsequently assigned to 4389833 Manitoba Ltd.

feature, "Go," and are phonetically identical, creating very similar commercial impressions.

Likelihood of Confusion

We turn then to a consideration of the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See 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, however, two key, although not exclusive, considerations are the similarities between the marks and the relationship 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).

Goods

It is not necessary that the goods at issue move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the

respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Applying this standard, we note that applicant's goods have been identified as "low speed vehicles, namely, carts, marketed to the marine industry." As identified, these carts appear to be motorized and could well include three-wheeled vehicles. The trade channels are limited, however, to the marine industry.

Applicant argues that registrant's goods are different in nature. For example, applicant argues that while its vehicles are identified as low-speed vehicles, registrant's vehicles are able to move at speeds of up to 40 MPH. Applicant's brief, p. 8. However, there are several problems with this argument.

On the face of the cited registration, the top land speed of registrant's motorized, three-wheeled vehicles is not stated. Furthermore, the screenprints from the

website of Westward Industries Ltd. were not submitted until the time of the appeal brief. The Trademark Examining Attorney correctly objected to their tardy submission inasmuch as the record in an application must be complete prior to appeal. 37 C.F.R. § 2.142(d); TBMP §§ 1207.01 *et seq.* See Rexall Drug Co. v. Manhattan Drug Co., 284 F.2d 391, 128 USPQ 114 (CCPA 1960); and In re Psygnosis Ltd., 51 USPQ2d 1594 (TTAB 1999). Accordingly, we have not considered these web pages.³

Nonetheless, one could certainly envision a “low-speed, motorized, three-wheeled land vehicle marketed to the marine industry” that would fit both registrant’s and applicant’s respective identifications of goods. Accordingly, the record does not support applicant’s arguments that these goods must be considered to be so very different in nature, and we find that this du Pont factor favors the position of the Trademark Examining Attorney.

³ We hasten to add that even if we had considered the contents of this website, it would not have changed the result herein.

Channels of trade

As to channels of trade, applicant argues that inasmuch as registrant's goods are different in nature, they will necessarily move through different channels of trade. Specifically, applicant argues that registrant's goods are targeted to "security personnel or police officers" - a distinctly different market than the marine industry.

However, as noted above, the target audience for registrant's motorized vehicles is in no way limited on the face of the registration. Accordingly, we must presume that registrant's goods may be sold in all of the normal channels of trade to all of the usual purchasers for goods of the type identified, i.e., that they might be sold to the marine industry as well. See Canadian Imperial Bank v. Wells Fargo, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).⁴ Hence, this related du Pont factor also favors a finding of likelihood of confusion.

⁴ Applicant must acknowledge that if, despite their tardy submission, we were to consider registrant's web pages, we would conclude that the primary targeted use for the **GO-4** vehicle appears to be municipal parking enforcement. While "security patrol" and "policing" do appear on the listing of uses, this vehicle is also touted as being useful for deliveries, courier services and maintenance. These latter applications would not seem incompatible with the types of uses the marine industry might find appropriate for a low-speed, motorized vehicle.

Marks

We consider next the du Pont factor that focuses on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

In making this determination, our focus should be placed on the recollection of the average consumer who normally retains a general rather than a specific impression of trademarks. Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106 (TTAB 1975).

While we must consider the marks in their entireties, in articulating reasons for reaching a conclusion on the issue of likelihood 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. See In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985) [CASH MANAGEMENT ACCOUNT found confusingly similar to THE CASH MANAGEMENT EXCHANGE].

The Trademark Examining Attorney has taken the position that applicant's proposed mark has the same sound as the registered mark (both pronounced "gō-fôr"), and

that this fact, combined with the dominance of the identical first word, "GO," results in two marks that create similar commercial impressions.

Acknowledging that the marks are substantially identical phonetically, applicant contends that given their visual differences, their respective commercial impressions are substantially different.

We find that, as agreed upon by applicant and the Trademark Examining Attorney, these two marks are likely to be perceived as phonetically identical.

As to appearance, although "GO" is the first word of both marks, it is true that registrant uses the numeral "4" while applicant's proposed mark uses the word "for." This does create some dissimilarity in overall appearance.⁵

As to connotation and commercial impression, applicant argues that the word "for" is not the correct spelling for the Arabic numeral "4," and that trademarks "utilizing Arabic numerals often utilize the numerals in an effort to communicate a version level or revision level of the product." Applicant's reply brief, p. 3. However,

⁵ We disagree with applicant's characterization in its reply brief, p. 2, that the visual differences in the marks are "vast." Rather, we find the overall appearance of the marks to be somewhat different but cannot agree that the difference in the second portions of these respective marks is as dramatic as applicant argues.

there is no evidence in the record supporting applicant's assertion that this could be the fourth version of registrant's motorized vehicle. In fact, it is just as likely that registrant, in adopting its mark, chose to use this numeral as a catchy, conversational shorthand for the word "for" in a manner not unlike one often sees used in vanity license plates, or as a popular electronic shorthand frequently used in casual exchanges such as instant messaging or email transmissions.

Accordingly, "GO" is the first word of both marks, and both trademarks end with the identical-sounding term, "fôr." Moreover, we recognize that the numeral "4" is sometimes used as a shorthand for the word "for." Hence, when we consider the marks in their entireties, weighing the slight difference in appearances against the marks' identical phonetic properties, we find that the marks do not have distinct connotations nor do they create sharply different commercial impressions. Hence, given the construction of these two marks, we find that these marks are confusingly similar.

Conclusion

The goods herein must be construed as potentially being closely related, and the same customers could

encounter and purchase the respective goods in the same or similar channels of trade. The respective marks are identical phonetically and quite similar as to commercial impressions. Accordingly, we find there is a likelihood of confusion.

Decision: We affirm the refusal to register herein based upon Section 2(d) of the Lanham Act.