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UNITED STATES PATENT AND TRADEMARK OFFICE

In re Nelson Jewellery Arts Co., Ltd.

Serial No. 78557247

Seth Natter, of Natter & Natter, for Nelson Jewellery Arts Co., Ltd.

Michael Kazazian, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Walters, Mermelstein, and Ritchie de Larena, Administrative Trademark Judges.

Opinion by Ritchie de Larena, Administrative Trademark Judge:

Nelson Jewellery Arts Co., Ltd. filed an application to register the mark CALLA, in standard character format, for "precious stones, namely, diamonds having two diagonally opposed pointed corners and two diagonally opposed rounded corners mounted on rings and earrings" in International Class 14.¹

The trademark examining attorney refused registration of the mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's

¹ Application Serial No. 78557247, filed January 31, 2005, pursuant to Section 1(a) of the Trademark Act, 15 USC §1051(a), claiming first use and first use in commerce on August 1, 2004.

mark so resembles the following mark, registered for "watches, chronometers, and clocks,"² that when used in connection with applicant's identified goods, applicant's mark will be likely to cause confusion:

Kalla

Upon final refusal of registration, applicant filed a timely appeal. Both applicant and the examining attorney filed briefs. For the reasons discussed herein, the Board affirms the final refusal to register.

We base our determination under Section 2(d) on an analysis of all of the relevant, probative evidence of record. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by §2(d) goes to the

² Registration No. 2839413, registered May 11, 2004 in International Class 14, filed pursuant to Section 44(e) of the Trademark Act, 15 USC §1126(e).

cumulative effect of differences in the essential characteristics of the goods and differences in the marks"). We consider each of the factors as to which applicant or the examining attorney presented arguments or evidence.

The similarity or dissimilarity of the marks
in their entirety

We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entirety. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). Visually, the marks are the same, with just the stylized "K" in the registered mark replaced by a "C" in applicant's mark. The letters "K" and "C" sound the same when followed by an "A," as here. Accordingly, applicant's mark, KALLA and the registered mark, CALLA sound identical.

Applicant argues that the marks have distinct connotations and commercial impressions. In particular, applicant points to a translation in the registration, showing KALLA to mean "wonderful, or marvelous." For its part, applicant says that CALLA connotes in a consumer's mind the plant known as a calla lily. However, applicant has provided scant evidence of the commercial impression likely to be left by either mark, much less any distinction likely to be made by a consumer between them.

In comparing the marks, we are mindful that the test 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 so that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

We find that the change from "K" to "C," with a resulting identical sound, does not create a sufficiently distinct commercial impression to obviate a likelihood of confusion between the marks. *See In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) ("CAREER IMAGE" AND "CREST CAREER IMAGES"); *In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) ("GASPAR'S ALE" and "JOSE GASPAR GOLD"); *Lilly Pulitzer, Inc. v. Lilly Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (CCPA 1967) ("THE LILLY" and "LILLI ANN"); *In re Riddle*, 225 USPQ 630 (TTAB 1985) ("ACCUTUNE" and

"RICHARD PETTY'S ACCU TUNE"). Accordingly, the first *du Pont* factor weighs heavily in favor of finding that there is a likelihood of consumer confusion.

The similarity or dissimilarity
and nature of the services, channels of trade, and
classes of consumers

Preliminarily, we note that the greater the degree of similarity between the applicant's mark and the cited registered mark, the lesser the degree of similarity between the applicant's goods or services and registrant's goods or services necessary to support a finding of likelihood of confusion. *In re Opus One, Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *In re Concordia International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). Furthermore, it is not necessary that the goods at issue be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient instead 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. See *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

The examining attorney has submitted ample evidence that "watches" and/or "clocks," as covered by the cited registration, are related to jewelry such as "diamonds," as covered by the pending CALLA application. In particular, the examining attorney submitted at least 15 third-party registrations that include both "watches" and/or "clocks" as well as "diamonds." The examining attorney also submitted at least 13 third-party registrations that include both "watches" and/or "clocks" as well as "fine jewelry." These third-party registrations are indicative of the likelihood that consumers will believe watches and clocks may emanate from the same source as diamonds and fine jewelry. To further support that contention, the examining attorney submitted evidence from at least 15 websites advertising both "watches" and/or "clocks" along with "diamonds," "rings," and "earrings." We find the evidence submitted by the examining attorney to be probative of the relatedness of applicant's goods to those of registrant.

There is nothing in the recital of goods in the cited registration to limit registrant from targeting the same consumers as applicant. In the absence of specific limitations in the registration, we must presume that registrant's goods will travel in all normal and usual channels of trade and methods of distribution and be sold to all classes of consumers. *Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937 (Fed. Cir. 1983).

Applicant argues that it targets a sophisticated consumer who would be more likely to distinguish between the KALLA and CALLA marks. Applicant's only evidence in support of this point is a third-party article which states that applicant's "Calla Collection" ranges in price from \$500 to \$40,000. With such scant evidence, we cannot say that the conditions of sale mitigate a likelihood of confusion. Furthermore, it is well-established that even a sophisticated consumer is not immune from source confusion. Since the marks are almost identical visually and are identical phonetically, even a careful, sophisticated consumer is not likely to note minor differences, if any, in the content or target audience. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 948-949 (Fed. Cir. 2000).

In view of the foregoing, the second, third and fourth *du Pont* factors weigh in favor of finding that there is a likelihood of consumer confusion.

Balancing The Factors

Considering all of the evidence of record as it pertains to the *du Pont* factors, we conclude that the marks are nearly identical visually and are identical phonetically; that the goods are related; and they are likely to be sold through the same channels. It is well-established that any doubts as to likelihood of confusion are to be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988). Accordingly, we find a likelihood of confusion

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between applicant's mark, CALLA, and the registered mark, KALLA.

Decision: The refusal to register is affirmed.