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Mailed:
16 January 2008
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mosquito Systems, Ltd.

Serial No. 78628011

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Ltd.

Sara N. Thomas, Trademark Examining Attorney, Law Office
110 (Chris A.F. Pedersen, Managing Attorney).

Before Drost, Kuhlke, and Walsh, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On May 11, 2005, applicant, Mosquito Systems, Ltd.,
applied under the intent to use provision of the Trademark
Act, to register the mark THE BUZZ STOPS HERE, in standard
character form, on the Principal Register for "pest control
services, mosquito control services" in Class 37. Serial
No. 78628011. Applicant subsequently amended its
identification of services and deleted the term "pest
control services."

The examining attorney has refused to register applicant's mark on the ground that it is confusingly similar under Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) to the mark THE BUG STOPS HERE (in typed or standard form) for "pest control services" in Class 37.¹ The registration contains a disclaimer of the term "Bug."

The examining attorney's position is that the marks are nearly identical and that both "marks are a play on the phrase THE BUCK STOPS HERE." Brief at unnumbered p. 6. Regarding the services, the examining attorney maintains that since "the mosquito is 'an organism that is damaging to livestock, crops, humans, or land fertility,' it is properly classified as a pest, and therefore, applicant's specific 'mosquito control services' are encompassed by the more broadly specified 'pest control services' provided by the registrant." Brief at unnumbered p. 8. Furthermore, "businesses often provide mosquito control services as one of the types of pest control services that they provide." Brief at unnumbered p. 9.

Applicant, on the other hand, argues that the "substitution of the terms 'BUG' and 'BUZZ', - when viewing the marks as a whole - as well as the strikingly different

¹ Registration No. 1089424, issued April 11, 1978, second renewal.

terms substituted results in the production of a visual difference that makes the marks dissimilar in appearance.”

Brief at 4. Regarding the services, applicant maintains that:

The services provided by both Applicant and Registrant are narrow and only apply to the above-mentioned services. Mosquito control services of Applicant are different services than those offered by the cited Registrant. Pest control services cover the abatement of many, but do not necessarily include mosquito control services. Indeed, most pest control services involve the abatement of pests that inhabit the interior of one's residence or place of business. Unlike pest control services, mosquito abatement services generally involve attacking mosquitoes which remain outside of one's residence or place of business... Additionally, mosquito reduction services are primarily a commercial venture often utilized by local governments and businesses.

Brief at 2-3.

After the examining attorney made the refusal final, this appeal and a request for reconsideration followed.

In likelihood of confusion cases, when we consider the evidence of record, we view it in relation to the relevant factors set out in *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 Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003) and *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In considering the evidence of record on these factors, we must keep in mind that “[t]he fundamental inquiry mandated

by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We will begin our analysis with the first *du Pont* factor. Here, we consider the similarities and dissimilarities of applicant's and registrant's marks in sound, appearance, meaning, and commercial impression in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). Both marks in this case are displayed in typed or standard character form so there is no difference in the marks as a result of any stylization or design. The marks, THE BUG STOPS HERE and THE BUZZ STOPS HERE, are identical in part because they consist of the same three words "The ___ STOPS HERE." The second words are BUG and BUZZ. These words are also similar inasmuch as they are single syllable words that begin with the letters "BU-." However, they are different because their final letter(s), "G" and "ZZ," result in the formation of different English words, BUG and BUZZ.

Despite this difference, we find that the marks are very similar in sound and appearance. The marks THE BUG

STOPS HERE and THE BUZZ STOPS HERE appear very similar and the difference between BUG and BUZZ may not even be noticed by some purchasers. The marks in their entireties would also be pronounced very similarly because they are identical except for the ending sound of the second word. Their meanings would also be similar because they are likely to remind many purchasers of the expression that was popularized by the sign on President Truman's desk that read "The Buck Stops Here." See Final Office Action, "The Phrase Finder" attachment. These marks would likely be recognized as takeoffs of this expression. Finally, regarding their commercial impressions, THE BUG STOPS HERE and THE BUZZ STOPS HERE marks are likewise similar. The word "Bug" in relation to pest control services and "Buzz" in relation to mosquito control services suggest a relationship between the marks as applicant argues "the mosquito is known for its buzzing sound." Brief at 7. While "Buzz" can have other meanings, purchasers of mosquito control services are likely to believe that registrant's "Bug" pest control services are directed to the more general pest control while the "Buzz" services are directed to the more specific mosquito control services and that these services are from the same entity. We conclude that the marks here, when viewed in their entireties, are

more similar than they are different. See *In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) ("With respect to JOSE, the Board correctly observed that the term simply reinforces the impression that GASPAS is an individual's name. Thus, in accord with considerable case law, the JOSE term does not alter the commercial impression of the mark." The marks JOSE GASPAS GOLD and GASPAS'S ALE were determined to be similar); *Chemical Corporation of America v. Anheuser-Busch, Inc.*, 306 F.2d 433, 134 USPQ 524 (5th Cir. 1962) (Defendant's use of the slogan WHERE THERE'S LIFE ... THERE'S BUGS enjoined in view of plaintiff's slogan WHERE THERE'S LIFE ... THERE'S BUD).

Next, we consider whether applicant's and registrant's services are related.

It is a well settled principle of trademark law that it is not necessary that the goods [or services] of the parties 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 for purposes herein that the respective goods [or services] of the parties 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 used therewith, give rise to the mistaken belief that they originate from or are in some way associated with the same producer.

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In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Applicant's services are mosquito control services; registrant's services are pest control services. With her final Office action, the examining attorney submitted a definition of a "pest" as "an organism that is damaging to livestock, crops, humans, or land fertility." Certainly, mosquitoes have been recognized as having a harmful impact on humans. See www.baronpest.com ("Mosquito-borne diseases affect millions of people worldwide each year. In the United States, some species of mosquitoes can transmit diseases such as West Nile, encephalitis, dengue fever and malaria to humans, and a variety of diseases to wildlife and domestic animals") and www.nardypest.com ("Mosquito-borne illness is not a laughing matter"). Clearly, as an organism that is associated with the West Nile, encephalitis, dengue fever and malaria as well as other diseases, the mosquito can properly be classified as a pest that is damaging to humans and livestock.

The binding precedent of our principal reviewing court, the Court of Appeals for the Federal Circuit, requires us to consider the goods or services as they are identified in the identification of goods or services.

Octocom Systems, Inc. v. Houston Computers Services Inc.,

918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed"). See also *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods"). Here, the term, pest control services, is a broad enough term that it would encompass the more specific mosquito control services. Therefore, applicant's services overlap registrant's services, and we must assume that the channels of trade and purchasers are the same. *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers").

We also address applicant's point that mosquito control services are not the same. Even if we accept the argument that these services are separate, we nonetheless

conclude that the evidence of record indicates that these services are related and that they are provided by the same entities under a common mark. See, e.g., www.middletonpest.com ("Pest Control" and "Specialized Services - From our mosquito reduction services to our exclusive Farm and Commercial Division"); www.dfwpest.com ("Pest Control - Services for all Pests - Roaches, Ants, Fleas, Spiders, Etc... Mister Mosquito Control Systems"); www.critterriders.com ("Simmons Pest Management Inc.," "Pantry Pests," and "Mosquitoes"); www.baronpest.com ("Pest Control" and "Mosquito Control/West Nile") and www.nardypest.com ("Pest Control Services - Our services include monthly maintenance, deer tick and mosquito control programs" and "general insect and pest control services").

The evidence of record supports a finding that, even if the services are not overlapping, pest control and mosquito control services are closely related. The printouts show that there is nothing unusual about an entity providing both of these services. Indeed, consumers seeking mosquito control services are likely to seek those services from the same entity that provides their pest control services. We also see no reason to conclude that the purchasers of these services would not at least overlap. For example, these services seem to be marketed

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to ordinary owners of land. See, e.g., www.baronpest.com ("The huge amount of rain recently has left huge pools of standing water, the perfect breeding grounds for Mosquitoes").

When the marks THE BUZZ STOPS HERE and THE BUG STOPS HERE are used on mosquito control services and pest control services, consumers are likely to believe that these services originate from the same entity. Therefore, we conclude that there is a likelihood of confusion.

Decision: The examining attorney's refusal to register applicant's mark under Section 2(d) of the Trademark Act is affirmed.