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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 Masonite International Corp.

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Serial No. 78649350

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William C. Schrot of Berenato, White & Stavish, LLC for  
Masonite International Corp.

Linda E. Blohm, Trademark Examining Attorney, Law Office  
110 (Chris A.F. Pedersen, Managing Attorney).

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

Opinion by Drost, Administrative Trademark Judge:

On June 13, 2005, Masonite International Corp.  
(applicant) applied to register the mark LES PORTES  
CASCADES, in standard character form, on the Principal  
Register for goods ultimately identified as "doors not made  
of metal" in Class 19. The application (Serial No.  
78649350) is based on applicant's intention to use the mark  
in commerce. The term "Les Portes," which is translated as  
"The Doors," has been disclaimed.

The examining attorney has refused to register applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of Registration No. 1951104 for the mark CASCADE in typed or standard character form for "vinyl windows and patio doors" in Class 19.

The examining attorney maintains that "the disclaimed matter in this case is non-English. The English term CASCADES will create an even stronger impression upon potential purchasers." Brief at unnumbered p. 4. In addition, the examining attorney points out that "Applicant's doors made of metal could include patio doors." Brief at unnumbered p. 5.

Applicant argues that the "words LES PORTES are a significant feature of Applicant's mark," the cited mark is weak, the goods "are quite dissimilar," and these goods are "purchased after careful selection and consideration by a consumer." Brief at 4-6.

After the examining attorney made the refusal final, this appeal followed.

In likelihood of confusion cases, we consider the evidence as it relates to the factors set out by the Federal Circuit and the Court of Customs and Patent Appeals in such cases as *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 19730; *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 begin by comparing the marks. "The first *DuPont* factor requires examination of '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 Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (*quoting du Pont*, 177 USPQ at 567).

Applicant's mark is LES PORTES CASCADES and registrant's mark is CASCADE. The marks are different because applicant's mark adds the word LES PORTES, which is translated as "The Doors." Applicant's goods are doors not made of metal and registrant's goods include patio doors. Thus, the term translated as "doors" would be generic for both applicant's and registrant's doors, and applicant has disclaimed the term. Disclaimed matter is often "less

significant in creating the mark's commercial impression." *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001). "Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.'" *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), quoting, *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985). While we certainly do not ignore the term "Les Portes," we cannot accept the argument that consumers are likely to rely on the addition of the generic words meaning "The Doors" to distinguish applicant's and registrant's doors. *M2 Software Inc. v. M2 Communications Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1948-49 (Fed. Cir. 2006) ("When comparing the similarity of marks, a disclaimed term, here 'COMMUNICATIONS,' may be given little weight, but it may not be ignored").

We also note that applicant uses the plural of "Cascades" and registrant's mark is for the singular "Cascade," but this difference is also not significant. *Wilson v. Delauney*, 245, 877, 114 USPQ 339, 341 (CCPA 1957) ("It is evident that there is no material difference, in a trademark sense, between the singular and plural forms of

the word "Zombie" and they will therefore be regarded here as the same mark").

We hold that both marks are dominated by the same term CASCADE(S). "Cascade" is defined as "a waterfall descending over a steep, rocky surface." *The Random House Dictionary of the English Language (unabridged)* (2d ed. 1987)<sup>1</sup> (The Cascade Range is also a mountain range). We take judicial notice of these definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). The addition of the disclaimed wording in applicant's mark does not result in "quite dissimilar" marks. Rather we find that CASCADE(S) is the dominant feature of both marks and the marks are similar in appearance and pronunciation. Furthermore, their meanings and commercial impressions are also very similar because the dominant feature of both marks is virtually identical and the generic term "Les Portes" stresses the fact that applicant's goods are doors. This term hardly distinguishes applicant's mark for doors when registrant's mark is also used on doors.

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<sup>1</sup> We note that the term "Cascade" apparently has a similar meaning ("waterfall") in French. See *Larousse's French-English English-French Dictionary* (1996).

The next factor we consider is the relationship between applicant's and registrant's goods. Applicant's goods are doors not made of metal and registrant's goods are vinyl windows and patio doors. We start by agreeing with the examining attorney that applicant's doors made of metal would include patio doors, and therefore, the goods are overlapping. Applicant argues that there are specific differences between the goods.

Applicant's goods are used as entry doors in interior applications, such as hall and closet entry doors. Applicant's goods do not include windows or patio doors. The '104 registration is specifically limited to patio doors... The goods listed in the '104 registration only include "vinyl windows and patio doors." There is no basis for expanding the scope of the cited registration.

To the contrary, Applicant has submitted evidence suggesting that the scope of the '104 registration should be narrowly construed. As such, Applicant submits that the goods listed in the present application and the goods listed in the cited registrations are quite different.

Brief at 5.

Applicant's arguments that registrant's goods should be narrowly construed and that its goods do not include patio doors are simply not legally viable. Registrant's goods are identified as "patio doors," and the binding precedent of the Federal Circuit requires us to consider these goods to include all types of patio doors. *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir.

1983) ("There is no specific limitation and nothing in the inherent nature of Squirtco's mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration") and *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"). See also *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"). Inasmuch as applicant's doors not made of metal would include patio doors not made of metal, we must conclude that the goods, at the minimum, are identical in part.

When goods are identical, we also must assume that the purchasers and channels of trade are similarly identical. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of

the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade") and *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 add that, while the goods are at least identical in part, the examining attorney has submitted evidence in the form of third-party registrations to suggest that entities have registered patio doors and/or windows along with other types of doors under a common mark. See Registration No. 3107496 ("Non-metal windows and window assembly kits..., non-metal patio doors, gliding doors, exterior doors..."); No. 3094013 ("Non-metallic windows in assembled and unassembled form; non-metallic doors, namely swing and patio doors"); No. 3110271 ("vinyl windows and ... non-metal doors, garage doors, and patio doors"); and No. 2879520 ("Non-metal doors, non-metal garage doors, non-metal patio doors, non-metal runners for sliding doors, non-metal sliding doors"). These registrations suggest that applicant's and registrant's goods may originate from the same source. 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 nonetheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source"). See also *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993). These registrations provide additional evidence to support the conclusion that the goods, to the extent that they are not identical, are closely related.

Applicant also makes the argument that the goods in this case are not purchased on impulse; a point with which we cannot disagree. However, merely because purchases are not impulse purchases does not eliminated the likelihood of confusion in this case where the goods are in part identical and the marks are dominated by the common term CASCADE(S). Even in cases where sophisticated purchasers are buying expensive items, confusion is often still likely. See, e.g., *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1477 (TTAB 1999) ("We recognize applicant's attorney's point that its software is expensive and that purchasers of it are likely to be sophisticated. Suffice it to say that no evidence in support of these assertions was submitted. In any event, even careful purchasers are

not immune from source confusion"). See also *In re Hester Industries, Inc.*, 231 USPQ 881, 883 (TTAB 1986) ("While we do not doubt that these institutional purchasing agents are for the most part sophisticated buyers, even sophisticated purchasers are not immune from confusion as to source where, as here, substantially identical marks are applied to related products"). Here, even purchasers who are carefully considering which door to buy are likely to be confused when they encounter CASCADE patio doors and LES PORTES CASCADES doors not made of metal.

Applicant also argues that the cited registration "is relatively weak. By contrast, Applicant's mark, including the terms 'LES PORTES' as the prominent portion thereof, is distinctive (as evidenced from search results on TESS)." Reply Brief at 2. See also Brief at 6. However, applicant's evidence that the cited mark is weak consists of a few registrations. To the extent that applicant is relying on an abandoned application and expired registrations, this evidence is not relevant. See *Glamorene Products Corp. v. Earl Grissmer Co., Inc.*, 203 USPQ 1090, 1092, n.5 (TTAB 1979) ("The filing of a notice of reliance upon third-party applications is a futile act because copies of those applications or the publication thereof in the Official Gazette is evidence only of the

filing of the applications and nothing else") and *Action Temporary Services Inc. v. Labor Force Inc.*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989) ("[A] canceled registration does not provide constructive notice of anything").

Furthermore, while third-party registrations may be used to demonstrate that a portion of a mark is suggestive or descriptive, they cannot be used to justify the registration of another confusingly similar mark. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987). See also *In re Jump Designs LLC*, 80 USPQ2d 1370, 1375 (TTAB 2006) ("[T]he registrations are not evidence of use of the marks shown therein. Thus, they are not proof that consumers are familiar with such marks so as to be accustomed to the existence of similar marks in the marketplace, and as a result are able to distinguish between the JUMP marks based on slight differences between them") and *Plus Products v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983) ("[T]hird party registrations relied on by applicant cannot justify the registration of another confusingly similar mark"). We add that the fact that applicant can point to a few other registrations for the term CASCADE without evidence of use of those marks does not establish that the registrant's mark is "relatively

weak." *In re Thomas*, 79 USPQ2d 1021, 1026 n.10 (TTAB 2006) ("Suffice it to say that the similarity of the cited marks to each other or to yet another third-party registration is irrelevant to the question of whether there is a likelihood of confusion herein").

Also, to the extent that applicant's listing of marks for registrations and applications by serial and registration numbers is of record, it is not persuasive evidence. *In re Carolina Apparel*, 48 USPQ2d 1542, 1542 n.2 (TTAB 1998) ("The Board does not take judicial notice of third-party registrations, and the mere listing of them is insufficient to make them of record") and *In re Duofold, Inc.*, 184 USPQ 638, 640 (TTAB 1974) ("[T]he submission of a list of registrations is insufficient to make them of record"). Finally, as discussed previously, we simply disagree with applicant's contention that the generic, foreign words, "Les Portes," are the prominent feature of applicant's mark.

When we consider the evidence of record in relation to the relevant *du Pont* factors, we conclude that confusion is likely if applicant were to use the mark LES PORTES CASCADES for doors not made of metal in view of the cited registration for CASCADE for vinyl windows and patio doors.

**Ser. No. 78649350**

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