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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re e.PARK Systems LLC

Serial No. 78666418
(filed July 8, 2005)

Anthony J. Casella of Casella & Hespos LLP for e.PARK
Systems LLC

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110 (Chris A.F. Pedersen, Managing Attorney).

Before Kuhlke, Wellington, and Ritchie de Larena,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

e.PARK Systems LLC filed an application to register the
mark IPARK (in standard character format) for goods
ultimately identified as an "in-car parking meter, namely,
an encoded electronic chip card containing programming to
facilitate parking using city owned and operated parking
meters by storing monetary value that can be used to pay
parking fees, displaying parking rates and tracking the

amount of time a vehicle has been parked in a particular parking zone" in International Class 9.¹

The examining attorney has refused to register the mark under Section 2(d) of the Trademark Act because of a registration for the mark IPARC (in typed character format) for "software and computer hardware for management of automotive parking facilities, namely, access control, revenue collection and control, customer services, and e-commerce relating to parking facilities" in International Class 9.²

Our determination of the examining attorney's refusal to register the mark under Section 2(d) of the Trademark Act is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. 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 Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences

¹ Application Serial Number 78666418 is based on a statement of a bona fide intent to use the mark in commerce, under Section 1(b) of the Trademark Act.

² Registration No. 2843020 issued on May 18, 2004.

in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *In re Azteca Rest. Enter., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

We turn to the first *du Pont* factor, i.e., whether applicant's mark and registrant's mark are similar or dissimilar when viewed in their entireties in terms of appearance, sound, connotation and overall commercial impression. See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The test under the first *du Pont* factor 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 that confusion as to the source of the goods or services offered under the respective marks is likely to result.

The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). We further note that under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections. See *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255, 259 (TTAB 1980).

With the above principles in mind, we find the marks IPARK and IPARC to be nearly identical. Indeed, the only difference between the two marks is that of the last letter in each mark. This difference, however, does very little to distinguish the two marks. Both marks are phonetically identical and will be pronounced as "I park" and, because it is the last letter that is different, it may be more difficult for consumers to notice this difference. Moreover, because the registered mark is in typed character format and applicant's mark is in standard character format, they can reasonably be displayed in the same stylized lettering as each other or remain in standard typeset. See, e.g., *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847-48 (Fed. Cir. 2000) (typed drawings are not limited to any particular rendition of the mark). See also *Phillips Petroleum v. C.J. Webb*, 442 F.2d 1376, 170 USPQ 35 (CCPA 1971). And, insofar as connotation or commercial impression is concerned, the two marks are equally suggestive because, again, they will both be pronounced as "I park" and the goods identified in the application and cited registration involve vehicle parking-related devices.

When we compare these marks in their entireties, as we must, we find that the marks are identical phonetically and otherwise are highly similar in appearance, connotation and

commercial impression. This factor strongly supports a finding of likelihood of confusion.

We now consider whether the goods of applicant and registrant are related. It is well established that the goods of the parties need not be similar or competitive, or even offered through the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods 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, give rise to the mistaken belief that they originate from the same source. See *Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *In re International Telephone & Telephone Corp.*, 197 USPQ 910, 911 (TTAB 1978). The issue, of course, is not whether purchasers would confuse the goods, but rather whether there is a likelihood of confusion as to the source of the goods. *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984). Moreover, where the marks are identical, the relationship between the goods need not be as close to support a finding of likelihood of confusion as would be required in a case where there are differences between the marks. *Ancor, Inc. v. Ancor Industries, Inc.*, 210 USPQ 70, 78 (TTAB 1981).

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Again, applicant's goods are identified as an "in-car parking meter, namely, an encoded electronic chip card containing programming to facilitate parking using city owned and operated parking meters by storing monetary value that can be used to pay parking fees, displaying parking rates and tracking the amount of time a vehicle has been parked in a particular parking zone." The cited registration covers "software and computer hardware for management of automotive parking facilities, namely, access control, revenue collection and control, customer services, and e-commerce relating to parking facilities."

While the respective goods are not identical on their face, we find them to be sufficiently related to give rise to a likelihood of confusion. Essentially, the respective goods share a common purpose and that is to facilitate and/or track paid parking for vehicles. And, although the registrant's goods are geared to the "management of automotive parking facilities," they include computer hardware for "revenue collection and control." Likewise, applicant's goods store monetary value that is used to pay parking fees; the goods also display the parking rates and amount of time the vehicle has been parked.

The examining attorney argues that the respective goods are potentially identical because registrant's computer hardware "could include an encoded electronic chip card that

can be used to store monetary value to pay fees and calculate time spent in a particular parking area." Brief, (unnumbered) p. 6. The examining attorney also notes correctly that we are not at liberty to restrict a registration's identification of goods based on what applicant represents is registrant's business or on applicant's evidence of how registrant is actually using its mark. See *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").

Inasmuch as there is no evidence to support a finding that applicant's goods may be classified as "computer hardware," we can not make the same conclusion as the examining attorney regarding the goods being potentially identical. Nonetheless, as described above, there is certainly an overwhelming similarity in the purpose or nature of the respective goods for us to conclude that the goods are related. Moreover, applicant's goods are identified as "containing programming" which infers that computer software is being employed and thus bringing them even closer to the goods identified in the cited registration.

In view thereof, and given the near identity of the marks we resolve the *du Pont* factor regarding the similarity of the goods against applicant.

We turn next to the *du Pont* factors involving the similarity of trade channels, purchasers and purchaser sophistication. Applicant argues that the cited registrant's goods are "obviously...for the commercial parking industry which requires such software and computer hardware for the management of such private parking facilities," whereas applicant's goods are purchased by agents or managers for cities or municipal districts. Brief, pp. 6-7. Applicant also asserts that "purchasers (city managers) would not be confused as to the source of the portable digital tools...such city managers are sophisticated purchasers." *Id.*, p. 7.

The arguments put forth by applicant are not all well taken. As the examining attorney correctly pointed out, there is no limitation in the cited registration's goods restricting such goods to a private parking facility. Therefore, the registrant's goods could plausibly be used and/or purchased by local governmental authorities as well as private companies operating parking facilities. In which case, the same city managers (or local government officials) responsible for purchasing the registrant's goods would presumably be the same ones purchasing applicant's goods.

Applicant is correct that in such cases where local government procurement officials are involved, we may presume that there is level of purchaser sophistication that is higher than the ordinary consumer. Nonetheless, we have held that even with respect to those purchasers who are sophisticated, they are not necessarily immune from source confusion. See *Wincharger Corporation v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289 (CCPA 1962); *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988). This is particularly true in this case because the two marks are nearly identical. Thus even those sophisticated purchasers involved in purchasing the respective goods may likely believe that applicant's and registrant's services emanate from a single source.

In view thereof, the factor regarding the sophistication of purchasers only slightly favors applicant. As to trade channels and purchasers, we find these *du Pont* factors weigh in favor of finding a likelihood of confusion.

Upon balancing the relevant *du Pont* factors, we conclude that consumers familiar with registrant's software and computer hardware for management of automotive parking facilities, namely, access control, revenue collection and control, customer services, and e-commerce relating to parking facilities, sold under its mark IPARC, would be likely to believe, upon encountering applicant's nearly identical mark IPARK for in-car parking meter, namely, an

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encoded electronic chip card containing programming to facilitate parking using city owned and operated parking meters by storing monetary value that can be used to pay parking fees, displaying parking rates and tracking the amount of time a vehicle has been parked in a particular parking zone, that the goods originate with or are associated with or sponsored by the same entity. Although we have stated that the *du Pont* factor regarding the purchaser sophistication weighs slightly in applicant's favor, it is not sufficient to outweigh our findings on the other *du Pont* factors, specifically the nearly identical marks and relatedness of the goods. Also, any doubts which we may have had have been resolved in favor of registrant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); *In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes*, 179 USPQ 729 (CCPA 1973).

Decision: The examining attorney's refusal to register applicant's mark IPARC for the identified goods on the ground that it is likely to cause confusion with the cited registration is affirmed.