

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

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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 Paper Petals, LLC

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Serial No. 78672003

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Annette P. Heller and Morris E. Turek of Heller &  
Associates for Paper Petals, LLC

Priscilla Milton, Trademark Examining Attorney, Law Office  
110 (Chris Pederson, Managing Attorney)

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Before Seeherman, Walsh and Kuhlke, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Paper Petals, LLC has appealed from the final refusal  
of the Trademark Examining Attorney to register PAPER  
PETALS, with PAPER disclaimed, depicted in the stylized  
form shown below, for the following goods:

Greeting cards, stationery, stationery  
boxes, envelopes, notepads, gift tags,  
note cards, postcards, recipe cards,  
invitation cards, wrapping paper, gift  
boxes and bands, gift bags, diaries,  
writing instruments, writing tablets,  
calendars, posters, prints, scrapbooks,

photograph albums, correspondence cards  
(Class 16).<sup>1</sup>

## Paper Petals

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that applicant's mark, when used in connection with the identified goods, so resembles the following marks, previously registered by the same entity, that, when used in connection with applicant's identified goods, it is likely to cause confusion or mistake or to deceive:

PETALS, in typed form, for "greeting cards" (Class 16);<sup>2</sup> and



for "greeting cards" (Class 16).<sup>3</sup>

Applicant and the Examining Attorney have filed appeal briefs, and applicant filed a reply brief.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative

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<sup>1</sup> Application Serial No. 78672003, filed July 17, 2005, and asserting first use and first use in commerce as of August 1, 2001.

<sup>2</sup> Registration No. 2732719, issued July 1, 2003.

<sup>3</sup> Registration No. 2732809, issued July 1, 2003.

facts in evidence that are relevant to the factors set forth in *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, two key considerations are the similarities between the marks and the similarities 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).

We first consider the goods. We must determine the question of the similarity of the goods as they are identified in applicant's application and the cited registrations. Applicant has identified its goods as "greeting cards, stationery, stationery boxes, envelopes, notepads, gift tags, note cards, postcards, recipe cards, invitation cards, wrapping paper, gift boxes and bands, gift bags, diaries, writing instruments, writing tablets, calendars, posters, prints, scrapbooks, photograph albums, correspondence cards." The registrant's goods are identified as "greeting cards." Applicant's identified goods are, thus, identical in part to the registrant's identified goods, greeting cards.

Further, the evidence of record shows that the additional goods identified in applicant's application are related to greeting cards. Specifically, the Examining Attorney has made of record a number of third-party registrations, based on use in commerce, showing that a single mark has been registered by various entities for both the goods identified in applicant's application and those identified in the cited registrations.<sup>4</sup> These third-party registrations include Registration No. 0959401 for CURRENT and design for, *inter alia*, greeting cards and recipe cards; Registration No. 2691063 for WHEELY AMAZING ART and design for, *inter alia*, greeting cards and gift boxes; Registration No. 2740405 for FRIENDLY FACES for, *inter alia*, greeting cards, envelopes, note cards and invitation cards; Registration No. 2877349 for IOTA for, *inter alia*, greeting cards, blank notepads and envelopes; Registration No. 2985030 for BLUE MARMALADE for, *inter alia*, greeting cards, stationery and wrapping paper; and Registration No. 3054472 for VAP for, *inter alia*, greeting cards, diaries and scrapbooks. Third-party registrations

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<sup>4</sup> It is noted that the Examining Attorney provided a large number of third-party registrations as evidence, directing us in a footnote to "See the attachments to the Office action dated 2/07/2006 in the Office electronic records." Brief, p. 2. In view of the large number of third-party registrations, it would have been helpful if the Examining Attorney had pointed out in her brief those that were most probative.

which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

In view thereof, we find that applicant's goods are identical in part and otherwise related to the registrant's identified goods. Thus, the *du Pont* factor of the similarity of the goods favors a finding of likelihood of confusion.

Moreover, to the extent that the goods are legally identical, as they are here since both applicant's and the registrant's goods include greeting cards, they must be deemed to be sold in the same channels of trade and to the same classes of customers. Thus, the *du Pont* factor of the channels of trade also favors a finding of likelihood of confusion.

Although the factor of the conditions of purchase have not been discussed by applicant or the Examining Attorney, we note that this factor also favors a finding of likelihood of confusion. The goods are sold to the general public, who would not be particularly sophisticated about the goods. Moreover, greeting cards, note pads, post cards and the other goods identified in applicant's application

can be inexpensive and therefore are not likely to be purchased with a great deal of attention to the trademarks for such items. In fact, some of these goods must be regarded as impulse purchases.

This brings us to the similarity of the marks, keeping in mind that when marks would appear on virtually identical goods, as they do here, the degree of similarity necessary to support a conclusion of likely confusion declines.

*Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). It is a well-established principle that, 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, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, as our principal reviewing court has observed, "[t]hat a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark." *Id.*

The two cited registrations consist of (1) the term PETALS in typed form, and (2) the term PETALS in stylized font encircled by a design element composed of what appear to be petals.

Applicant's mark is PAPER PETALS. With respect to the cited registration for PETALS per se, applicant has in essence simply added the descriptive term PAPER to the registrant's mark.<sup>5</sup> Applicant concedes that "PETALS is the more significant and dominant portion of Applicant's mark," and that the word PAPER "is descriptive and has been disclaimed." Brief, p. 8. We agree. Because the additional word PAPER in applicant's mark is highly descriptive of the greeting cards and paper products identified in the application, it is not sufficient to distinguish applicant's mark from the registrant's.

As for the cited registration for PETALS and design, because the word PETALS in the design mark is the portion of the mark that can be articulated, and therefore will be used by purchasers to request or refer to the goods, it is this element that is entitled to greater weight. See *In re*

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<sup>5</sup> We recognize that applicant's mark uses a stylized type font, but we do not consider this difference to be distinguishing. The registered PETALS mark in typed form could be displayed in the same font used by applicant. As for the registered PETALS design mark and applicant's mark, the fonts in neither mark are so unusual that they would make a particular impression, or cause consumers to distinguish the marks on this basis.

*Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987).

Moreover, because the design element only reinforces the term PETALS, it does not serve as a distinguishing feature of the mark.

As a result, although applicant's mark contains the additional word PAPER, because of the descriptive nature of this word and the lesser weight to which it is entitled as we compare the marks in their entirety, applicant's mark and the registrant's marks are still similar in appearance, and connotation, and they are substantially the same in connotation and commercial impression.

Applicant argues that because of the presence of the term PAPER in its mark, its mark creates a distinct commercial impression from the registered marks and that the Examining Attorney improperly dissected the mark by dismissing the significance of the term PAPER. Applicant relies principally on *In re Hearst Corp.*, 982 F.2d 493, 25 USPQ2d 1238 (Fed. Cir. 1992), which applicant argues is factually indistinguishable from this case, stating that "just as the applicant in *Hearst* added the descriptive (and disclaimed) term 'girl' to the registered mark VARGA, [sic] Applicant, in this case, has added the descriptive term 'paper' to the registered mark PETALS." Brief, pp. 8-9; reply brief, p. 2. We believe *Hearst* is distinguishable

from the facts at hand and does not control our determination in this case. In *Hearst*, the mark VARGA GIRL for calendars was held not to be confusingly similar to VARGAS for, *inter alia*, calendars. The Court found that "the Board erred in its diminution of the contribution of the word 'girl'" and that "[w]hen GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely." 25 USPQ2d at 1239. Contrary to applicant's assertions, in *Hearst* the applicant did not add a descriptive and disclaimed term to the registered mark, as applicant has done here. Rather, the registered mark was VARGAS (emphasis added), while the applicant's mark was VARGA GIRL (without an "S"), and the word GIRL was not disclaimed. See Registration No. 3232049. Moreover, the Court in *Hearst* explicitly recognized that the weight to be given terms in a mark is "not entirely free of subjectivity" and provided examples to "illustrate the fact-dependency of such determinations." *Id.* The Court confirmed, in *In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004), that the determination is highly fact-specific (affirming the Board's decision that JOSE GASPAR GOLD for tequila was likely to cause confusion with GASPAR'S ALE for beer and ale). As we noted *supra*, the Court has also recognized

"[t]hat a particular feature is descriptive ... with respect to the involved goods ... is one commonly accepted rationale for giving less weight to a portion of a mark." *In re National Data Corp.*, 224 USPQ at 751. Accordingly, there is nothing improper in giving less weight to the descriptive term PAPER and more weight to the dominant term PETALS as we consider the similarity of the marks in their entireties.

Applicant also asserts that the registered marks are weak and thus entitled to only a narrow scope of protection, referring to the following four third-party registrations for goods in International Class 16: PRETTY PETALS for "stationery-type portfolios and wirebound notebooks" (Reg. No. 2967635); POETICPETALS for "custom designed notes pads, note cards, invitations and stickers" (Reg. No. 2991984); PETAL PROFUSION for "greeting cards and note cards" (Reg. No. 2449224); and PETAL POINT for "artists' materials, namely ink pads and stamp pad inks" (Reg. No. 2027789). We disagree. Third-party registrations, of course, are not evidence that the marks shown therein are in use or that the public is aware of them. *See AMF Incorporated v. American Leisure Products, Inc.*, 177 USPQ 268, 269 (CCPA 1973) ("little weight is to be given such registrations in evaluating whether there is

likelihood of confusion."). We recognize that third-party registrations may be used in the manner of dictionary definitions, to show that a term has a significance for particular goods. However, we are unable to conclude from these four registrations that PETALS has a suggestive or highly suggestive meaning.<sup>6</sup> More importantly, even if the cited registrations were to be considered "weak" marks, weak marks are entitled to protection from the registration of a highly similar mark for identical and closely related goods. See *In re Colonial Stores, Inc.*, 216 USPQ 793 (TTAB 1992); see also *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974) (likelihood of confusion is to be avoided as much between weak marks as between strong marks.)

We have concentrated our analysis on the *du Pont* factors that have been discussed by applicant and the Examining Attorney. To the extent that any other factors are applicable, we have treated them as neutral.

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<sup>6</sup> Applicant, although recognizing that the Board cannot consider a collateral attack on a cited registration, has made such an attack by asserting that PETALS is merely descriptive and that the registration for PETALS "should have never issued to registration on the Principal Register, and that PETALS, in Registrant's design mark (Reg. No. 2,732,809), should have been disclaimed." Brief, p. 5. Registrations are presumed valid and are entitled to the presumptions of Section 7(b) of the Trademark Act. 15 U.S.C. §1057(b). See *In re Dixie Restaurants*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). Thus, we have given no consideration to this argument.

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After considering all the relevant *du Pont* factors and all the relevant evidence of record, we find that the Examining Attorney has demonstrated that applicant's mark PAPER PETALS for its identified goods is likely to cause confusion with the registered marks PETALS and PETALS and design.

Decision: The refusal of registration is affirmed.