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THE TTAB

Mailed: September 10, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wang

Serial No. 78706610

Rebecca A. Wang, pro se.

Linda M. Estrada, Trademark Examining Attorney, Law Office
104 (Chris Doninger, Managing Attorney).

Before Zervas, Walsh and Taylor, Administrative Trademark
Judges.

Opinion by Taylor, Administrative Trademark Judge:

Rebecca A. Wang, a Massachusetts sole proprietorship
composed of Rebecca A. Wang, sole proprietor, has filed an
application to register on the Principal Register the mark
HORIZON CAREER and design,



for services ultimately identified as "recruiting,
placement, staffing and career networking services; [and]

providing career information via [the] world wide web internet global computer network."¹ The term "CAREER" is disclaimed.

The examining attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark is confusingly similar to the mark in Registration No. 2413209, HORIZON STAFFING (in typed form), for "temporary and permanent personnel placement and recruitment services in the light industrial sector."² The term "STAFFING" is disclaimed.

When the refusal was made final, applicant appealed and requested reconsideration of the final refusal. On January 18, 2008, the examining attorney denied the request for reconsideration and, on January 29, 2008, this appeal was resumed. Briefs were filed by both applicant and the

¹ Serial No. 78706610, filed September 9, 2003, and alleging July 4, 2004 as the date of first use of the mark anywhere and in commerce. The application also contains the following color statements: The color(s) orange, red, yellow, blue, green, white and black is/are claimed as a feature of the mark. The mark consists of a yellow sun with black shading on the rays and an orange and red background. Above the sunshine design is the wording HORIZON in red and orange above a black curved line. Below the curved line is the wording CAREER in blue. There is a black horizontal line below the sun design and above the ocean design which feature the color blue accompanied by white water rings spreading to the yellow and green road.

² Registration No. 1896609, issued December 12, 2000, Section 8 Affidavit accepted, Section 15 Affidavit acknowledged.

examining attorney. For the reasons discussed below, we affirm the refusal to register.

As a preliminary matter, we note that the examining attorney originally cited the marks in Registration Nos. 2758850, 2877966 and 2788800 as additional bars to registration of applicant's mark. Contrary to applicant's apparent belief, the refusals were withdrawn as to those marks; the final refusal is limited to the HORIZON STAFFING mark cited above. We also note that applicant refers to a previous recitation of services in its brief. We have, however, based this decision on applicant's services as ultimately identified.

Turning now to the merits of this appeal, our determination of the issue of likelihood of confusion is based on an analysis of all of the probative 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 turn first to a consideration of applicant's "recruiting, placement, staffing and career networking services; [and] providing career information via [the] world wide web internet global computer network" and registrant's "temporary and permanent personnel placement and recruitment services in the light industrial sector." In determining likelihood of confusion, we must compare applicant's services as set forth in her application with the services set forth in the cited registration. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n. 4 (Fed. Cir. 1993); and *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992). Where the services in the application and/or cited registration are broadly identified as to their nature and type (as is the case herein with applicant's identification), such that there is an absence of any restrictions as to the channels of trade and no limitation as to the classes of purchasers, it is presumed that in scope the identification of goods encompasses not only all the goods of the nature and type described therein, but that the identified goods are offered in all channels of trade which would be normal therefor, and that they would be purchased by all potential

buyers thereof. In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).

The examining attorney argues that the parties' services are "similar, related and travel in similar channels of trade since they are recruiting and staffing services." (Br., p. 6). Applicant, despite contending that that there is no likelihood of confusion as to the source of the parties' respective services, does not dispute that the services are related or that they travel in the same trade channels. Although the registrant's placement and recruitment services are restricted to the light industrial sector, applicant's recitation contains no such restriction. As such, we must assume that applicant's broadly worded recruiting, staffing and placement services encompasses all types of these services including registrant's temporary and permanent placement and recruitment services in the industrial sector. We further find applicant's career networking services and provision of career information via the Internet related to registrant's services because they are offered to the same individuals and one is a necessary element of the other.

The *du Pont* factor of relatedness of the services thus favors a finding of likelihood of confusion.

Further, as noted above, in the absence of any limitations to the services recited in applicant's application, we must presume that they will be offered in all the normal channels of trade and will be offered to and purchased by all the normal classes of purchasers, including those seeking employees and/or employment in the industrial sector. See *In re Elbaum*, supra. That is, we find, at a minimum, that the channels of trade and classes of purchasers overlap. In view thereof, the *du Pont* factors of the similarity of the channels of trade and purchasers strongly favor a finding of likelihood of confusion as to the cited registration.

We now consider applicant's mark HORIZON CAREER and design and registrant's mark HORIZON STAFFING. In determining the similarity or dissimilarity of the marks, we must consider the marks in their entireties in terms of sound, appearance, meaning and commercial impression. See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). 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 their entireties that confusion as to the source of the 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).

Applicant argues that her mark is not similar in appearance, sound and commercial impression with the registered mark because the literal portions of the marks differ and her mark features a design element. The examining attorney, by comparison, maintains that the marks are confusingly similar. She particularly argues that the literal portions of the marks are nearly identical in appearance, sound and meaning as they feature the wording HORIZON as the dominant literal component, and that the design element present in applicant's mark does not obviate the similarity of the marks.

We agree that applicant's HORIZON CAREER and design mark is similar to the cited HORIZON STAFFING mark. Although we must compare the marks in their entireties, one feature of a mark may be more significant than another and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985) ["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 consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable."] For instance, as our principle 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 the mark." See *In re National Data Corp.*, 224 USPQ at 751.

In this case, the cited mark consists of two words, the first being the word HORIZON, which appears to be arbitrary in connection with the recited services. The second word, STAFFING, is merely descriptive as evidenced by the disclaimer. As such, the term STAFFING would not be looked to by consumers as source identifying. Accordingly, the dominant and distinguishing portion of the cited mark is the term HORIZON.

Applicant's mark consists of the term HORIZON CAREER superimposed on a design of a rising or setting sun separated from an ocean and road by a black horizontal line. The word CAREER in applicant's mark also has been disclaimed, as it merely describes the category of services applicant provides, and likewise would not be looked upon as a source-identifying element. Nor do we find the design

sufficient to distinguish applicant's mark from the cited mark. Although the design element is clearly noticeable, it does not serve to distinguish these marks in sound or appearance. The design simply reinforces the HORIZON CAREER portion of the mark. Further, with a composite mark comprising a design and words, it is the wording that would make a greater impression on purchasers and is the portion that is more likely to be remembered as the source-signifying portion of the applicant's mark. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593 (TTAB 2001) ("words are normally accorded greater weight because they would be used by purchasers to request the goods"). See also, e.g., *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (1987).

For these reasons, even though applicant's and registrant's marks contain different wording, because of the descriptive nature of the term CAREER in applicant's mark and the word STAFFING in the registered mark, and the lesser weight to which these terms are entitled as we compare the marks in their entireties, applicant's mark and the registered mark are similar in sound, appearance, connotation and commercial impression.

Thus, the factor of the similarity of the marks favors a finding of likelihood of confusion.

In view of the foregoing, we conclude that prospective purchasers familiar with registrant's HORIZON STAFFING mark for temporary and permanent personnel placement and recruitment services in the light industrial sector would be likely to believe, upon encountering applicant's mark HORIZON CAREER and design for recruiting, placement, staffing and career networking services; [and] providing career information via [the] world wide web internet global computer network., that applicant's and registrant's services originate with or are somehow associated with or sponsored by the same entity.

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.