

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

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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jenkins Chiropractic, Ltd.

Serial No. 78710701

Cheryl Fernandez for Jenkins Chiropractic, Ltd.

Pamela Y. Willis, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Quinn, Bucher and Bergsman, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Jenkins Chiropractic, Ltd. seeks registration on the
Principal Register of the mark **CORE4TRAINING** (*in
standard character format*) for services recited in the
application, as amended, as follows:

"video recordings featuring instruction of
postural techniques for the improvement of
posture and promotion of safety and
efficiency in movement, by a chiropractor or
an instructor certified in training such
postural techniques" in International Class
9;

and

"instruction of postural techniques for the improvement of posture and promotion of safety and efficiency in movement, namely seminar and one-on-one education, consultation, training and therapy, by a chiropractor or an instructor certified in training such postural techniques" in International Class 41.¹

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles the mark **CORE 4** (*in standard character format*) registered in connection with "physical fitness consultation services; physical fitness instruction and training services" in International Class 41, as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have briefed the substantive issues of the case. We reverse the refusal to register.

¹ Application Serial No. 78710701 was filed on September 12, 2005 based upon applicant's allegation of first use anywhere in connection with the goods in class 9 at least as early as March 9, 2005 and first use in commerce at least as early as March 14, 2005, and applicant's allegation of first use anywhere and first use in commerce at least as early as June 16, 2004 in connection with the services in class 41.

In arguing for registrability, applicant contends that there is no likelihood of confusion because the respective goods and services are so very different and that they will be moving through different channels of trade to different classes of sophisticated purchasers.

By contrast, the Trademark Examining Attorney contends that registrant's broadly-defined physical fitness services could encompass applicant's more narrowly defined services, and it is possible that physical fitness providers could be the source of video recordings of the kind marketed by applicant.

LIKELIHOOD OF CONFUSION

Our determination under Section 2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relationship of the goods and/or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

The marks

We turn first to the *du Pont* factor that focuses on 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 Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

In making this determination, our focus should be placed on the recollection of the average consumer who normally retains a general rather than a specific impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

While we must consider the marks in their entireties, 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. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985) [CASH MANAGEMENT ACCOUNT found confusingly similar to THE CASH MANAGEMENT EXCHANGE].

The Trademark Examining Attorney has taken the position that applicant's CORE4TRAINING and registrant's CORE 4 both lead with the word "Core" followed by the number

"4." As to a difference in appearance, the absence of a space within applicant's mark is of no significance for purposes of our likelihood of confusion determination. When spoken, the first two syllables of applicant's mark are identical to registrant's mark in its entirety.

As to connotation, the Trademark Examining Attorney points out that applicant has appropriated registrant's mark in its entirety, and has simply added as a suffix thereto the generic name of its goods and services, "training." While there are situations where the addition of a new term to a registered mark does obviate the similarity between the marks such that it can overcome a likelihood of confusion under Section 2(d), generally this is not the case with the addition of a generic term.

The word "Core" followed immediately by the identical numeral "4" creates the commercial impression for both of these marks. There is no evidence or discussion in the record about the strength or weakness of the word "Core" for these services and goods. However, as noted by the Trademark Examining Attorney, at the time of preparing its brief, applicant did not even discuss the dissimilarities of the marks.

Accordingly, we find these marks are quite similar as to appearance, sound, connotation and commercial impression, and this *du Pont* factor favors a finding of likelihood of confusion.

The goods and services

As seen above, the services in the cited registrations are recited as "physical fitness consultation services; physical fitness instruction and training services." Applicant's goods and services involve chiropractic instruction in postural techniques, and the video recordings of the same.

While applicant claims that its goods and services are totally different from registrant's, the Trademark Examining Attorney contends that they are similar in that "all are related to some sort of physical activity." Although applicant's specimens of record refer to "Core Fitness Classes," we are faced with applicant having severely narrowed its goods and services after the initial refusal to register. The Trademark Examining Attorney argues in her brief that "there is no information firmly stating that [applicant's] goods/services cannot be performed in conjunction with the registrant's services" and there is "nothing in applicant's identification of

goods to indicate that physical fitness providers could not at the same time provide applicant's video recordings."

Even if we suspected that the Trademark Examining Attorney may be right about the relationship between instruction in physical fitness and chiropractic instruction in postural techniques, we find no evidence in this sparse record on which to base such a conclusion. At the time of the final refusal to register and the response to the request for reconsideration, applicant's services were limited to chiropractic instruction in postural techniques. Yet the Trademark Examining Attorney provided no evidence that these services are related. We are certainly not permitted to resort to our own personal experiences to find a relationship. In the absence of any probative evidence in the record, applicant's original, much broader identification of goods/recitation of services is insufficient to support the Trademark Examining Attorney's contention that physical fitness services of the type offered by registrant would encompass applicant's chiropractic instruction in postural techniques. While it is a fact that applicant has offered very little for this record other than advocacy in the form of conclusory opinions, it is the burden of the Trademark Examining

Attorney to make a *prima facie* case of the relatedness of the services herein, and we find that she has failed to do so on this record.

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