

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 LG Electronics Inc.

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Serial No. 78737356

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Robert J. Kenney of Birch, Stewart, Kolasch & Birch, LLP  
for LG Electronics Inc.

Colleen Dombrow, Trademark Examining Attorney, Law Office  
101 (Ronald R. Sussman, Managing Attorney).

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Before Drost, Cataldo, and Ritchie de Larena<sup>1</sup>,  
Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On October 20, 2005, LG Electronics Inc. (applicant)  
applied to register the mark BLURADIANCE in standard  
character form on the Principal Register for goods

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<sup>1</sup> Judge Hohein, now deceased, participated in the September 23, 2008, hearing. Judge Ritchie de Larena is substituted for the purpose of final decision. TMEP § 802.04 (2d ed. rev. 2004). See also *In re Bose Corp.*, 772 F.2d 866, 869, 227 USPQ 1, 4 (Fed. Cir. 1985) ("Turning to the validity of the board's decision, we hold that there was no error in substituting a board member without allowing reargument. The statutory requirement that a case be 'heard' by three board members means *judicially* heard, not *physically* heard").

ultimately identified as "domestic cooking oven ranges; electric cooking ranges; microwave ovens" in Class 11.<sup>2</sup>

The examining attorney<sup>3</sup> refused to register applicant's mark under the provision of Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) because of a registration for the mark RADIANCE, in typed or standard character form, for "gas stoves" in Class 11.

After the examining attorney made the refusal final, a request for reconsideration and this appeal followed. An oral argument was held on September 23, 2008.

Before we discuss the merits of this issue, we must first address the evidence attached to applicant's brief, to which the examining attorney has objected. Brief at unnumbered p. 3. Inasmuch as this evidence was not previously submitted, it is untimely and we will not consider it. *See, e.g., In re First Draft Inc.*, 76 USPQ2d 1183, 1192 (TTAB 2005) ("Submission of the TARR printout with its appeal brief, however, is an untimely submission of this evidence") and *In re Trans Continental Records Inc.*, 62 USPQ2d 1541, 1541 n.2 (TTAB 2002) (Exhibits from

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<sup>2</sup> Serial No. 78737356. The application is based on an allegation of a bona fide intention to use the mark in commerce.

<sup>3</sup> The current examining attorney was not the original examining attorney in this case.

web search engines not considered when submitted for the first time on appeal).

When we are considering whether there is a likelihood of confusion, we look at the evidence as it relates to the factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *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 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 to examine "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, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). Registrant's mark consists solely of the word RADIANCE while applicant adds the letters BLU before RADIANCE to form the mark BLURADIANCE. In effect,

applicant has taken the entire registered mark and added the phonetic equivalent to the word "blue" at the beginning of the mark. Applicant argues that "the BLU portion of the applicant's mark would be significantly more likely to be remembered by the purchaser than would the RADIANCE portion of the mark." It is not clear why the phonetic equivalent of the color blue would be the dominant part of applicant's mark. The term "radiance" is certainly a significant part of the mark and consumers are unlikely to ignore the term or ascribe to it little weight in distinguishing the marks. Indeed, there is no evidence that the term is entitled to only a narrow scope of protection.

We add that applicant has displayed its mark in standard character form, which means that it is not limited to any particular stylization. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000) ("Registrations with typed drawings are not limited to any particular rendition of the mark and, in particular, are not limited to the mark as it is used in commerce"); *ProQuest Information and Learning Co. v. Island*, 83 USPQ2d 1351, 1359 (TTAB 2007) (Applicant's mark "is shown in standard character format. Hence, we must consider that applicant's mark is not limited to any special form or

style as displayed on its goods"); and *In re Cox Enterprises Inc.*, 82 USPQ2d 1040, 1044 (TTAB 2007) ("We must also consider that applicant's mark, presented in typed or standard character form, is not limited to any special form or style as displayed on its goods"). Thus, we cannot accept applicant's argument that its mark "does not distinguish between or separate the terms BLU and RADIANCE." We must consider the likelihood of confusion issue assuming that applicant's mark may be displayed in a manner that would distinguish or visually separate the "radiance" portion of the mark from the "blu" portion such as BluRadiance or even BluRADIANCE.

Applicant also relies on the case of *Miguel Torres S.A. v. Cantine Mezzacorona S.C.A.R.L.*, 52 USPQ2d 1557 (E.D. Va. 1999) and argues that there "the marks CORONAS and MEZZACORONA were found not to be confusingly similar, even though both were used on identical goods; wines." Brief at 7. Interestingly, the *Miguel Torres* court noted that the board had previously determined that there was a likelihood of confusion between the same marks and the Federal Circuit had affirmed that determination.

Torres filed an opposition to the registration of MEZZACORONA based on its prior use and registration of CORONAS and GRAN CORONAS for wine. On July 18, 1996 the Trademark Trial and Appeal Board ("the Board") issued a decision sustaining Torres' opposition.

Cantine's request for reconsideration was denied on January 16, 1997, and it timely filed an appeal to the Court of Appeals for the Federal Circuit.

The appeal was fully briefed and the parties presented oral argument on December 1, 1997. In a decision dated December 17, 1997, the Federal Circuit affirmed the Board's decision, saying:

"We cannot find fault with the Board's factual determinations that the [MEZZACORONA] mark ... was similar in physical appearance, sound, and meaning to the marks registered to Torres, whether the marks are considered as applied for or registered, or as actually used ... We conclude, therefore, that the Board's decision to grant the opposition and deny Cantine's registration because its mark was confusingly similar to two previously-registered marks was correct as a matter of law."

*Miguel Torres*, 52 USPQ2d at 1560 (punctuation in original).

The district court also noted the differences between the two types of proceedings. *Id.* at 1560-61 ("The Court also found that because the standards for likelihood of confusion differ in registration proceedings and infringement actions, the Court could not apply the collateral estoppel doctrine because the proceedings conducted by the Board and the Federal Circuit were not identical to the instant action"). Indeed, the district court relied on factors such as other marks and wording that appear on the labels that are not considered in a registration context. *Id.* at 1564. Therefore, applicant's cited case provides little support for applicant's

position. It is an infringement case that points out that, in the registration context, the board and Federal Circuit determined that there was a likelihood of confusion.

Furthermore, while the marks are not identical, the only difference between the marks is the term "Blu" in the front of applicant's mark. The addition of this term does not significantly change the sound, appearance, meaning, or commercial impression of the marks. We find the language from the Federal Circuit instructive:

The marks SQUIRT and SQUIRT SQUAD are, however, of such similarity that they are more likely to create confusion than prevent it. Not only does appellee's mark SQUIRT SQUAD incorporate the whole of appellant's mark SQUIRT, but also, in SQUIRT SQUAD, SQUIRT retains its identity. Because of the alliteration with SQUIRT, SQUAD is an apt choice to combine with SQUIRT to suggest a line or group of toys from the same source as SQUIRT balloons. Thus, the marks do not create different commercial impressions.

*Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983).

Similarly, applicant has taken the entire registered mark and added the phonetic equivalent of the word "blue" to the mark. The color simply would suggest to many purchasers that BLURADIANCE is another product in the line of RADIANCE products from the same source. *See also Merck & Co., Inc. v. Abbott Laboratories*, 210 USPQ 605 (TTAB 1981) (A-HYDROCORT similar to HYDROCORTONE); *Alberto-Culver*

*Co. v. Helene Curtis Industries, Inc.*, 167 USPQ 365, 370 (TTAB 1970) (COLOR COMMAND similar to COMMAND); and *H.D.T. Company Factors, Inc. v. Coral Chemical Co.*, 136 USPQ 315 (TTAB 1962) (CORAL similar to BLUE CORAL).

Here, the marks contain the identical term RADIANCE. The only difference is the addition of the term "Blu" to applicant's mark. The similarities in sound, appearance, meaning, and commercial impressions of the marks are greater than their differences and we conclude that the marks are similar. See *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) ("When one incorporates the entire arbitrary registered mark of another into a composite mark, inclusion in the composite mark of a significant nonsuggestive element does not necessarily preclude the marks from being so similar as to cause a likelihood of confusion") and *Wella Corp. v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT and surfer design likely to be confused with CONCEPT for hair care products).

Next, we consider whether applicant's and registrant's goods are related. Registrant's goods are gas stoves, while applicant's goods are domestic cooking oven ranges, electric cooking ranges, and microwave ovens. It is not

necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association or connection between the producers of the respective goods. See *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

Regarding the goods, applicant argues that the "goods in connection with which the two marks are used or to be used are very different. Specifically, the Registrant's goods are 'gas stoves' which are in the nature of gas-fired versions of the traditional 'wood stoves' used to heat a room or house. These goods are very different from Applicant's appliances used in the kitchen for cooking food." Brief at 8-9. The examining attorney has submitted several dictionary definitions and argues:

The attached dictionary from [www.dictionary.com](http://www.dictionary.com) defines gas stove as, "A range with gas rings and an oven for cooking with gas [syn: gas range]." (See

evidence attached to the final office action dated May 1, 2007.) The attached dictionary definition from [www.rhymezone.com](http://www.rhymezone.com) defines gas stoves as, "a range with gas rings and an oven for cooking with gas." The attached dictionary definition from [www.encyclopedia.com](http://www.encyclopedia.com) defines range as, "stove: a cooking stove with one or more ovens and with hot plates or burner on top." The attached evidence from [www.encyclopedia.com](http://www.encyclopedia.com) shows that the word "stove" is synonymous with "cooktop, hot plate, oven range, cooker, hob." Furthermore, the information from [www.infoplease.com](http://www.infoplease.com) shows that the word "stove" is synonymous with "kitchen stove, range, kitchen range, cooking stove, kitchen appliance." The attached evidence clearly shows that a stove is synonymous with a range. Further, the evidence from [buyit.dfw.com](http://buyit.dfw.com) and [www.easyapplianceparts.com](http://www.easyapplianceparts.com) shows that the terms range and stove are used interchangeably in the appliance industry.

See Brief at 10-11 (additional references to "(See evidence attached to the final office action dated May 1, 2007.)" omitted).

The examining attorney has also submitted additional evidence to suggest that registrant's gas stoves are related to applicant's domestic cooking oven ranges, electric cooking ranges, and microwave ovens. See, e.g., Registration No. 0437113 (gas ranges and gas stoves); 2601154 ("gas stoves, electric cooking ovens," and "microwave ovens"); 2715840 ("domestic cooking ovens," "gas stoves" and "microwave cooking ovens"); 2774528 ("gas ranges, electric ranges, gas stoves, electric stoves, cooking ovens for domestic and commercial use"); 2957986 ("gas ranges; gas stoves"); 2956155 ("large domestic

appliances, namely, gas stoves, electric stoves, induction ovens, gas ranges, electric ranges, refrigerators and freezers"); 3008176 ("domestic cooking ovens, commercial cooking ovens, electric stoves, gas stoves, microwave ovens for cooking"); 3076078 ("electric and gas stoves, gas and electric pressure cookers, and gas and electric ranges"); 30997528 (electric and gas stoves, cookers and cooking ranges"); and 3123622 ("electric cooking ovens; electric ranges; electrical stoves; freezers; gas cooking ovens; gas ranges; gas stoves; refrigerators"). 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).

Applicant argues that the goods of the parties "serve very different functions, in different areas of the home, and would be sold to consumers in very different channels of trade." Brief at 9. Applicant's argument ignores the fact that we must consider the goods as they are set out in the identifications of goods in the registration and

application. See *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 [or services] set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods [or services], the particular channels of trade or the class of purchasers to which the sales of goods [or services] are directed"). See also *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").

Here, the term "stove" is defined as "a portable or fixed apparatus that furnishes heat for warmth, cooking, etc., commonly using coal, oil, gas, wood, or electricity as a source of power." A range is "a large portable or stationary cooking stove having burners built into the top surface and containing one or more ovens." *The Random House Dictionary of the English Language (unabridged)* (2d ed. 1987).<sup>4</sup> Therefore, to the extent that a gas stove

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<sup>4</sup> We take judicial notice of these definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594,

includes a fixed apparatus that furnishes heat for cooking, it overlaps with a domestic cooking oven range that would include a gas oven and burners. Applicant's point is that registrant is apparently advertising gas stoves that are only used for heating a room instead of a stove that could be used for cooking. Applicant then seeks to introduce extrinsic evidence to establish the nature of applicant's goods citing *In re Trackmobile, Inc.*, 15 USPQ2d 1152 (TTAB 1990). However, in *Trackmobile*, the board was unable to determine what was the nature of the goods based on the identification of goods. *Id.* at 1153 ("The terms 'mobile railcar movers' and 'light railway motor tractors' are somewhat vague to members of this Board who possess no special knowledge of such equipment").

Here, the term "gas stoves" has no such vagueness. Apparently, applicant's problem with the term is not that it is vague but rather that it is broader than applicant would like because it could encompass both gas stoves for heating and gas stoves for cooking. However, the fact that a term may describe more than one very specific item does not make the term unclear. See *In re Dynamit Nobel Aktiengesellschaft*, 169 USPQ 499, 499 (TTAB 1971) ("The

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596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

term 'ammunition' is a commonly used term and sufficiently describes applicant's goods to the extent that its rights in the mark sought to be registered will be definable") and *In re Taylor*, 133 USPQ 490, 490 (TTAB 1962) (The "terms 'salads' and 'desserts' when described as restaurant and take-out food items as applicant has done, is sufficient to advise all persons what applicant's goods are").

Indeed, the *Trackmobile* case makes it clear that extrinsic evidence would not normally be appropriate to determine what a registrant's goods are.

If registrant's goods are broadly described in its registration so as to include types of goods which are similar to applicant's goods, then an applicant in an ex parte case cannot properly argue that, in point of fact, registrant actually uses its mark on a far more limited range of goods which range does not include goods which are similar to applicant's goods.

Applicant acknowledges the foregoing rule of law by noting, by way of example, that if a prior registration utilizes the unambiguous term "vegetables" as its description of goods, it would be improper for an applicant to argue that in point of fact registrant makes use of its mark only on "peas." However, applicant contends that it is not attempting to narrow the description of goods set forth in the cited registration (light railway motor tractors), but rather it is attempting to show by means of extrinsic evidence that the term "light railway motor tractors" has a meaning in the trade, and that this meaning does not include applicant's goods (mobile railcar movers)..

The terms "mobile railcar movers" and "light railway motor tractors" are somewhat vague to members of this Board who possess no special knowledge about such equipment.

However, when the description of goods for a cited registration is somewhat unclear, as is the case herein, it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods has a specific meaning to members of the trade.

*Id.* at 1153-54.

The term "gas stoves" is not a term that requires special knowledge to understand. Indeed, it is a term that includes "types of goods which are similar to applicant's goods," and as *Trackmobile* noted "an applicant in an ex parte case cannot properly argue that, in point of fact, registrant actually uses its mark on a far more limited range of goods which range does not include goods which are similar to applicant's goods." Therefore, we find that gas stoves and domestic cooking oven ranges are overlapping goods.

When goods are overlapping, we must assume that purchasers and channels of trade also overlap.

Where the goods in the application at issue and/or in the cited registration are broadly identified as to their nature and type, 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 Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006).

See also *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

We add that even if registrant's goods are limited to stoves for heating and applicant's goods are used for cooking, this fact would not establish that the goods are not related. Registrant's gas stoves can include "Optional Warming Shelves, with nickel plated mitten racks," which indicates that registrant's stoves can be used to warm, inter alia, food items. [www.vermontcastings.com](http://www.vermontcastings.com). This suggests that purchasers are likely to associate a gas stove for warming items and heating with a domestic cooking oven range. See also *Williams Oil-O-Matic Heating Corp. v. Geo. D. Roper Corp.*, 17 USPQ 176, 177 (Comm'r Pat. 1933) ("It is true the opposer's heating devices are for indirectly heating the air in dwellings while the applicant's liquid fuel-burning devices are mainly for heating food to cook it. Both kinds of goods include liquid fuel burners and devices for controlling them. It is considered the holding of the examiner that the goods of both parties belong to the same class as these terms have been construed in the adjudicated cases is sound").

When we consider the marks in their entirety, we find that they are similar inasmuch as both marks would be dominated by the term RADIANCE. We also find that the

goods are overlapping and related. Therefore, when we consider the other factors, we conclude that there is a likelihood of confusion in this case. To the extent we have doubts; we resolve them, as we must, in favor of the prior registrant and against the newcomer. *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988); *Kenner Parker Toys v. Rose Art Industries*, 963 F.2d 350, 22 USPQ2d 1453, 1458 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 862 (1992).

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