

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
Sept. 28, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Abkit, Inc.

Serial No. 78739650

Scott D. Woldow of Smith, Gambrell & Russell, LLP for
Abkit, Inc.

Katina S. Mister, Trademark Examining Attorney, Law Office
104 (Chris Doninger, Managing Attorney).

Before Bucher, Grendel and Holtzman, Administrative
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark CAMOKIDS (in standard character form) for goods
identified in the application as "cosmetics, namely, creams
and lotions for the skin and hair; non-medicated ointments
for the skin and hair; shampoos, bath and shower gel; bath

and shower gel body wash; body oils," in Class 3, and "antibiotic ointments; anti-itch ointments," in Class 5.¹

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that the mark, as applied to applicant's goods as identified in the application, so resembles the mark CAMO KIDS, previously registered on the Supplemental Register (in standard character form, and with a disclaimer of CAMO) for "children's clothing, namely, sweatshirts, jogging suits, jackets, pants, T-shirts, shorts, hats, caps and jumpers" in Class 25,² as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Both applicant and the Trademark Examining Attorney have submitted briefs. Upon careful consideration of the evidence of record and the arguments of counsel, we find that there is no likelihood of confusion, and we therefore reverse the refusal to register.

¹ Serial No. 78739650, filed October 25, 2005. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

² Reg. No. 2239924, issued April 13, 1999. Section 8 affidavit accepted.

Our likelihood of confusion determination under Section 2(d) 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 (the *du Pont* factors). See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Initially, we note that the mark the Trademark Examining Attorney has cited as a Section 2(d) bar to registration of applicant's mark is registered on the Supplemental Register, with a disclaimer of CAMO. A mark registered on the Supplemental Register may be cited as a Section 2(d) bar to the registration of an applicant's mark. See *In re The Clorox Co.*, 578 F.2d 305, 198 USPQ 337 (CCPA 1978); *In re Hunke & Jochheim*, 185 USPQ 188 (TTAB 1975). However, marks registered on the Supplemental Register are presumed to have been (at least as of the time of registration) merely descriptive at a minimum, and they therefore are deserving of a lesser scope of protection than arbitrary or suggestive marks registered on the

Principal Register. *Id.* A mark registered on the Supplemental Register normally will be a Section 2(d) bar to registration of an applicant's mark only where the respective marks are substantially identical and the respective goods are substantially similar. *In re Hunke & Jochheim, supra.*

Keeping these principles in mind, we turn to the first *du Pont* factor, which requires us to determine the similarity or dissimilarity of the marks when viewed in their entireties in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imports, Inc., supra.* We find that applicant's mark CAMOKIDS and the cited registered mark CAMO KIDS are similar in terms of appearance, differing only in that the registered mark is displayed as two words while applicant's mark is displayed as one word. We also find that the respective marks are identical in terms of sound.

In terms of connotation, we find the respective marks to be somewhat similar. In both marks, CAMO would be understood by purchasers to be short for "camouflage." Applicant argues that CAMO in its mark would be understood by purchasers as referring to or short for "chamomile," which applicant asserts is a key ingredient in applicant's personal care products. However, there is no evidence that

CAMO is or would be recognized as being short for "chamomile." Because CAMO in both marks would be perceived as being short for "camouflage," we find that, in their entireties, both marks have the connotation of "camouflage kids" or "camouflage for kids" or "kids wearing camouflage."

In terms of overall commercial impression, we find that the respective marks are dissimilar. The registered mark CAMO KIDS, as applied to the clothing items identified in the registration, immediately and obviously creates the commercial impression of camouflage clothing for kids, or of kids wearing camouflage clothing. No such commercial impression results from the use of CAMOKIDS in connection with applicant's personal care products. As applied to such products, CAMOKIDS or "camouflage kids" is incongruous if not completely non-sensical. Personal care products are not "camouflaged."

On balance, we find that although the respective marks are similar in terms of appearance, sound and connotation, those points of similarity are greatly outweighed by the dissimilarity in the overall commercial impressions of the marks as applied to the respective goods. The marks in their entireties are dissimilar, and the first *du Pont* factor weighs against a finding of likelihood of confusion.

The second *du Pont* factor requires us to determine the similarity or dissimilarity of the goods as recited in the application and in the cited registration. The respective goods obviously are dissimilar in nature. However, the Trademark Examining Attorney has submitted a number of third-party use-based registrations which include in their identifications of goods both clothing items like registrant's and personal care products like applicant's. Although such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988). The Trademark Examining Attorney also has submitted printouts of several third-party websites which display both types of goods for sale by a single source.

Based on this third-party registration and website evidence, we conclude that although applicant's goods and the goods identified in the cited registration are dissimilar in nature, they are somewhat related for

purposes of the second *du Pont* factor. That factor weighs in favor of a finding of likelihood of confusion.

Under the third *du Pont* factor, we find that applicant's goods and registrant's goods are or would be marketed in the same trade channels and to the same classes of purchasers. There are no restrictions or limitations in the respective identifications of goods, so we must presume that the goods are marketed in all normal trade channels for such goods and to all normal classes of purchasers for such goods. The third *du Pont* factor weighs in favor of a finding of likelihood of confusion.

Weighing all of the evidence of record as it pertains to the relevant *du Pont* factors, we conclude that there is no likelihood of confusion. The marks are dissimilar when viewed in their entireties and as applied to the respective goods. The goods themselves, albeit somewhat commercially related, are different in nature. The cumulative differences in the marks and goods weigh against a finding of likelihood of confusion. Especially when we keep in mind the lessened scope of protection to be afforded weak marks registered on the Supplemental Register, we find that any likelihood of confusion which might exist is insufficient to warrant refusal of applicant's mark.

Decision: The refusal to register is reversed.