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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re GNLV Corp.

Serial No. 78747767

Lauri S Thompson of Greenberg Traurig for GNLV Corp.

Mary E Boagni, Trademark Examining Attorney, Law Office 114
(K. Margaret Le, Managing Attorney).

Before Walters, Kuhlke and Bergsman, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

GNLV Corp. has filed an application to register the
standard character mark REMOVE on the Principal Register for
"shampoo, hair conditioner, hand and body lotion, shower
gel, facial soap and bath soap," in International Class 3.¹
The application includes the statement "the foreign wording
in the mark translates into English as restores or
rejuvenates."

¹ Serial No. 78747767, filed November 4, 2005, based on an allegation of
a bona fide intention to use the mark in commerce.

The examining attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the previously registered mark shown below that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.²

Mark: RENOVER [registered February 25, 2003]
Services: "skincare salon services," in International Class 42
Owner: Renover Skincare Corporation
Translation: "The foreign wording in the mark translates into English as to rejuvenate."

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and 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 Company, Inc.*, 315 F.3d 1311, 65

² The examining attorney included Registration No. 2109746 as a basis for the refusal under Section 2(d). However, in her appeal brief, the examining attorney withdrew the refusal as to this registration. Further, this registration has been cancelled under Section 8. Thus, the refusal is moot as to this registration.

USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 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); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. 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 terms of their overall commercial impressions that confusion as to the source of the goods or 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). In this case, the average purchasers are consumers of skincare products and skincare salon services. Furthermore, although the

marks at issue must be considered in their entireties, it is well settled that 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).

The examining attorney contends that, while not identical, the overall commercial impressions of the marks are the same because they look and sound very similar. She argues, further, that if both marks are translated from French into English, they have the same connotation, as both marks translate into English as the same word.

Applicant contends that if we apply the doctrine of foreign equivalents and translate the marks, the registered mark is extremely weak and diluted; whereas, if we do not apply the doctrine of foreign equivalents because consumers are unlikely to translate the marks, then the marks are readily distinguishable because they have entirely different commercial impressions. Applicant submitted third-party registrations to establish that there are several different registered marks that include the term RESTORE for skin care products. Applicant argues that, if applicant's and registrant's marks are translated into English, they are

merely part of a crowded field of RESTORE marks for skin care products and services.³

Whether or not we translate the marks from French to English, we find that applicant's mark and the cited registered mark are substantially similar. REMOVE and RENOVER are almost identical in appearance, differing by only the final letter "R" in the registered mark and they have essentially the same commercial impression. In this regard, we note that the "er" suffix at the end of the registered mark is "used in forming nouns designating persons from the object of their occupation or labor."⁴ Especially if we translate the marks, then the applicant's mark conveys the commercial impression of products that "restore" the skin while the registered mark conveys the commercial impression of people that help restore the skin (i.e., restorers).

If we translate both of these marks from French to English, they have the same meaning, i.e., "restore."⁵ Even

³ Applicant also submitted copies of search results from the Google search engine for the term "restore," which is of no probative value both because the excerpts are truncated and because the subjects to which they pertain are unrelated to skin care.

⁴ The Random House Dictionary of the English Language (Unabridged), p. 657 (2nd ed. 1987). We may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 IS{Q 505 (Fed. Cir. 1983)

⁵ We take judicial notice of the translation of "rénover" in the *Pocket Oxford-Hachette French Dictionary* (2005) (wordreference.com) as "to restore," noting that "rénové" is the past participle "rénover." It is

if we consider the English translation of the marks and weigh them in the context of the third-party registrations submitted by applicant, we do not find that this evidence establishes that the registered mark is sufficiently weak that applicant's mark and the registered mark can coexist. While each of the third-party registrations has additional wording and, in some cases, different skin care products and services, both of the marks herein are almost identical forms of the identical word. Moreover, each case must be decided on its own merits.

Thus, we begin our consideration of the respective goods and services with the premise that, because the marks at issue are so similar, the extent to which the applicant's goods and registrant's services must be related to support a finding of likelihood of confusion is lessened. *See In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001). It is only necessary that there be a viable relationship between the two to support a finding of likelihood of confusion. *See In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983).

The question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the

immaterial to our analysis herein that the cited registered mark and the

evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

Further, it is a general rule that goods and services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein; and *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002).

Acknowledging that the goods and services are different, the examining attorney contends that they are complementary goods and services that are likely to be encountered together by consumers in the same channels of

applied-for mark do not include an acute accent over the "e."

trade. In support of her position, the examining attorney submitted third-party registrations including both the identified goods and services registered in connection with the same mark; and numerous excerpts from Internet websites showing salons offering skin care services and their own lines of skin and hair care products.

Applicant argues that it owns a resort hotel casino and that its products are intended to be offered to hotel guests; that its products are for general personal use and are not intended for sale in salons; and, therefore, there is no overlap in the trade channels.⁶

The examining attorney has clearly established a close relationship between applicant's identified goods, which consist of skin and hair care products, and the skin care salon services recited in the cited registration.

Further, inasmuch as the identification of goods in the involved application and the recitation of services in the cited registration are not limited to any specific channels

⁶ Applicant includes in its brief a request, should the Board not be convinced to reverse the refusal, to remand the application to the examining attorney so that applicant can amend its identification of goods to limit its trade channels. However, at this point in the proceeding it is too late for applicant to request a remand. If applicant had wanted to amend its identification of goods, it was required to do so prior to appeal or, with the approval and remand request of the examining attorney, prior to the issuance of a final decision by the Board. Moreover, as the examining attorney correctly noted, restricting the trade channels in the application would not resolve the issue because the trade channels in the registration are broadly stated and it is reasonable to assume that registrant's skin care salon services could be offered in a resort hotel, so that the trade channels would overlap.

of trade, we presume that the goods and services would be offered in all ordinary trade channels for these goods and to all normal classes of purchasers. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992). Because the evidence establishes that skin care salons also sell skin care products, there is clearly an overlap in the channels of trade for these goods and services. Further, such goods and services will be purchased by the general public, which includes all levels of sophistication and purchasing care.

When we consider the record and the relevant likelihood of confusion factors, and all of applicant's arguments relating thereto, including those arguments not specifically addressed herein, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, RENOVE, and registrant's mark, RENOVER, their contemporaneous use on the closely related goods and services involved in this case is likely to cause confusion as to the source or sponsorship of such goods and services.

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