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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Propaganda Headquarters, Inc.

Serial No. 78755108

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Propaganda Headquarters, Inc.

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Before Holtzman, Kuhlke and Bergsman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Propaganda Headquarters,
Inc. to register the mark PROPAGANDA in standard character form
for services ultimately identified as:¹

Advertising and consulting services in the areas of
marketing and branding; management of professional
athletes and entertainers; arranging and conducting
marketing promotional events for others; advertising,

¹ Application Serial No. 78755108, filed November 16, 2005 based on an
allegation of first use and first use of the mark in commerce on March
1, 2001.

including promotion of products and services for third parties through sponsorship arrangements and license agreements relating to various events; and public relations, in Class 35.

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's services, so resembles the mark PLANET PROPAGANDA in typed form (PROPAGANDA disclaimed) for the following services, as to be likely to cause confusion.²

Advertising agency services, namely promoting the services of others through television, radio, newspaper, magazine, direct-mail, brochures, outdoor billboards and Internet websites; business marketing consulting services; public relations consultation; creating trademarks and service marks for others, namely business and product naming, in Class 35.

When the refusal was made final, applicant appealed. Briefs have been filed.

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. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, however, two key considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the

² Registration No. 2729657, issued June 24, 2003. The registration includes two additional classes of services. However, the refusal to register is based solely on the services in Class 35.

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goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We turn first to the services. As identified, the services are in part identical or legally identical. Applicant's "consulting services in the areas of...branding" overlap with registrant's "business and product naming services," as do applicant's "public relations services" and registrant's "public relations consultation." Also, applicant's broadly worded "advertising...services in the area[] of marketing" encompass registrant's "advertising agency services, namely promoting the services of others"; and applicant's "consulting services in the areas of marketing" include registrant's "business marketing consulting services."

Applicant argues that its services are marketed towards mid to large size companies in the sporting industry and, in particular, "the action sports industry (sports consisting of surfing, skateboarding, motorcross, [etc.]);" and that applicant and registrant have no overlapping clientele. Applicant also argues that unlike registrant, applicant is not an advertising agency, and that applicant's "main" services involve event production, branding, marketing and management.

These arguments are not persuasive. It is well settled that the question of likelihood of confusion must be decided on the basis of the services set forth in the application and

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registration, without limitations as to the actual nature of the services, their channels of trade and/or classes of purchasers that are not reflected therein. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 1464, 18 USPQ2d 1889 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783 (Fed. Cir. 1990); and *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983). Whether or not applicant is technically an advertising agency, its marketing services, among its other services, are broadly described and they include the types of services an advertising agency would provide. Furthermore, applicant's marketing and branding services are not limited to the sports industry or to sports clientele. But, even if applicant's services were so limited, it would be unavailing because registrant's services contain no restrictions at all. In the absence of any limitations in the registration, we must assume registrant's advertising and promotional services are offered in all the usual fields, including the sports field; to all potential customers, including athletes, sports companies, and others in the sports industry; and that the fields and customers for both applicant's and registrant's services would therefore be the same.

It is reasonable to assume that the customers for applicant's and registrant's services would exercise some degree of care in selecting the services. However, even careful

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purchasers can be confused as to source under circumstances where similar marks are used on identical services. See *In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) citing *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ("Human memories even of discriminating purchasers...are not infallible.").

We turn then to the similarity or dissimilarity of the marks in their entireties in terms sound, appearance, meaning and commercial impression. See *du Pont*, *supra*. See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). In making this determination, we keep in mind that when marks would appear on identical or legally identical services, the degree of similarity between the marks necessary to support a finding of likely confusion declines. *Century 21 Real Estate v. Century Life*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Applicant's mark PROPAGANDA and registrant's mark PLANET PROPAGANDA are similar in sound and appearance. The term PROPAGANDA is applicant's entire mark, and that same term is aurally and visually a major component of registrant's mark.

The word PROPAGANDA is also significant in conveying the meaning and commercial impression of registrant's mark. The presence of the word PLANET in registrant's mark does not significantly change the meaning or commercial impression created

by PROPAGANDA alone. Both marks suggest the persuasive or manipulative nature of the advertising, and the word PLANET added to PROPAGANDA simply expands on the scope of the "propaganda."³

The fact that PROPAGANDA is disclaimed in applicant's mark does not detract from the otherwise strong similarity between the marks. It is well settled that disclaimed matter still forms a part of the mark and cannot be ignored in determining likelihood of confusion. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) ("The technicality of a disclaimer in National's application to register its mark has no legal effect on the issue of likelihood of confusion. The public is unaware of what words have been disclaimed..."). As the Court explained, "the basic principle in determining confusion between marks is that marks must be compared in their entireties." *National Data*, supra at 750. See also *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281, 1282 (Fed. Cir. 1984) (finding SPICE VALLEY confusingly similar to SPICE ISLAND, both for tea, the Court stated, "Although applicant disclaimed the word 'spice' apart from SPICE VALLEY as a whole, the marks are viewed in their entireties.").

³ We take judicial notice of the definition of "propaganda" Compact Oxford English Dictionary of Current English (2004) (from the website www.onelook.com) as "**noun** information, especially of a biased or misleading nature, used to promote a political cause or point of view." The Board may take judicial notice of dictionaries, including online dictionaries, which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1791 n.3 (TTAB 2002).

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When the marks are viewed in their entireties, as we have done here, and considering that the marks are used for services which are in part identical and legally identical, we find that the factor of the similarity or dissimilarity of the marks strongly favors a finding of likelihood of confusion. We also note that there is no evidence that the term PROPOGANDA is commonly used or registered by others in the field or that the term is descriptive or otherwise weak in relation to the services.

Applicant concedes that the marks are similar. Brief at 1. Applicant, however, argues that there is no likelihood of confusion because its business name "Propaganda Headquarters" is well-known and highly recognized in the sports industry. This argument is irrelevant inasmuch as applicant's business name is not part of the mark sought to be registered. See *Bellbrook Dairies, Inc. v. Hawthorn-Mellody Farms Dairy, Inc.*, 117 USPQ 213, 214 (CCPA 1958); and *Blue Cross and Blue Shield Association v. Harvard Community Health Plan Inc.*, 17 USPQ2d 1075, 1077 (TTAB 1990). Nor is it relevant that applicant may have used its mark before registrant. Priority of use is not an issue in an ex parte proceeding. See *In re Calgon Corporation*, 435 F.2d 596, 168 USPQ 278, 280 (CCPA 1971).

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In view of the similarity of the marks, and because the services, as well as the trade channels and purchasers for the services are in part identical, we find that confusion is likely.

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