

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re AMF Bowling Worldwide, Inc.

Serial Nos. 78761280 and 78761901

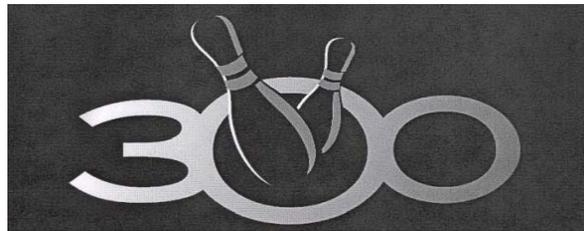
Douglas B. Smith of McGuire Woods LLP for AMF Bowling
Worldwide, Inc.

Tashia A. Bunch, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Hohein, Hairston and Zervas, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Applications were filed by AMF Bowling Worldwide, Inc.
to register the marks 300 (in standard character form) and
300 and design, as shown below,



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for services ultimately identified as "bowling alley services consisting of promoting and conducting the operation of bowling centers, including conducting bowling competitions, providing bowling alleys, rental of bowling shoes and bowling balls, party services in bowling alleys, rental of billiard tables and provision of video and coin operated games" in International Class 41; and "café and restaurant services" in International Class 43."¹

The trademark examining attorney refused registration in each application under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's marks, when used in connection with applicant's services, so resemble the previously registered mark ROCK 300 (ROCK is disclaimed) for "bowling alley services,"² as to be likely to cause confusion.

When the refusals were made final, applicant appealed.

¹ Application Serial Nos. 78761280 and 78761901, respectively. Both applications were filed on November 28, 2005 and are based on intent to use under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b)

² Registration No. 2241745, issued April 27, 1999; Section 8 affidavit accepted; Section 15 affidavit received. This registration covers other goods and services in International Classes 9, 25 and 41 (e.g., prerecorded audio tapes, video tapes and compact discs featuring various types of music; clothing; and prerecorded programs pertaining to music and music videos). It is clear, however, that the examining attorney's refusal to register is based solely on "bowling alley services."

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Applicant and the examining attorney have filed briefs.

In view of the similar records and issues in these two applications, we have consolidated the applications for purposes of final decision. Thus, we have issued this single opinion.

Applicant, in urging reversal of the refusal to register, contends that its marks and the cited registered mark are different in sound, appearance, connotation and commercial impression. Applicant contends that marks consisting of or containing 300 are weak marks which are therefore entitled to only a limited scope of protection. According to applicant, the number 300 is highly suggestive when used in connection with bowling alley services because 300 is a perfect score in a bowling game. In support of its position in this regard, applicant submitted ten third-party registrations for marks that include 300 for bowling equipment and clothing (e.g., bowling balls, bowling bags, bowling shirts) and providing information about the sport of bowling via the Internet. Also, applicant argues that its marks are entitled to registration over the cited registered mark in view of the coexistence on the register of the marks STRIKE for "bowling alley services" (Registration No. 2862630) and LUCKY STRIKE for "bowling alleys" (Registration No. 3060821).

As to the relatedness of applicant's services and the services in the cited registration, applicant's brief is silent on this matter.

The examining attorney, on the other hand, maintains that the marks are similar in that applicant's marks and the cited registered mark share the identical element, 300. The examining attorney is not convinced that 300 is weak. The examining attorney points to the absence in the record of evidence that the marks in the third-party registrations are in use.

As to the respective services, the examining attorney argues that the "bowling alley services" in the involved applications are legally identical to the "bowling alley services" in the cited registration. Further, the examining attorney argues that the "café and restaurant services" in the involved applications and the "bowling alley services" in the cited registration are related services. In support of her position, the examining attorney submitted copies of five use-based third-party registrations for marks that cover bowling alley services and restaurant services as well as excerpts from fifteen websites showing that bowling alleys offer café and restaurant facilities. The examining attorney contends

that consumers are accustomed to seeing these types of services provided by the same entity under the same mark.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods and/or services.

Turning first to a consideration of the respective services, as the examining attorney points out, the "bowling alley services" in applicant's applications are identical to the "bowling alley services" in the cited registration. Such services would be offered in the same channels of trade (i.e., bowling alleys) and be bought by the same classes of purchasers (i.e., the general public).

Further, the record supports a finding that "café and restaurant services," on the one hand, and "bowling alley services," on the other hand, are related. As noted, the examining attorney introduced excerpts from websites showing that bowling alleys offer café and restaurant

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facilities. Excerpts from several of the websites are quoted below:

Spare Time Lanes is a restaurant and a bar, with bowling alley in Gallitzin, Pennsylvania, that offers the best in bar drinks, open bowling, and delicious chicken wings..
www.dignansfirehouse.com

Welcome to Midland Family Bowl! Here we aim to offer you the best in lanes, customer service and food! All our lanes are synthetic lanes and kept to expert standards! Your family will also enjoy our clean smoke free environment. Whether you are looking for a casual place to eat or need to entertain friends or co-workers, the Midland Family Bowl and Restaurant offers a unique gathering place for all size groups.
www.midlandbowl.com

Showtime Lanes Café & Steakhouse
Restaurant, Daily Buffets & Specials, Carry-Out Dinners, "By-the Piece or By-the-Bucket" Chicken and Fish, Catering
For Your Next Event use our Party or Meeting Rooms!
Pro Shop · Bowling · Lounge/w Pool Tables
www.showtimelanes.com

Parkview Lanes is your place for delicious food and bowling fun. Our bowling alley is equipped with 12 lanes, a full restaurant, and sports bar.
www.parviewlanesonline.com

Andover Lanes
Open Bowling All Day Everyday
Non-Smoking Establishment
24 Lanes
Bar & Restaurant
Full Service Snack Bar
Arcade
www.andoverlanes.com

This evidence establishes that a common source will offer both bowling alley services and café and restaurant

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services. Also, as noted, the examining attorney made of record five use-based third-party registrations which show that such services may be sold under a single mark by a single source. Specifically, the examining attorney submitted the following registrations which cover both bowling alley services and restaurant services:

Registration No. 2797781 for the mark BOWLMOR LANES;
Registration No. 2862629 for the mark STRIKE BETHESDA;
Registration No. 2862630 for the mark STRIKE; Registration No. 2862631 for the mark THE ENTERTAINMENT UNDERGROUND; and
Registration No. 3170054 for the mark SEVEN TEN LANES.

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 have some probative value to the extent that they may serve to suggest that such goods or services are the type which may emanate from a single source." See *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) See also *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993). Here, the registrations show adoption of the same mark by the same entity for bowling alley services, on the one hand, and restaurant services, on the other hand. Further, applicant itself intends to use the applied-for marks in connection with both types of services. In sum,

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these services are related, and would be offered in overlapping channels of trade (i.e., bowling alleys) to the same classes of purchasers (i.e., the general public). As noted, applicant has not argued otherwise in its brief.

We next turn to a consideration of the respective marks. We must determine whether applicant's marks and registrant's mark, when compared in their entireties, are similar or dissimilar in terms of sound, appearance, 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 impression that confusion as to the source of the 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). Furthermore, although the marks 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*

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National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applicant's marks are 300 and 300 with a bowling pins design. The cited registered mark is ROCK 300. Obviously, because applicant's marks include the identical element 300 in the cited registered mark, there are consequent similarities in appearance, sound and connotation. The additional word ROCK in the cited registered mark is insufficient to distinguish that mark from applicant's marks. With respect to applicant's 300 and design mark, we recognize that the bowling pins design therein cannot be ignored. However, it is 300 that clearly dominates this mark. The bowling pins design is subordinate and less likely to be remembered by consumers. It is 300 that would be used by purchasers to call for applicant's services. In re Appetitio Provisions Co., 3 USPQ2d 1553 (TTAB 1987).

We find, therefore, that when applicant's marks and the cited registered mark are considered in their entirety, they are similar in sound, appearance, connotation, and commercial impression. Given the fallibility of memory and that consumers often retain only a general rather than specific recall of marks to which they are exposed, the similarities in applicant's marks and the cited registered mark are such that, as used in

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connection with the respective services, confusion as to source or sponsorship thereof is likely to occur.

Applicant contends that marks consisting of or containing 300 are weak marks which are therefore entitled to only a limited scope of protection. Specifically, applicant maintains that 300, as used in connection with bowling alley services, is highly suggestive because 300 is a perfect score in a bowling game. As noted, in support of this argument, applicant submitted third-party registrations for marks that include 300 for goods and services in the bowling field.

Although third-party registrations are not evidence that the registered marks are in use, such registrations may be used to indicate that a commonly registered element has a suggestive or commonly understood meaning for particular goods or services such that differences in other portions of the marks may be sufficient to render the marks as a whole registrable. See, e.g., *Tektronix, Inc. v. Daktronics, Inc.*, 187 USPQ 588 (TTAB 1975), *aff'd*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976).

In this case, the various registrations of marks containing 300 in the bowling field indicate that this number was chosen by the trademark owners to suggest a perfect bowling game. However, this fact does not help to

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distinguish applicant's marks 300 and 300 design and the cited registered mark ROCK 300. The number 300, as used in the marks, conveys the same suggestive significance, and the additional word ROCK in the cited registered mark does not change significantly that meaning or the commercial impression of the marks.

Furthermore, even weak marks are entitled to protection where confusion is likely. Here, notwithstanding any weakness in 300, each of applicant's marks is still similar in sound, appearance, connotation and commercial impression to the cited registered mark.

Insofar as the coexistence of the registered marks LUCKY STRIKE and STRIKE, both for bowling alley services, is concerned, even if such registrations "have some characteristics similar to [applicant's applications], the PTO's allowance of such prior registrations does not bind the Board or this court." *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). It is well settled that each case must be decided on its own facts, based on the particular mark, the particular goods or services, and the particular record in each application. See *Nett Designs*, *supra*.

Finally, to the extent we have any doubt, we resolve it, as we must, in favor of the registrant. *In re Hyper*

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Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

In view of the foregoing, and because similar marks are to be used in connection with identical and related services, we find that there is a likelihood of confusion.

Decision: The refusal to register under Section 2(d) is affirmed in each application as to the services in both Classes 41 and 43.