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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Free-Flow Packaging International, Inc.

Serial No. 78878112

Edward S. Wright, Esq. for Free-Flow Packaging
International, Inc.

Linda A. Powell, Trademark Examining Attorney, Law Office
117 (Loretta C. Beck, Managing Attorney).

Before Grendel, Zervas and Kuhlke, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Free-Flow Packaging International, Inc., applicant
herein, seeks registration on the Principal Register of the
mark **MINI PAK'R** (in standard character form; MINI
disclaimed) for Class 7 goods identified in the application
as "machines for manufacturing and dispensing packing

material, namely machines for inflating and sealing air-filled cushioning materials.”¹

The Trademark Examining Attorney has issued a final refusal to register applicant’s mark, on the ground that the mark, as applied to the goods identified in the application, so resembles the mark **MINIPACK**, previously registered (in standard character form) for Class 7 goods identified in the registration as “packing machine for packaging objects in thermoshrinkable films”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).

Applicant has appealed the final refusal. After careful consideration of the evidence of record and the arguments presented, we reverse the refusal to register.

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.*

¹ Serial No. 78878112, filed on May 5, 1006. The application is based on intent-to-use, under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

² Registration No. 1248818, issued on August 23, 1983. Registered and renewed.

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).

The first *du Pont* factor requires us to determine the similarity or dissimilarity of the marks when viewed in their entireties in terms of appearance, sound, connotation and commercial impression. *Palm Bay Imports, Inc., supra*. We find that the marks are similar in terms of appearance, despite the fact that applicant's mark is presented as two words while the registered mark is presented as one compound word, and despite the fact that applicant's mark includes the apostrophe and the letter "R" at the end. These points of dissimilarity are outweighed by the presence in both marks of word MINI followed by the term PACK or PAK. We next find that the marks are similar in terms of sound, sharing the same first three syllables and differing only as to the extra "R" syllable at the end of applicant's mark. We next find that the marks are similar in terms of connotation, in that they both refer to packing. The PACK in the registered mark is used as a noun or a verb, while the PAK'R in applicant's mark, obviously a mere misspelling of PACKER, is a noun referring to the

machine doing the packing. However, this slight difference in meaning is outweighed by the fact that both marks have to do with packing. The word MINI means the same thing in both marks, i.e., small. Finally, we find that the marks are similar in terms of commercial impression in that they both begin with MINI and end with some form of the word "pack," i.e., PACK and PAK'R. The misspelling of "packer" as PAK'R in applicant's mark is not enough to render the marks dissimilar in terms of their commercial impressions. As applied to the goods in this case, however, we find that both marks are somewhat suggestive.

For these reasons, we find that applicant's mark and the cited registered mark are similar, and that the first *du Pont* factor accordingly weighs in favor of a finding of likelihood of confusion.

The second *du Pont* factor requires us to determine the similarity or dissimilarity of the goods as identified in the application and in the cited registration. It is not necessary that the goods be identical or even competitive in order to find that the goods are related for purposes of our likelihood of confusion analysis. That is, the issue is not whether consumers would confuse the goods themselves, but rather whether they would be confused as to the source of the goods. See *In re Rexel Inc.*, 223 USPQ

830 (TTAB 1984). It is sufficient that the goods be related in some manner, or that the circumstances surrounding their use be 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 source or that there is an association or connection between the sources of the respective goods. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

In this case, we find that the evidence of record fails to establish that applicant's "machines for manufacturing and dispensing packing material, namely machines for inflating and sealing air-filled cushioning materials," are sufficiently related to registrant's "packing machine for packaging objects in thermoshrinkable films," to support a finding of likelihood of confusion. Registrant's goods essentially are shrink wrap machines which are used to shrink wrap individual products. Applicant's goods are machines which manufacture and dispense air-filled cushioning materials for packaging.

The Trademark Examining Attorney has submitted Internet evidence suggesting that these end-products, i.e., shrink wrap film and air-cushioned packaging, can be manufactured and/or marketed by a single source. For example:

1. www.packagingutah.com - Product categories include: Anti-static peanuts, bubble, foam; cushioning foam, peanuts; void fill pillows; and polypropylene including shrink wrap/tools.
2. www.bubbleandfoampackaging.com - "We offer bubble wrap rolls for large wrapping and void fill applications, anti-static bubble wrap for packaging sensitive electronic equipment, bubble bags and bubble mailers for small delicate items. In addition to bubble packaging we have a full line of foam packaging products." Also - "Shrink Wrap - Industrial shrink film and shrink wrap supplies. We offer shrink film for DVD shrink wrap applications, food shrink wrap applications, marine shrink wrap, and shrink wrap heat guns."
3. www.ipspackaging.com - product categories include shrink wrap and shrink film, shrink wrap packaging. Also shrink wrap heat guns, shrink wrap machines. Also bubble wrap, bubble lined mailers, bubble bags, foam packaging.
4. www.thomasnet.com - Production Packaging Equipment, Inc. - "distributor of air pillow packaging machinery and void filling packaging equipment for protective packaging applications. Additional products include bagging, heat sealing, shrink wrap, blister sealing..."

However, applicant's and registrant's goods are not these end-products (shrink wrap film and air-cushioning products), but rather the machines which produce the end-products. There is no evidence that both types of machines

are manufactured or marketed by a single source.³ We find that the second *du Pont* factor weighs against a finding of likelihood of confusion.

The third *du Pont* factor requires us to consider the similarity or dissimilarity of the trade channels in which the respective goods are marketed. As noted above, the Trademark Examining Attorney has presented evidence which suggests that the end-product materials, i.e., shrink wrap film and air-filled cushioning, can be marketed together on the same Internet websites. However, these Internet websites fail to establish that the goods at issue here, i.e., the machines used to manufacture and dispense these end-products, are marketed in the same trade channels. The Trademark Examining Attorney argues that these machines would be used together in the packaging process by the same persons, i.e., the workers in a company's shipping department, but there is no actual evidence supporting this argument. We find that the third *du Pont* factor weighs against a finding of likelihood of confusion.

The fourth *du Pont* factor requires us to consider evidence pertaining to the conditions of purchase. In this case, there is no evidence showing how much these machines

³ Even with respect to the relatedness of the end-products, the evidence of record is de minimis.

cost, or the care with which they are purchased. However, applicant's machines and registrant's machines appear to be highly specialized machines for specialized tasks, which likely would be purchased by knowledgeable purchasers. We find that the fourth *du Pont* factor weighs against a finding of likelihood of confusion, or at least is neutral in our analysis.

Considering all of the evidence as it pertains to the relevant *du Pont* factors, we find that the record fails to support a finding of likelihood of confusion. The marks are similar, but suggestive. The evidence does not suffice to show that applicant's and registrant's machines (as opposed to the end-products made by the machines) are manufactured by a single source, or that they are marketed in the same trade channels to the same purchasers. The machines are likely to be purchased with a degree of care. On this record, we conclude that there is no likelihood of confusion.

Decision: The refusal to register is reversed.