

**THIS OPINION IS  
NOT A PRECEDENT  
OF THE TTAB**

*Decision Mailed:  
August 14, 2008  
GDH/gdh*

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Trinity Episcopal Church of Baton Rouge

Serial No. 78978633

R. Bennett Ford, Jr. of Roy, Kiesel, Keegan & DeNicola for  
Trinity Episcopal Church of Baton Rouge.

David Yontef, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

Before Hohein, Hairston and Richie De Larena, Administrative  
Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Trinity Episcopal Church of Baton Rouge has filed an  
application to register on the Principal Register the mark  
"TRINITY" and design, as reproduced below,



for "beverageware" in International Class 21.<sup>1</sup>

<sup>1</sup> Ser. No. 78978633, filed on May 10, 2006 as, initially, a part of Ser. No. 75643321, and which is based on an allegation of a bona fide intention to use such mark in commerce.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the following marks, the first two of which are owned by the same registrant (Trinity University) and the last of which is owned by a different registrant (Trinity Christian College) for the goods indicated below, as to be likely to cause confusion, or to cause mistake, or to deceive:

(i) the mark "TRINITY UNIVERSITY E TRIBUS UNUM 1869 SAN ANTONIO, TEXAS" and design, as illustrated below,



which is registered on the Principal Register for, in relevant part, "glass and plastic beveragewear, [and] coffee cups ..." in International Class 21;<sup>2</sup>

(ii) the mark "TRINITY UNIVERSITY," which is registered on the Principal Register in standard character form for, in pertinent part, "drinking glasses, plastic cups, and coffee mugs" in International Class 21;<sup>3</sup> and

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<sup>2</sup> Reg. No. 1,642,057, issued on April 23, 1991, which sets forth a date of first use of the mark anywhere and in commerce of May 1971; renewed. The terms "UNIVERSITY," "SAN ANTONIO," "TEXAS" and "1869" are disclaimed; the lining is a feature of the mark and does not indicate color; and the English translation of the words "E TRIBUS UNUM" is "ONE OUT OF THREE.". Although such registration also presently sets forth goods in two other classes, registration of applicant's mark has not been finally refused on the basis thereof.

<sup>3</sup> Reg. No. 2,273,474, issued on August 31, 1999, which sets forth a date of first use of the mark anywhere and in commerce of May 1971; combined affidavit §§8 and 15. Although such registration also sets

(iii) the mark "TRINITY CHRISTIAN COLLEGE," which is registered on the Principal Register in standard character form for, in relevant part, "household and kitchen utensils, namely ... glass beverage ware; plastic beverage ware; plastic cups, paper cups, coffee cups, plastic mugs, ... ; porcelain and earthenware pieces, namely mugs, cups, ...; [and] drinking steins ..." in International Class 21.<sup>4</sup>

Applicant has appealed and briefs have been filed. We affirm the refusal to register as to each of the cited registrations.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). See also In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity or dissimilarity in the goods at issue and the similarity or dissimilarity of the respective marks in their

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forth goods in four other classes, registration of applicant's mark has not been finally refused on the basis thereof.

<sup>4</sup> Reg. No. 2,762,101, issued on September 9, 2003, which sets forth a date of first use of the mark anywhere and in commerce of December 1, 1959. The words "CHRISTIAN COLLEGE" are disclaimed. Although such registration also sets forth goods in eight other classes, registration of applicant's mark has not been finally refused on the basis thereof.

entireties.<sup>5</sup> See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). Here, as pointed out by the Examining Attorney in his brief, inasmuch as applicant has conceded in its brief, as well as in its response to the initial Office Action, that its "beverageware" constitutes "goods [which] admittedly overlap with the goods of the registrations cited by the examiner," and hence would be sold through the same channels of trade to the same classes of consumers, the primary focus of our inquiry is on the similarities and dissimilarities in the respective marks, when considered in their entireties, along with, as applicant also asserts, the additional *du Pont* factor of the number and nature of similar marks in use on similar goods.

Turning, therefore, to consideration of the similarities and dissimilarities in the respective marks, we note as a preliminary matter that, "[w]hen marks would appear on virtually identical goods ..., the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 1034 (1994). See also *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443, 449 (TTAB 1980). While applicant concedes in its brief, as it must, that "[a]ll of the marks admittedly share the word Trinity," applicant nonetheless contends that "it is improper to

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<sup>5</sup> The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the

dissect the marks, comparing only the parts that are similar and ignoring the differences." Instead, applicant maintains that, when considered in their entirety, "it becomes clear that the many differences between the marks outweigh their single similarity." Applicant, in this regard, observes in particular that, unlike the registrants' marks, its mark includes a "design component" which "symbolizes the three crosses of Calvary, where Christ was crucified."

Applicant insists that such feature is significant in distinguishing its mark from the registrants' marks because:

In combination word-design marks, there is no general rule as to whether the word portion or the design portion will dominate the mark. In re Electrolyte Laboratories, Inc., 929 F.2d 645, 647 (Fed. Cir. 1990); TMEP § 1207.01(c)(ii). Rather, the determination of which portion of the mark is dominant must be made on a case-by-case basis, bearing in mind that marks must be considered in their entirety. Id. Here, the design component of applicant's mark is clearly dominant.

Applicant is a church. Its principle [sic] audience will include Christians. Similarly, the registered marks cited by the examiner clearly belong to Christian organizations. One of them includes the word Christian in its title. The other's motto is "E Tribus Unum" or "one out of three," a reference to the Holy Trinity that is central to Christianity. The Christians that make up the audience of the applicant and of the registrants can be expected to recognize the crosses of Calvary in applicant's design component. Accordingly, the religious symbolism of the design component of applicant's mark will make it particularly strong to the relevant members of the public.

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essential characteristics of the goods and differences in the marks." 192 USPQ at 29.

While applicant's mark includes this symbol of Calvary, none of the marks cited against the application include any similar symbol. Because of the significance of this symbol to the relevant audience, this difference gives the marks, when considered in their entirety, very different connotations and commercial impressions.

Registrants are a college and a university respectively. Both include the words "college" and "university" in their [respective] registered marks. Neither of these terms appear[s] in applicant's mark. These differences will also help distinguish the marks in the minds of the potential consumers.

Finally, the [mark of the] '057 Registration ... includes numerous design elements that further distinguish it from the applicant's mark. The principle [sic] component of the mark in the '057 Registration is an encircled rising sun, which bears no resemblance to anything in applicant's mark. A depiction of the Latin phrase E TRIBUS UNUM inscribed on a book, presumably, the bible, is also central to this design. Again, nothing similar appears in applicant's mark. These differences further distinguish applicant's mark from the design of the '057 [R]egistration.

Applicant also argues that a "search of the trademark office records indicate[s] that five different registrations currently exist in international class 021 that include the word TRINITY," namely, the three cited as bars to registration of applicant's mark and two others, owned by the same registrant, for the mark "TRINITY PACKAGING CORPORATION" in both a stylized script format<sup>6</sup> as well as standard character form<sup>7</sup> for, in each

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<sup>6</sup> Reg. No. 3,202,645, issued on January 23, 2007, which sets forth a date of first use of the mark anywhere and in commerce of December 1, 2005. The words "PACKAGING CORPORATION" are disclaimed.

instance, "molded plastic products, namely all purpose portable household containers, containers for household or kitchen use, household containers for food, [and] portable plastic containers for storing household and kitchen goods." Such is indicative, according to applicant, that "the Trinity portion of these marks is relatively weak with respect to these goods" and that it consequently "is only entitled to a narrow scope of protection."

We agree with the Examining Attorney, however, that when considered in their entirety, applicant's mark and each of the cited registrants' marks is substantially similar in sound, appearance, connotation and overall commercial impression such that, when used in connection with items of beverage ware, confusion as to source or sponsorship is likely to occur. In particular, we concur with the Examining Attorney that the dominant element of each of the marks is the word "TRINITY." As our principal reviewing court has noted, while the marks at issue are to be considered in their entirety, including any descriptive or generic terms, it is also the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, according to the court,

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<sup>7</sup> Reg. No. 3,107,862, issued on June 20, 2006, which sets forth a date of first use of the mark anywhere and in commerce of January 1, 2006. The words "PACKAGING CORPORATION" are disclaimed.

"[t]hat a particular feature is descriptive or generic with respect to the involved goods ... is one commonly accepted rationale for giving less weight to a portion of a mark ...."

Id. Additionally, as a general rule, the Examining Attorney correctly points out in his brief that it is often the first part of a mark which is most likely to be impressed upon the mind of a consumer. See, e.g., *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005); and *Presto Products Inc. V. Nice-Pak Products Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). Furthermore, the Examining Attorney properly notes that "[w]hen a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods" and, therefore, "the word portion is normally accorded greater weight in determining likelihood of confusion." See, e.g., *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); and *In re Drug Research Reports, Inc.*, 200 USPQ 554, 556 (TTAB 1978).

Applying these principles to the marks at issue, it is clear that while the design component of applicant's mark is visually prominent and is not insignificant, the dominant portion of applicant's mark, in terms of what customers would refer to when asking about or otherwise calling for applicant's goods, is the literal portion, namely, the prominently displayed word "TRINITY." As applicant conceded in a letter dated May 25, 2006,

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the word "TRINITY" constitutes the sole literal element of its mark inasmuch as the design component, rather than being a stylized rendering of the letters "ITI," serves to "symbolize both the three crosses of Calvary and the Holy Trinity (Father, Son & Holy Spirit)."<sup>8</sup> As such, the design component reinforces the basic notion of the word "TRINITY" in applicant's mark.

Similarly, the word "TRINITY" forms the dominant portion of each of the cited registrants' marks. Specifically, in the case of the marks "TRINITY CHRISTIAN COLLEGE" and "TRINITY UNIVERSITY," it is obvious that in each instance the first word thereof is the word "TRINITY." It is also plain that the words "CHRISTIAN COLLEGE" and "UNIVERSITY" are "non-source indicating entity designators," as argued by the Examining Attorney,<sup>9</sup> when used in connection with institutions of higher learning and any associated collateral goods, such as drinking glasses, plastic mugs and cups, and coffee mugs and cups, which are frequently marketed to those desiring to show an affinity therewith. The same is likewise respectively true as to the words "TRINITY" and "UNIVERSITY" in the mark "TRINITY UNIVERSITY E TRIBUS UNUM 1869 SAN ANTONIO, TEXAS" and design when used in connection with items of glass and plastic beverage ware and coffee cups. Clearly the

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<sup>8</sup> Applicant, noting that initially the Office's "TESS data lists the word mark as 'ITI TRINITY'" for its application but that "this is not correct," accordingly requested that "the 'word mark' portion of the records for this application be changed to simply 'TRINITY' as that is the only portion of the mark that includes text."

<sup>9</sup> As the Examining Attorney observes, it is common practice for the public simply to refer to institutions of higher learning without reference to the entire formal name of the particular college or university. Thus, for instance, "TRINITY CHRISTIAN COLLEGE" would

Latin motto "E TRIBUS UNUM," the founding year "1869," the geographically descriptive words "SAN ANTONIO, TEXAS" and even the logo itself, including the symbolic Bible and sun or light designs, are subordinate to the principal words "TRINITY UNIVERSITY."

While it is nonetheless the case that there are individual differences between applicant's mark and each of the three cited marks which are apparent upon a side-by-side comparison of the marks at issue,<sup>10</sup> the fact that the marks share the dominant term "TRINITY" as their principal source distinguishing element results in applicant's "TRINITY" and design mark being substantially similar to the cited registrants' "TRINITY CHRISTIAN COLLEGE," "TRINITY UNIVERSITY" and "TRINITY UNIVERSITY E TRIBUS UNUM 1869 SAN ANTONIO, TEXAS" and design marks in sound, appearance, connotation and overall commercial impression when the marks are considered in their entireties. See, e.g., Bose Corp. v. QSC Audio Products Inc., 293 F.3d 1367, 63 USPQ2d 1303, 1311 (Fed. Cir. 2002) ["The Board itself, other

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commonly be known simply as "TRINITY" and "TRINITY UNIVERSITY" would likewise be spoken of as "TRINITY" for short.

<sup>10</sup> Such a comparison, however, is not the proper test to be used in determining the issue of likelihood of confusion inasmuch as it is not the ordinary way that consumers will be exposed to the marks. Instead, it is the similarity of the general overall commercial impression engendered by the marks which must determine, due to the fallibility of memory and the concomitant lack of perfect recall, whether confusion as to source or sponsorship is likely. The proper emphasis is accordingly on the recollection of the average purchaser, who normally retains a general rather than a specific impression of marks. See, e.g., Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller, 477 F.2d 586, 177 USPQ 573, 574 (CCPA 1973); In re United Service Distributors, Inc., 229 USPQ 237, 239 (TTAB 1986); In re Solar Energy Corp., 217 USPQ 743, 745 (TTAB 1983); Envirotech Corp. v. Solaron Corp., 211 USPQ 724, 733 (TTAB 1981); and Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106, 108 (TTAB 1975).

courts and this court have been confronted frequently with situations similar to this one, in which a competing mark shares a core portion of senior marks, and in which the competing mark was found too similar to the other mark to earn mark status for itself"]. The substantial similarities between applicant's mark and each of the cited registrants' marks simply outweigh the differences therein and thus favor a finding of likelihood of confusion, especially when such marks are used in connection with legally identical items of beverageware.

As to applicant's argument that the marks at issue are nonetheless weak and, hence, the cited registrants' marks are entitled to only a narrow scope of protection, the Examining Attorney accurately observes that, as previously noted:

[T]hree of the five registrations cited by Applicant serve as the basis for the examining attorney's refusal while the remaining two registrations show marks registered [to the same registrant] with [respect to] different goods. Of significant interests [sic], and as conceded by Applicant in ... its brief, only two parties own the cited registrations. Therefore, the term TRINITY is strong ... [relative] to beverageware and is entitled to a broad scope of protection ....

Moreover, it should be pointed out that in any event it is well settled that third-party registrations are entitled to little weight on the issue of likelihood of confusion inasmuch as such registrations do not demonstrate use of the marks which are the subjects thereof in the marketplace or that the purchasing public is familiar with the use of those marks and has learned to distinguish between them. See, e.g., Olde Tyme Foods, Inc. v.

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Roundy's Inc., 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992); Smith Bros. Mfg. Co. v. Stone Mfg. Co., 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973); AMF Inc. v. American Leisure Products, Inc., 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973); and In re Hub Distributing, Inc., 218 USPQ 284, 285-86 (TTAB 1983).

Accordingly, we conclude that consumers and prospective customers who are familiar or otherwise acquainted with either the marks "TRINITY UNIVERSITY" and "TRINITY UNIVERSITY E TRIBUS UNUM 1869 SAN ANTONIO, TEXAS" and design for glass and plastic beveragewear, including drinking glasses, plastic cups, and coffee mugs and cups, or the mark "TRINITY CHRISTIAN COLLEGE" for glass and plastic beverageware, paper cups, coffee cups, plastic, porcelain and earthenware mugs and cups, and drinking steins would be likely to believe, upon encountering applicant's substantially similar mark "TRINITY" and design for its legally identical items of beverageware, that such goods emanate from, or are otherwise sponsored by or affiliated with, the same source.

**Decision:** The refusal under Section 2(d) is affirmed as to each of the cited registrations.