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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Brigade Electronics plc

Serial No. 79006447

Joel H. Bock of Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd. for Brigade Electronics plc.

Scott M. Sisun, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

Before Seeherman, Holtzman and Taylor, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Brigade Electronics plc (applicant) to register the mark BACKALARM (in standard character format) for "reversing alarm for motor vehicles" in Class 12.[1]

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that

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[1] Application Serial No. 79006447, filed September 21, 2004 under Section 66(a) of the Trademark Act.

applicant's mark, when applied to applicant's goods, so resembles the registered mark BAC-A-LARM (in typed form) for "vehicular electrical back-up alarms" in Class 12 as to be likely to cause confusion.[2]

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

We turn first to the goods, keeping in mind that the question of likelihood of confusion is determined on the basis of the identification of goods set forth in the application and registration, without limitations or restrictions as to the actual nature of the goods, 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, 18 USPQ2d 1889 (Fed. Cir. 1991); and Octocom Systems Inc. v. Houston

[2] Registration No. 2609204, issued August 20, 2002.

Computers Services Inc., 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990).

Applicant's goods are "reversing alarms for motor vehicles" and registrant's goods are "vehicular electrical back-up alarms." The wording may differ slightly but the goods are legally identical - both are back-up alarms for vehicles. Applicant's reversing alarms, which are not restricted to a type of power, fully encompass registrant's back-up alarms which are electrically powered. The examining attorney has introduced excerpts of articles and product catalogues obtained from various websites showing that "reversing" alarms and "back up" alarms are interchangeable terms used to refer to the same devices. According to the evidence, these devices are used to provide warning signals when operating a vehicle in reverse gear. Portions of the website printouts are reproduced below (emphasis added).

> Point of View: Dangers of Unevaluated **Reversing Alarms**
> ...
> In 1971, the Occupational Safety and Health Administration required a reverse signal alarm on all construction vehicles whose operator has an obstructed rear view. The RSA must be activated whenever reverse gear is engaged, whether or not the vehicle is moving, and it must sound an intermittent beep...
> ...
> Absence of Data
> In 1991, Gerard Scannell, the assistant secretary at OSHA wrote Senator Tom Harkin stating, "An analysis was made in 1971 when standards were first

promulgated. At that time, it was determined that **back-up alarms** saved lives."...
...
www.heavyequipmentnews.com

Hunter Industries in Safety First > Wayne Chomohus:
Sound the alarm!
Thursday 19 August 2004
Reversing alarms can be very effective in some situations - and very ineffective in others. **Back-up alarms** are necessary on many...
www.forkliftaction.com

PRODUCT RANGE
...
Horns:
Signal horns, supertone horns, buzzer, fanfare horns and **reversing alarms (Back-Up alarms).**
www.Hella.com (product catalogue)

Category: Automotive\Accessories
Preco - Preco Electronics - Safety Products for Commercial Vehicles...**Backup Alarms - Back-up Alarms - Reversing Alarms...**
www.elecdir.com ("Electronics and Electrical Web Directory")

Because the goods are legally identical, we must presume that the channels of trade for the respective goods are the same, and further that the goods are offered to all potential purchasers. Applicant does not dispute that the goods are identical, but argues that "the conditions present in the market place and the sophistication of the purchasers" weigh against a finding of likelihood of confusion. In particular, applicant argues that "purchasers in this area purchase alarms based not on

the name but on the specifications of the alarm, for example, the current and voltage required by the alarm to operate, the decibel level of the alarm, the size of the unit and the actual sound of the alarm."

Applicant's assertion that trademarks play no part in the decision to purchase these products is specious and misses the point. The point is that while the decision to purchase a specific alarm might be based on the characteristics of the alarm, consumers choosing an alarm with specific characteristics might purchase one instead of another based on the source of the goods, and hence the trademark does play a role in the purchasing decision.

It is reasonable to assume that commercial purchasers, such as owners and operators of commercial vehicles, comprise the relevant public for back-up alarms, and that such purchasers would be knowledgeable about the products and would exercise some degree of care in their purchasing decisions. However, even knowledgeable and careful purchasers of goods can be confused as to source under circumstances where similar marks are used on identical goods. 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.").

Thus, we turn to a consideration of the marks. In determining the similarity or dissimilarity of marks, we must consider the marks in their entireties in terms of 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).

Applicant contends that registrant's mark BAC-A-ALARM and applicant's mark BACKALARM are different in appearance, arguing that applicant's mark "lacks the idiosyncratic hyphenations" and "also lacks the peculiar spelling of the registered mark." Applicant further argues that the two marks create different commercial impressions. In applicant's view, BACKALARM, without hyphens, "has the feel or impression of functionality and sophistication." Applicant concludes that the differences in appearance and commercial impression are sufficient to avoid confusion.

We note that there are certain visual differences in the marks. Unlike applicant's mark BACKALARM, the syllables in registrant's mark BAC-A-LARM are hyphenated and the word BACK is misspelled as BAC. However, these differences in appearance are not particularly significant when we consider the overall similarities in the marks. The letters and their arrangement in each mark are virtually the same. In addition, BACKALARM and BAC-A-LARM are identical in sound. They are phonetic equivalents

that would both be pronounced as "back alarm." Further, BACKALARM and BAC-A-LARM, when viewed in the context of the goods, back-up alarms, have the identical meaning in relation to those goods, and they create the same or at least similar overall commercial impressions. The asserted image of "functionality and sophistication" that applicant attributes to its mark escapes us and would surely be lost on the average consumer. We do not find that the hyphens and misspelling in registrant's mark affect the commercial impression in any significant way.

Contrary to applicant's apparent contention, the marks do not have to be similar in all respects, that is, in sound, appearance, meaning and commercial impression, in order to support a finding of likelihood of confusion.[3] See Interstate Brands Corp. v. McKee Foods Corp., 53 USPQ2d 1910 (TTAB 2000); and Educational Development Corporation v. Educational Dimensions Corporation, 183 USPQ 492 (TTAB 1974). As the Court stated in In re Coors Brewing Co., 343 F.3d 1340, 68 USPQ2d 1059 (Fed. Cir. 2003) at p. 1062, "similarity is not a binary factor but is a matter of degree." See also Nautilus Group Inc. v. ICON Health and Fitness Inc., 372 F.3d 1330, 71 USPQ2d 1173, 1184 (Fed. Cir.

[3] In this regard, applicant's contention that the examining attorney's "decision" that similarity in sound alone may be sufficient to support a likelihood of confusion "is fatally flawed and must be reversed" is meritless. The examining attorney's statement of the law is correct, as are the cases the examining attorney relied on to support it. Applicant's baseless criticism of those cases as having "ignored the teachings of the DuPont decision" has been given no consideration.

2004) ("In general, the greater the similarity between the two marks at issue, the greater the likelihood of confusion.").

In this case, while we have considered the differences in the marks, we find that the identity in sound and meaning and the similarity in commercial impression far outweigh the slight differences in appearance. Purchasers who are familiar with registrant's mark BAC-A-LARM for back-up alarms, would be likely to believe, upon encountering applicant's mark BACKALARM for the identical goods, that the goods originated with or are in some way connected with the same entity. Even if purchasers remember registrant's mark as having hyphens and a misspelling, they are likely to perceive BACKALARM as simply a slightly different version of registrant's mark rather than as identifying a different source for the goods.

While the mark BAC-A-LARM may be suggestive of registrant's goods, and therefore not entitled to a broad scope of protection, the mark is at least entitled to protection from registration of this highly similar mark for identical goods. See In re Colonial Stores, Inc., 216 USPQ 793 (TTAB 1992). See also King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974) (likelihood of confusion is to be avoided as much between weak marks as between strong marks).

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

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