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Mailed: July 20, 2007
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Brigade Electronics PLC

Serial No. 79006965

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

Sani Khouri, Trademark Examining Attorney, Law Office 110
(Chris A. F. Pedersen, Managing Attorney).

Before Quinn, Hairston and Taylor, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Brigade Electronics PLC has filed an application to register on the Principal Register the mark BRIGADE in standard character format, for goods ultimately identified as "closed circuit television apparatus comprising television cameras and television monitors on vehicles; electrical or electronic switches, all for use in stopping or reducing the intake of polluted air into the driving and/or passenger compartments of road vehicles" in

International Class 9; and "parts, electrical parts and fittings for motor land vehicles, namely, noiseless alarms and backup alarms" in International Class 12.¹

The trademark examining attorney has finally refused registration 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 mark BRIGADE, which is registered for "automobiles,"² as to be likely to cause confusion, or to cause mistake, or to deceive.

Applicant has appealed. Briefs have been filed.

The examining attorney maintains that the respective goods are complementary because applicant's goods are designed to be used on automobiles, the goods in the cited registration. Also, the examining attorney maintains that the Board has long held that vehicles, on the one hand, and accessories, parts and attachments for vehicles, on the other hand, are related goods.

Applicant, in urging reversal of the refusal to register, argues that its goods are designed to improve the operational safety of vehicles and are therefore different

¹ Application Serial No. 79006965, filed September 21, 2004, under Section 66(a) of the Trademark Act.

² Registration No. 2929431 issued March 1, 2005.

in nature from automobiles themselves, and that the respective goods are not complementary and would be encountered in different markets. Thus, it is applicant's position that there is no likelihood of confusion.

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. duPont 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, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Considering first the duPont factor of the similarity of the marks, we note that applicant does not contend that its mark is dissimilar to that of registrant. In fact, applicant's mark is identical to the cited mark in sound, appearance, connotation and commercial impression. Use of identical marks is a fact which "weighs heavily against applicant." See *In re Martin's Famous Pastry Shoppe, Inc.*,

748 F.2d 165, 223 USPQ 1289 (Fed. Cir. 1984); and In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

We turn next to a consideration of the similarity or dissimilarity of the goods. We note at the outset of considering this duPont factor, where the marks are the same, as in this case, it is only necessary that there be a viable relationship between the goods in order to support a finding of likelihood of confusion. See In re Concordia International Forwarding Corp., 222 USPQ 35, 356 (TTAB 1983). Furthermore, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used or intended to be used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991), and cases cited therein. For the reasons set forth below, we find that applicant's goods in both classes 9 and

12 are sufficiently related to the goods identified in the cited registration so that confusion is likely to occur in the marketplace.

Applicant's goods are identified as follows: "closed circuit television apparatus comprising television cameras and television monitors on vehicles; electrical or electronic switches, all for use in stopping or reducing the intake of polluted air into the driving and/or passenger compartments of road vehicles" in International Class 9; and "parts, electrical parts and fittings for motor land vehicles, namely, noiseless alarms and backup alarms" in International Class 12. (emphasis added). It is readily apparent from the identification of goods that all of applicant's goods are for use on vehicles.

Moreover, applicant has stated that its goods are for "improving the operational safety of commercial vehicles, trucks, and passenger vehicles." (Response to Office Action, 10/25/2005). In view of the fact that applicant's goods are for use on vehicles, which includes automobiles, we agree with the examining attorney that applicant's goods and registrant's automobiles are complementary goods.

Further, as the examining attorney has noted, the Board has found a likelihood of confusion when different parties have used the same or similar marks for vehicles,

on the one hand, and vehicle parts, accessories, and equipment, on the other hand. See, e.g., In re Mitsubishi Jidosha Kogyo Kabushiki Kaisha, 19 USPQ2d 1633 (TTAB 1991) [SIGMA for automobiles vs. SIGMA for tires]; In re Jeep Corp., 222 USPQ 333 (TTAB 1984) [LAREDO for land vehicles and structural parts therefor vs. LAREDO for pneumatic tires]; In re General Motors Corp., 196 USPQ 574 (TTAB 1977) [STARFIRE for motor vehicles - namely, automobiles vs. STARFIRE for automatic shock absorbers]; and Jetzon Tire & Rubber Corp. v. General Motors Corp., 177 USPQ 476 (TTAB 1973) [GEMINI and GMINI for automobiles vs. GEMINI for vehicle tires]. In this case, applicant's goods are in the nature of parts, accessories and equipment for automobiles. Under the circumstances, we find that applicant's closed circuit television apparatus, electrical or electronic switches, noiseless alarms and backup alarms for use on vehicles and registrant's automobiles are related goods. In view of the foregoing, the duPont factor

of the similarity of the goods favors a finding of likelihood of confusion.³

We next turn to the duPont factors of the similarity or dissimilarity of the trade channels and classes of purchasers. Applicant argues that "consumers seeking to purchase 'automobiles' under the registered mark would not encounter the Applicant's mark in the same conditions, in the same markets, or under the same circumstances. The market for goods that improve the safety of vehicles is distinct and completely separate from the market to purchase new and used vehicles." (Response to Office Action, 10/25/2005). Applicant, however, has failed to offer any evidence in support of this argument. In any event, we note that neither the application nor the cited registration is any way restricted as to channels of trade or classes of purchasers for the respective goods. It is

³ To establish a relationship between the goods involved herein, the examining attorney made of record several use-based third-party registrations which show that entities have adopted a single mark for automobiles, on the one hand, and various accessories, parts and attachments therefor, on the other hand. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1983). However, a close review of the third-party registrations submitted by the examining attorney reveals that none of these registrations covers any of applicant's specific types of goods. Thus, we have not relied on these third-party registrations in reaching our finding that applicant's and registrant's goods are related.

therefore presumed that the goods identified in the application and the cited registration move in all normal channels of trade, and that the goods are available to all potential customers of such products. In re Elbaum, 211 USPQ 639 (TTAB 1981). When we operate under these presumptions, we must conclude that both applicant's and registrant's automobiles are sold at automobile dealerships (although by different departments) to members of the general public. In other words, we must conclude that purchasers would encounter both applicant's and registrant's goods at the same automobile dealerships. Thus, the duPont factors of the channels of trade and classes of purchasers for the respective goods also favor a finding of likelihood of confusion.

The final duPont factor we consider is that of the conditions of sale. As noted, the goods involved herein are of a type that may be purchased by members of the general public. We recognize that automobiles are expensive and that consumers typically do not make this purchasing decision based on impulse. While applicant has offered no information with respect to the cost of its goods, consumers may exercise some degree of care in purchasing applicant's goods, since according to applicant, its goods are designed to improve the operational safety of

vehicles. However, even if we assume that some degree of care were exhibited in making the purchasing decisions, because the marks are identical and the goods are related, even careful purchasers are likely to assume that the marks identify goods emanating from a single source. In particular, purchasers are likely to assume that applicant's closed circuit television apparatus, electrical or electronic switches, noiseless alarms and backup alarms for use on vehicles offered under the mark BRIGADE were manufactured or approved by registrant, or that they were made by registrant especially for its BRIGADE automobiles.

In view of the foregoing, we find that persons familiar with registrant's BRIGADE automobiles, who encounter applicant's BRIGADE mark on a closed circuit television apparatus comprising television cameras and television monitors on vehicles, electrical or electronic switches for use in stopping or reducing the intake of polluted air into the driving and/or passenger compartments of road vehicles, noiseless alarms or backup alarms, would be likely to assume that such goods emanate from, or are otherwise sponsored by or affiliated with, the same source.

Finally, to the extent that we have any doubts, we must resolve doubt on the issue of likelihood of confusion against applicant and in favor of the registrant. In re

Ser No. 79006965

Hyper Shoppes (Ohio) Inc., 837 F.2d 463, 6 USPQ2d 1025
(Fed. Cir. 1988).

Decision: The refusal to register is affirmed as to
the goods in both Classes 9 and 12.