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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Stamperia Carcano Giuseppe S.P.A.

Serial No. 79009571

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Carcano Giuseppe S.P.A.

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112 (Angela Wilson, Managing Attorney)

Before Seeherman, Grendel and Drost, Administrative
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Stamperia Carcano Giuseppe S.P.A., applicant herein,
seeks registration on the Principal Register of the mark
CARTEC (in standard character form) for goods identified in
the application as "metal parts for cables and chains,
namely cable clips, wires and thimbles; metal rigging

chains, turnbuckles, shackles, eye nuts, bolts, hooks," in Class 6.¹

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 CARTECH, previously registered (in standard character form) for goods identified in the registration as "steel and other alloys and metals in the form of wire, strips, bars, billets, tubing blanks and shapes," in Class 6, 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 of counsel, we affirm 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. 79009571, filed on June 16, 2004. The application is a §66(a) application, based on International Registration 0845469. 15 U.S.C. §1141(a).

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).

We begin with the second *du Pont* factor, which requires us to determine the similarity or dissimilarity of the goods as they are identified in the application and in the cited registration. It is settled that 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).

Applicant's goods are identified as "metal parts for cables and chains, namely cable clips, wires and thimbles; metal rigging chains, turnbuckles, shackles, eye nuts, bolts, hooks." The goods in the cited registration are identified as "steel and other alloys and metals in the form of wire, strips, bars, billets, tubing blanks and shapes."

First, looking at the respective identifications of goods on their face, we find that registrant's broadly identified "...metals in the form of wire..." encompass and thus are legally identical to applicant's "metal parts for cables and chains, namely ...wires." Next, we find that the evidence of record further establishes that applicant's "eye nuts, bolts and hooks" are related to registrant's products in the marketplace. In this regard, there are seven third-party registrations which include in their identifications of goods both "bolts" and the types of products identified in the cited registration. There are five third-party registrations which include in their identification of goods both "nuts" and the types of

products identified in the cited registration. There are three third-party registrations which include in their identification of goods both "hooks" and the types of products identified in the cited registration. Although such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

For these reasons, we find that applicant's goods as identified in the application are identical as to "wire" and related as to "bolts," "nuts" and "hooks." The second *du Pont* factor weighs in favor of a finding of likelihood of confusion.

The third *du Pont* factor requires us to compare the trade channels in which the goods are marketed. To the extent that applicant's metal wire is legally identical to the metal wire identified in the cited registration, we find that the trade channels for such goods likewise are legally identical. Additionally, the record includes printouts from four third-party websites which show that

wire is marketed together with the products identified in the cited registration. There also are four third-party websites which market "bolts" along with registrant's types of products, and three third-party websites which market "nuts" along with registrant's types of products. For these reasons, we find that the trade channels are identical in part and otherwise similar. The third *du Pont* factor weighs in favor of a finding of likelihood of confusion.

The fourth *du Pont* factor requires us to consider evidence pertaining to the conditions of purchase. We find that there is no evidence in the record to support applicant's contention that the goods at issue always would be purchased by sophisticated and careful purchasers. We find on this record that the fourth *du Pont* factor is at best neutral in this case.

We turn finally to the first *du Pont* factor, which requires us to determine the similarity or dissimilarity of the marks when viewed in their entirety in terms of appearance, sound, connotation and commercial impression. *Palm Bay Imports, Inc., supra*. The test, under the first *du Pont* factor, 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 goods 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). In cases such as this, where the applicant's goods are identical in part to the goods identified in the cited registration, the degree of similarity between the marks which is required to support a finding of likelihood of confusion is less than it would be if the goods were not identical. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Applicant's mark CARTEC and the cited registered mark CARTECH obviously are identical in terms of appearance but for the presence of the letter "h" at the end of the cited registered mark. On balance, the marks look similar, sharing six out of seven letters. The marks are identical in terms of sound. In terms of meaning, it appears on this record that both CARTECH and CARTEC are arbitrary or coined terms as applied to the goods at issue. The letters "tech" in the registered mark might be seen as being short for "technology" or "technician," but we find that the letters "tec" at the end of applicant's mark might reasonably be

understood by purchasers to connote the same thing. On balance, we find that whatever meaning might be ascribed to the cited registered mark, applicant's mark is so similar that it would be likely to connote the same thing.

Finally, we find that the marks are similar in terms of commercial impression. Again, the marks are identical except for the "h" at the end of the cited registered mark. That point of dissimilarity does not suffice to distinguish the marks in their entireties.

Comparing the marks in their entireties in terms of appearance, sound, connotation and commercial impression, we find that the marks are similar. Moreover, as noted above, where the applicant's goods are identical (even in part) to the goods identified in the cited registration, as they are in this case, the degree of similarity between the marks which is required to support a finding of likelihood of confusion diminishes. We find that the first *du Pont* factor weighs in favor of a finding of likelihood of confusion.

Considering all of the evidence of record as it pertains to the *du Pont* factors, and for the reasons discussed above, we conclude that a likelihood of confusion exists. To the extent that any doubts might exist as to the correctness of this conclusion, we resolve such doubts

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against applicant. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc. supra.*

Decision: The refusal to register is affirmed.