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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Rubel & Menasche S.A.

Serial No. 79012393

H. John Campaign of Graham, Campaign P.C. for Rubel & Menasche S.A.

William Breckenfeld, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Grendel, Drost, and Cataldo, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On May 19, 2005, applicant, Rubel & Menasche S.A.,
filed an application to register the mark  [XXI
CENTURY CUT and design] on the Principal Register for goods
ultimately identified as:

Precious metals and alloys thereof, namely, silver and gold; jewellery including rings, brooches, earrings, chains, bracelets, watches of precious metals, namely, silver, gold, and non-precious metals and other sorts of ornaments; bijouterie; precious stones; clocks and

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watches and other chronometric instruments; diamonds for industrial use in Class 14¹

Applicant has disclaimed the term "Cut."

The examining attorney refused to register applicant's mark under Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) because of a registration for the mark CENTURY CUT (typed or standard character drawing) for cut diamonds and other precious and semi-precious gemstones in Class 14.²

When the refusal was made final, applicant filed a request for reconsideration and this appeal.

The examining attorney argues that the "goods are overlapping as precious stones include cut diamonds and other precious gemstones. Additionally, [the term] cut diamonds includes cut diamonds for industrial use." Brief at unnumbered p. 5. The examining attorney also argues that "the diamond design elements are so integrated with the XXI as to make the letters appear to be settings for the diamonds. The average reader is likely to be first drawn to the easily-read wording CENTURY CUT." Brief at unnumbered p. 9.

¹ Serial No. 79012393. The application is an extension of protection filed under the provision of Section 66(a) of the Trademark Act. 15 U.S.C. § 1141f(a).

² Registration No. 2326125 issued March 7, 2000, affidavit under § 8 accepted, "Cut" disclaimed.

On the other hand, applicant argues that there is no likelihood of confusion because its "mark consists of the predominant term 'XXI' with two diamonds placed in the top part of the two 'X-es, [''] underlined by the term 'Century Cut.'" Brief at 4. In addition, applicant relies on the "truism that purchasers of diamonds are considering expensive, luxury goods, and thus they become a sophisticated buying class, entirely unlikely to be deceived by XXI CENTURY CUT precious stones or diamonds for industrial use when they want Registrant's CENTURY CUT diamond jewelry." Brief at 4.

In cases involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003) and *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In considering the evidence of record on these factors, we must keep in mind that "[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We will first consider the relationship between the goods. In this case, registrant's goods include cut diamonds and other precious gemstones. Applicant's goods include precious stones and diamonds for industrial use. We note that the term "precious stone" is defined as "any of several gems, such as the diamond or the ruby, that have high economic value because of their rarity or appearance."³ Therefore, we consider that the goods in this case are identical in part inasmuch as both applicant's and registrant's goods include cut diamonds and industrial diamonds. Also, registrant's precious gemstones are presumed to overlap with applicant's precious stones. When goods are identical, "the degree of similarity necessary to support a conclusion of likelihood of confusion declines.'" *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (quoting *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992)). Also, because the goods are in part identical, we must assume that the purchasers and channels of trade are also the same. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part

³ *The American Heritage Student Dictionary* (1998). We take judicial notice of this definition. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade"); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers").

We next examine the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005).

Registrant's mark consists of the two words CENTURY CUT in typed or standard character form. The registrant's mark is identical to part of applicant's mark that also consists of the words CENTURY CUT. Because registrant's mark is in typed or standard character form, we must presume that there is no difference in the stylization of these words in applicant's and registrant's marks. *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983) ("[T]he argument concerning a difference in type style is not viable where one party asserts rights in no particular

display"). However, the marks are dissimilar because applicant adds the letters XXI and the design of two diamonds. While the XXI and diamonds design is certainly larger than the words Century Cut, it is clear that the words Century Cut are plainly visible. Applicant assumes that most purchasers will see the mark as 21st Century Cut and argues that the examining attorney did not take "into consideration that the 21st Century is unlike any other Century in the history of the world." Brief at 6. Even if it was established that the 21st Century is an unusual century, we nonetheless believe that the words CENTURY CUT will be the dominant feature of applicant's mark. First, the terms are readily apparent to any purchaser viewing the mark. The letters XXI, which also can be the Roman numerals for the number 21, are displayed in a design of the goods. The design of two diamonds for goods that include diamonds would hardly be the feature that purchasers would use to distinguish diamonds. Furthermore, the letters XX appear as part of the design of the diamonds inasmuch as they serve as settings for the diamonds. We add that purchasers would have to separate the XXI from the diamond design and recognize that one meaning of the letters is "21st." Therefore, the "21st" meaning of the mark is unlikely to be the commercial impression that many

purchasers will have of the marks. Purchasers will likely view the marks as CENTURY CUT and CENTURY CUT and diamonds and settings design. Furthermore, even among those that do understand applicant's mark to be 21st CENTURY CUT, they are likely to believe that it is simply another refinement of registrant's CENTURY CUT cut diamonds and precious gemstones. When we compare the marks, we conclude that they are similar in sound, appearance, meaning, and commercial impression. While there are differences, the marks are dominated by the identical term CENTURY CUT, and the Roman numerals and the diamonds design does not result in marks that are not confusingly similar. *In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) ("With respect to JOSE, the Board correctly observed that the term simply reinforces the impression that GASPAS is an individual's name. Thus, in accord with considerable case law, the JOSE term does not alter the commercial impression of the mark." The marks JOSE GASPAS GOLD and GASPAS'S ALE were determined to be similar). *See also Wella Corp. v. California Concept Corp.*, 558 F.2d 1019, 1022, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT and design held likely to be confused with CONCEPT for hair care products); and *In re Hepperle*, 175 USPQ 512 (TTAB 1972) (ACAPULCO GOLD for suntan lotion

and ACAPULCO for lipstick confusingly similar). We add that "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of the mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant also maintains that the goods are expensive and that the purchasers are sophisticated. The examining attorney points out that the "record contains no evidence as to the cost of either the applicant's or registrant's goods." Brief at unnumbered p. 6. While we can assume that some purchasers of diamonds are sophisticated and some diamonds are very expensive, with the lack of evidence in the record, we cannot assume that all diamonds are necessarily very expensive and that the purchasers would be sophisticated. *In re Opus One Inc.*, 60 USPQ2d 1812, 1817 (TTAB 2001) ("There is no evidence in the record from which we might conclude that wine and restaurant services, in general, are necessarily expensive, or that purchasers thereof are necessarily sophisticated and careful in making their purchasing decisions"). To the extent that purchasers are sophisticated, it is also true that these purchasers are not necessarily able to avoid confusion when

marks as similar as CENTURY CUT and CENTURY CUT and a diamond design with the Roman numerals XXI are used on identical goods. *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1477 (TTAB 1999) ("We recognize applicant's attorney's point that its software is expensive and that purchasers of it are likely to be sophisticated. Suffice it to say that no evidence in support of these assertions was submitted. In any event, even careful purchasers are not immune from source confusion"). *See also In re Hester Industries, Inc.*, 231 USPQ 881, 883 (TTAB 1986) ("While we do not doubt that these institutional purchasing agents are for the most part sophisticated buyers, even sophisticated purchasers are not immune from confusion as to source where, as here, substantially identical marks are applied to related products").

When we consider that the goods of applicant and registrant overlap and that the marks are dominated by the identical words CENTURY CUT, we conclude that confusion is likely.

Decision: The examining attorney's refusal to register applicant's mark for the identified goods on the ground that it is likely to cause confusion with the cited registration under Section 2(d) of the Trademark Act is affirmed.