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**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

June 10, 2003
Paper No. 14
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Advance Magazine Publishers Inc.

v.

Ronay Brown

Opposition No. 118,342 to application Serial No. 75/557,737
filed on September 21, 1998

Eric E. Gisolfi of Sabin, Bermant & Gould for Advance Magazine
Publishers Inc.

Ronay Brown, pro se.

Before Hohein, Bucher and Drost, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Ronay Brown has filed an application to register the
mark "G.Q. NAILS" for services identified as a "full beauty care
salon for hands, feet, body, hair, and face."¹

Advance Magazine Publishers has opposed registration on
the ground that since as early as 1957, opposer and its
predecessors have continuously used the mark "GQ"; that opposer

¹ Ser. No. 75/557,737, filed on September 21, 1998, which alleges a
date of first use anywhere and in commerce of October 28, 1985. The
word "NAILS" is disclaimed.

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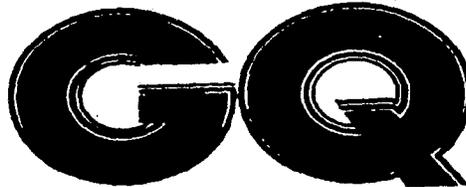
is the owner of valid and subsisting registrations for the following:

(1) the mark "GQ," which is registered for:

(a) a "men's magazine dealing with fashion, entertainment and other topics of general interest";² and

(b) "shopping bags";³

(2) the mark "GQ" and design, which is registered as reproduced below



for a "men's magazine dealing with fashion, entertainment and other topics of general interest";⁴ and

(3) the mark "GQ" and design, which is registered as shown below



for a "magazine dealing with fashion, entertainment, health, lifestyle and other

² Reg. No. 1,298,799, issued on October 2, 1984, which sets forth a date of first use anywhere and in commerce of June 1, 1957; combined affidavit §§8 and 15.

³ Reg. No. 1,599,570, issued on June 5, 1990, which sets forth a date of first use anywhere and in commerce of 1985; renewed.

⁴ Reg. No. 1,159,133, issued on June 30, 1981, which sets forth a date of first use anywhere and in commerce of June 1, 1957; renewed.

topics of general interest, directed to men";⁵

that through longstanding use, the mark "GQ" has become famous and synonymous with opposer and its goods; and that applicant's mark, when applied to her services, so resembles opposer's previously used and registered "GQ" mark as to be likely to cause confusion, mistake or deception.⁶

Applicant, in her answer, has denied the salient allegations of the notice of opposition.

The record consists of the pleadings; the file of the opposed application; and, as opposer's case-in-chief, a notice of reliance on certified copies of its pleaded registrations, showing that each registration is subsisting and owned by opposer, and a notice of reliance on applicant's answers to opposer's first set of interrogatories.⁷ Applicant did not introduce any evidence in her behalf. Only opposer filed a brief⁸ and neither party requested an oral hearing.

⁵ Reg. No. 1,833,829, issued on May 3, 1994, which sets forth a date of first use anywhere and in commerce of 1983; combined affidavit §§8 and 15.

⁶ Although opposer also raises an allegation of dilution by pleading that applicant's mark "will lessen the capacity of Opposer's famous mark to identify and distinguish its goods ... within the meaning of Section 43(c) of the Trademark Act," such allegation will not be given further consideration inasmuch as it was neither pursued at trial nor argued in opposer's brief.

⁷ While it is also noted that opposer attached, as Exhibit A to its brief, a copy of the April 2002 issue of its "GQ" magazine, such exhibit has been given no consideration since it was not made of record during opposer's initial testimony period. As indicated in TBMP §705.02: "Exhibits and other evidentiary materials attached to a party's brief on the case can be given no consideration unless they were properly made of record during the time for taking testimony."

⁸ As set forth in TBMP §706.02: "Factual statements made in a party's brief on the case can be given no consideration unless they are

Priority of use is not in issue in this proceeding inasmuch as opposer has proven that, as noted above, each of its pleaded registrations is subsisting and is owned by opposer. See King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). Opposer's ownership thereof also serves to establish its standing to bring this proceeding. Id. The sole issue to be determined in this case is thus whether applicant's "G.Q. NAILS" mark for her "full beauty care salon" services so resembles opposer's "GQ" mark for its general interest men's magazine and/or its shopping bags as to be likely to cause confusion as to the source or sponsorship of the respective services and goods.

According to the record, the sole information with respect to opposer is that, as noted previously, it is the owner of its pleaded registrations for the mark "GQ" and that such registrations are subsisting. As to applicant, the record reveals that she operates "a full service nail salon" under the mark "G.Q. NAILS." (Answer to Interrogatory No. 1.) Applicant commenced such business, as a sole proprietorship, on October 7, 1985 at a location in Houston, Texas. As of the July 12, 2001 date of service of her answers to opposer's interrogatories, she has continued to operate her full service nail care salon under her mark at a location in Buford, Georgia.

supported by evidence properly introduced at trial. Statements in a brief have no evidentiary value, except to the extent that they may serve as admissions against interest." While the latter is not applicable herein, it is pointed out that, among other things, there simply is no evidence of record as to opposer's asserted longstanding use of its "GQ" mark, much less any evidence that such mark is famous as contended by opposer in its brief.

Applicant's annual expenditures on advertising and promotion of her mark have varied, but such "has not been more than \$700.00 in any one given year." (Answer to Interrogatory No. 6.) While applicant advertises to the general public through, inter alia, the use of flyers, business cards, local community newspapers and direct mail, her advertising is mostly targeted to women. Applicant has not licensed or otherwise authorized third parties to use her mark.

While applicant admits that she "is familiar with GQ magazine," there is no indication as to when such familiarity began. (Answer to Interrogatory No. 12.) Applicant states, however, that she has "[n]ever bought a copy [thereof] nor ... had a subscription [thereto]." (Answer to Interrogatory No. 14.) Applicant also notes that "in May of 1996" she conducted a search with respect to her mark "at the Houston University Rice Library," but did not find any prior third-party applications, registrations or uses with respect thereto. (Answer to Interrogatory No. 5.) According to applicant, she chose the mark "G.Q. NAILS" for her business "because of a car my father bought me during my sophomore year in high school" and on which she "had personalize[d] plates of the mark ... for about 5 years." (Answer to Interrogatory No. 13.)

Upon consideration of the pertinent factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, we find on this record that, contrary to the arguments set forth by opposer in its brief, opposer has not met

its burden of demonstrating that confusion as to source or sponsorship is likely to occur. Here, the sole *du Pont* factor in opposer's favor is the similarities in the respective marks. Specifically, we agree with opposer that, as argued in its brief, the respective marks overall are "very similar in appearance, sound and connotation," given that applicant's mark is dominated by the term "G.Q." due to the descriptiveness of the word "NAILS" with respect to the nail care services applicant provides in connection with her "full beauty care salon for hands, feet, body, hair, and face." See, e.g., *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); and *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). The respective marks, when considered in their entirety, are consequently substantially similar in commercial impression.

Nevertheless, this record contains no evidence (such as sales figures, advertising expenditures and/or length of use) to support the allegation in the notice of opposition that, through longstanding use, the mark "GQ" has become famous and synonymous with opposer and its goods and, thus, is entitled to "a wide latitude of legal protection." See, e.g., *Kenner Parker Toys Inc. v. Rose Art Industries Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 862, 113 S.Ct. 181 (1992). The record herein also contains no evidence to support opposer's contention in its brief that "[b]ecause 'GQ' is not a common abbreviation, initial[ism] or acronym, ... Applicant chose to include 'GQ' as part of her combination mark because of the

association between fashion and style and the mark 'GQ'." The mere fact that applicant has admitted her familiarity with opposer's "GQ" mark does not mean, as asserted by opposer in its brief, that applicant "was well aware of Opposer's magazine when she adopted her mark." Such assertion is nothing more than mere speculation on opposer's part, inasmuch as there is no evidence as to when applicant became familiar with opposer's mark, and we find nothing in the record which even suggests that applicant adopted her mark and/or filed her application for registration thereof in bad faith.

Finally, with respect to whether applicant's full beauty care salon services are so related in a commercial sense to opposer's general interest men's magazine and/or its shopping bags as to be likely to cause confusion, mistake or deception when respectively sold under the substantially similar marks "G.Q. NAILS" and "GQ," we observe that, on their face, applicant's services are distinctively different from opposer's goods. In particular, it is plain that applicant's services, in light of the focus of her advertising efforts on women, would be principally directed to women customers, whereas opposer's men's magazines, while covering fashion, entertainment, health, lifestyle and other topics of general interest, are primarily directed to men. Although opposer cites several cases for the proposition that it is "well settled that confusion is likely to occur from the use of similar marks for goods, on the one hand, and for services including those goods[,] on the other hand," it is intuitively obvious that neither general interest men's

magazines nor shopping bags are used in the rendering of full beauty care salon services.

Opposer, however, also maintains in its brief that the specific services and goods involved herein are "closely related because they both involve fashion and style," contending that:

In the instant case, Opposer's mark is used for publications which provide information about fashion, style and other general interest topics. Applicant provides style and fashion related services[,] namely, beauty salon services, to its customers.

Nonetheless, even if applicant's full beauty care salon services could be broadly characterized, as is the case with opposer's men's magazines, as devoted to or involving fashion and style, the mere fact that terminology may be found which encompasses the parties' services and goods does not mean that customers therefor will view the services and goods as related in the sense that they will assume that they emanate from or are associated with a common source. See, e.g., General Electric Co. v. Graham Magnetics Inc., 197 USPQ 690, 694 (TTAB 1977); and Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd., 188 USPQ 517, 520 (TTAB 1975). Simply put, applicant provides full beauty care salon services, while opposer sells general interest men's magazines and shopping bags. Merely because such services and goods arguably may be subsumed under the broad rubric of involving matters of "fashion and style" does not mean, absent supporting evidence, that such diverse services and products would be regarded by prospective customers as coming from or being sponsored by the same source.

Accordingly, given the absence on this record of any proof as to (a) the asserted fame or strength of opposer's "GQ"

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mark, (b) bad faith on the part of applicant in the adoption and/or use of her "G.Q. NAILS" mark, and/or (c) the claimed closely related nature of the parties' services and goods, the fact that applicant's mark is substantially similar to opposer's mark does not suffice to meet opposer's burden of demonstrating that contemporaneous use by the parties of their respective marks in connection with their specifically different services and goods is likely to cause confusion, mistake or deception as to origin or affiliation.

Decision: The opposition is dismissed.