

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

Mailed:
November 10, 2004
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Miss Universe L.P., LLLP
v.
Rainbow Productions and Publications, Inc.

Opposition No. 91122676
against Application Serial No. 78019444

Opposition No. 91124156
against Application Serial No. 78019435

Andrea L. Calvaruso and Marya Lenn Yee of Donovan & Yee LLP
for Miss Universe L.P., LLLP.

Rainbow Productions and Publications, Inc., *pro se*.

Before Hohein, Chapman and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Rainbow Productions and Publications, Inc. seeks
registration on the Principal Register of the mark MISS T-
GIRL USA for services recited as "entertainment services in
the nature of promoting and conducting gay beauty

pageants,"¹ and for MISS DRAGQUEEN USA for services recited as "entertainment services in the nature of conducting gay beauty pageants,"² both in International Class 41.

The above-captioned opposition proceedings were consolidated by order of the Board dated February 25, 2002. The cases are now ready for decision and shall be decided in this single opinion, which shall be entered in the proceeding files of both oppositions.

Opposer has opposed registration of the marks in both of applicant's applications, alleging as grounds therefor that it is the prior user of a family of marks, including MISS USA, MISS TEEN USA, variants of these marks having fifty state designations, e.g., MISS [STATE] USA and MISS [STATE] TEEN USA, and MRS. USA, all used on or in connection with beauty pageants and promotional goods related to these pageants; that opposer owns a Principal Register registration for the mark MISS USA for "entertainment services, namely, presentation of pageants

¹ Application Serial No. 78019444 was filed on August 2, 2000 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. Applicant disclaimed the words T-GIRL USA.

² Application Serial No. 78019435 was filed on August 2, 2000 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. Applicant disclaimed the words DRAGQUEEN USA.

and contests" in International Class 41³ and a Principal Register registration for the mark MISS TEEN USA for "entertainment services, namely, promoting and conducting beauty pageants" in International Class 41;⁴ that it is the owner of other variants of the MISS USA marks for all fifty states and the District of Columbia; that applicant's marks, when used in connection with the services identified in applicant's applications, so resemble opposer's previously-used and registered marks, including MISS USA and MISS TEEN USA, that it would be likely to cause confusion, to cause mistake, or to deceive, under Trademark Act Section 2(d), 15 U.S.C. §1052(d); and that applicant's proposed marks "will dilute the distinctive quality of Opposer's famous marks."

Applicant, in its answer to Opposition No. 91122676 (against MISS T-GIRL USA), denied the salient allegations of the opposition. However, applicant never filed an answer to Opposition No. 91124156 (against MISS DRAGQUEEN

³ Registration No. 1601484 issued to Miss Universe, Inc. on June 12, 1990 based upon a claim of use in commerce since at least as early as 1952, section 8 affidavit accepted and section 15 affidavit acknowledged; renewed.

⁴ Registration No. 1660124 issued to Miss Universe, Inc. on October 8, 1991 based upon a claim of use in commerce since at least as early as 1983, section 8 affidavit accepted and section 15 affidavit acknowledged; renewed. The word TEEN is disclaimed apart from the mark as shown.

USA). Furthermore, applicant did not take any testimony or submit any evidence in the consolidated proceeding, and did not file a brief on the consolidated cases. Neither party requested an oral hearing.

The record consists of the pleadings; the files of the involved applications; trial testimony, with related exhibits, taken by opposer of Anthony Santomauro, opposer's vice president of business planning and development; and status and title copies of opposer's pleaded registrations, introduced by way of opposer's notices of reliance.

As noted above, in its order of February 25, 2002, the Board consolidated these two proceedings, based upon opposer's motion of November 6, 2001 to do so. In addition, the Board's order noted that inasmuch as the answer to Opposition No. 91124156 was due on November 14, 2001, and it appeared that no answer had been filed, notice of default was entered against applicant under Fed. R. Civ. P. 55(a). Applicant was given thirty days to show cause why judgment by default should not be entered against applicant. The record reflects no response from applicant. Accordingly, default judgment is hereby entered against applicant in Opposition No. 91124156; the opposition is

sustained; and registration to applicant for that application is refused.

We turn then to a discussion of the merits of Opposition No. 91122676.

Likelihood of Confusion

THERE IS NO ISSUE AS TO PRIORITY

Opposer has introduced into the record by way of its notices of reliance copies of its pleaded registrations, which show that they are valid, subsisting and owned by opposer. Thus, this proof removes the issue of priority from this case. See King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

LIKELIHOOD OF CONFUSION FACTORS

The record demonstrates that opposer produces three large beauty pageants each year: "Miss USA," "Miss Teen USA" and "Miss Universe." Opposer also licenses all fifty states and the District of Columbia to use its service marks in promoting and conducting local pageants in each of the states and the District of Columbia (e.g., MISS NEW YORK USA, MISS ALABAMA TEEN USA, etc.).

Opposer and its predecessor have used MISS USA continuously in presenting pageants and contests each year

since 1952, and have used MISS TEEN USA continuously in promoting and conducting beauty pageants each year since 1983. According to the Nielsen Media ratings, in both 2001 and 2002, approximately eight million viewers watched the MISS USA pageant while seven million viewers watched the MISS TEEN USA pageant. In the year 2001, both of these pageants were also broadcast in fifty-six foreign countries.

In addition to the television broadcasts of the pageants themselves, opposer's MISS USA and MISS TEEN USA events are covered on entertainment television programs such as the "Late Show," "Late Night with David Letterman," "E! Entertainment Television," "Extra," "Access Hollywood," "The Today Show," etc. Print media coverage includes regular pieces in The New York Times, LA Times, People, Business Week, USA Today, JET, The Washington Post, The New York Times, Oprah, etc.

Opposer promotes its MISS USA and MISS TEEN USA pageants each year, spending almost three million dollars annually to produce its "world-famous pageants." Its Internet websites (www.missusa.com and www.missteenusa.com) received approximately 300 million hits between September 2001 and September 2002. Opposer earns approximately \$20

million in gross annual revenues from corporate sponsorships, from licensing its marks and from the broadcast rights for the various pageants. Opposer spends approximately \$300,000 per year enforcing its rights in these claimed marks.

Other than the file of the involved application, the record contains little information about applicant or its intended services. In fact, there is no evidence in the record that applicant has made any use of its MISS T-GIRL USA mark.

Our determination under Section 2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

We turn first to a consideration of the services. The evidence shows that opposer is in the business of putting on beauty pageants. Applicant's recitation of services in the involved application is for "entertainment services in the nature of promoting and conducting gay beauty pageants." While presumably the contestants in applicant's pageants would be homosexuals, and this would not be the case in opposer's pageants, both are for entertainment

services in the nature of beauty pageants in International Class 41. Accordingly, while the services would not be identical, we find these services to be similar and related.

We turn next to a consideration of the similarities/dissimilarities of applicant's mark, MISS T-GIRL USA, and opposer's marks, MISS USA and MISS TEEN USA. It is well settled that marks must be considered in their entirety because the commercial impression of a mark on an ordinary consumer is created by the mark as a whole, not by its component parts. This principle is based upon the common sense observation that the overall impression is created by the purchaser's cursory reaction to a mark in the marketplace, not from a meticulous comparison of it to others to assess possible legal differences or similarities. See 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §23:41 (4th ed. 2001). See also, Dassler KG v. Roller Derby Skate Corp., 206 USPQ 255 (TTAB 1980). Stated differently, the proper test in determining likelihood of confusion does not involve a side-by-side comparison of the marks, but rather must be based on the similarity of the general overall commercial impressions engendered by the involved marks.

In this case, when compared as to sound and appearance, both applicant's mark, MISS T-GIRL USA, and opposer's marks, MISS USA and MISS TEEN USA, all consist of a beginning, which is "MISS," and an ending having the designation "USA." Thus, the beginning and ending sounds are identical and the structure of the composite marks is similar. In all fifty states and the District of Columbia, applicant licenses the use of these marks for local pageants where the name of the state (or the District of Columbia) is inserted between the word "MISS" and the "USA" (or "TEEN USA") designation (e.g., MISS TEXAS USA, MISS GEORGIA TEEN USA, etc.). This structure, familiar to those consumers who are exposed to the state pageants, is identical to the structure and cadence of applicant's applied-for mark.

As to connotation, no evidence was properly made of record showing the meaning of the "T-Girl" portion of applicant's mark. Accordingly, in the absence of any clear insights into how prospective consumers might perceive this term, when the parties' respective marks are considered in their entireties, we find that consumers may well attribute the related beauty pageant services to a single source or sponsorship by the same entity. Hence, while the parties'

respective marks are obviously not identical, when considered in their entirety, we find that the mark MISS T-GIRL USA, when compared with MISS USA and/or MISS TEEN USA, creates similar overall commercial impressions.

We turn next to the du Pont factor focusing on the variety of goods and/or services on which the prior marks are used. A finding of likelihood of confusion herein is also supported by the common law usages of an entire family of marks, including the variants of opposer's registered marks having fifty state designations used on or in connection with beauty pageants and promotional goods related to these pageants. Specifically, we find that the record supports the fact that the marks asserted to comprise the "family" have been used and advertised in promotional material in such a manner as to create common exposure and, thereafter, recognition of common ownership based upon a feature common to each mark, namely the "MISS ... USA" designation. See J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); Witco Chemical Co. v. Whitfield Chemical Co., 418 F.2d 403, 164 USPQ 43 (CCPA 1969); and Dan River, Inc. v. Apparel Unlimited, Inc. 226 USPQ 186 (TTAB 1985).

We turn then to the du Pont factor focusing on the fame of opposer's prior marks (e.g., the revenue, advertising and other promotional activities, the length of use, etc.). The record is clear that opposer has engaged in extensive marketing of its MISS USA and MISS TEEN USA services and collateral products. The record shows that opposer has consistently spent a great deal of money advertising and marketing its beauty pageants and related goods. Also contributing to the strength and renown of opposer's marks is the wide variety of free media promotional exposure provided for opposer's beauty pageants. Opposer takes in annual revenues of more than \$20 million, having spent three million dollars each year to produce its world-famous pageants. In the most recent years for which there is data in this record, eight million viewers in the United States watched the MISS USA pageant while seven million viewers watched the MISS TEEN USA pageant. Both pageants were also broadcast in fifty-six foreign countries. Opposer's Internet websites receive 300 million hits each year, and opposer spends an average of \$300,000 each year enforcing its rights in these claimed marks.

Accordingly, we find the record sufficient to establish recognition of opposer's beauty pageant services and the involved marks among vast numbers of consumers. The record of opposer's marketing efforts and media exposure is most impressive. On the record before us, we conclude that opposer's services are not unlike the product of the opposer in Kenner Parker Toys Inc. v. Rose Art Industries, Inc., 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992), insofar as the opposer in that case was said to have had a "piece of gold" that, at one time, had been the most advertised product in its industry. For purposes of our likelihood of confusion determination herein, we agree with other tribunals who have been faced with this question,⁵ and we find, based upon the record before us, that the terms MISS USA and MISS TEEN USA are well-known marks, deserving of a wide scope of protection.

In balancing all the relevant du Pont factors, we find that applicant's MISS T-GIRL USA mark, when used in connection with the services set forth in its application, so resembles opposer's MISS USA and MISS TEEN USA marks,

⁵ See e.g., Miss Universe, Inc. v. Miss Teen U.S.A., Inc., 209 USPQ 698 (N.D. Georgia 1980); Miss Universe, Inc. v. Little Miss U.S.A., Inc., 212 USPQ 425 (N.D. Georgia 1981); Miss Universe, Inc. v. Pitts, 714 F.Supp. 209, 14 USPQ2d 2004 (N.D. Louisiana 1989).

for its beauty pageant services and related promotional goods, as to be likely to cause confusion, to cause mistake or to deceive as to source or sponsorship.

In conclusion, we find the evidence of record clearly supports a finding that there is a likelihood of confusion, and we sustain the opposition based thereon. Having sustained the opposition on this basis, we do not reach the claim asserted by opposer that applicant's proposed mark "will dilute the distinctive quality of Opposer's famous marks."

Decision: Opposition No. 91124156 is sustained based upon a default judgment under Fed. R. Civ. P. 55, and registration to applicant for application Serial No. 78019435 is refused. Opposition No. 91122676 is sustained based upon a likelihood of confusion, and registration to applicant for application Serial No. 78019444 is also refused.