

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: July 16, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

United States Olympic Committee
v.
Micheal L. Casey-Beich

Opposition No. 91162914
to application Serial No. 76520772
filed on May 6, 2003

Carole F. Barrett of Howard Rice Nemerovski Canady Falk &
Rabkin for United States Olympic Committee.

Micheal L. Casey-Beich, pro se.¹

Before Quinn, Holtzman and Kuhlke, Administrative Trademark
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, Micheal L. Casey-Beich, seeks registration
of the mark **BIBLELYMPICS** for goods ultimately

¹ We note applicant's revocation of attorney and intention to
proceed pro se, filed on August 1, 2006.

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identified in the application as "paper banners" in International Class 16.²

Opposer, the United States Olympic Committee (USOC), has opposed registration of applicant's mark on the grounds that: (1) as applied to applicant's goods, the mark so resembles opposer's previously used and registered marks that consist of or include the terms OLYMPIC, OLYMPICS, OLYMPIAN, PARALYMPIC, OLYMPICARDS, OLYMPIKIDS, and OLYMPIZETTE for a variety of goods and services, including "international athletic competitions in the nature of sporting events and goods that support those events, including printed material in class 16 [and banners]," as to be likely to cause confusion, deception or mistake among consumers under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d); (2) applicant's mark "is so similar to Opposer's OLYMPIC Marks and PARALYMPIC that its use would falsely suggest a connection with the institution ... within the meaning of 15 U.S.C. §1052(a)...and dilute the distinctiveness of opposer's marks"; and (3) applicant's mark "constitutes a simulation of the marks OLYMPIC and PARALYMPIC" as prohibited by the Ted Stevens Olympic and Amateur Sports Act (OASA), 36 U.S.C. §220506. In addition, opposer alleges that the OLYMPIC, OLYMPIAD and PARALYMPIC

² Serial No. 76520772, filed May 6, 2003, alleging a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

marks and "combinations or simulations thereof" have become famous.

Applicant filed an answer which we construe as a general denial of plaintiff's allegations. In the answer applicant describes BIBLELYMPICS as a "religious home personal study." Answer ¶2.

The evidence of record consists of the pleadings herein, the file of the opposed application, certified copies of opposer's pleaded registrations submitted under notice of reliance that show that the registrations are subsisting and owned by opposer, and the testimony deposition upon written questions of Kelly Maynard, opposer's assistant general counsel. Applicant did not take any testimony or submit any other evidence during her trial period. Applicant, however, filed several documents after her testimony period closed and after plaintiff's main brief on the case was filed. Inasmuch as plaintiff has not objected to any of these documents we have considered them only to the extent they impart applicant's position with regard to the legal issues presented by this case.³

³ These documents include what appears to be a complaint filed by applicant against opposer in the Circuit Court of the Eleventh Judicial Circuit Mclean County, Illinois. This complaint apparently was filed on January 16, 2007, after the briefing period in this case had closed. In view of the late stage of this proceeding, we do not find it appropriate to suspend based on this possible civil action, but rather elect to reach the merits. See *E.I. du Pont de Nemours & Co. v. G.C. Murphy Co.*, 199 SUPQ 807, 808 n.3 (TTAB 1978) and *Ortho Pharmaceutical Corp. v. Hudson Pharmaceutical Corp.*, 178 USPQ 429 (TTAB 1973).

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Opposer has pleaded 43 registrations and 5 applications. Opposer submitted proof of these registrations, including the subsequently-issued registrations based on the pleaded applications.⁴ While we have considered all of the registrations in our likelihood of confusion analysis, we focus our decision the following registrations:

Registration No. 968566 for the mark OLYMPIC (in typed form) for "apparatus sold as a unit for playing a board or similar type parlor game; educational toys; regular and warmup uniforms used in connection with track and field games; helmets; and track shoes" in U.S. Class 22 (International Class 28), "jewelry, tie clips, lapel pins, cuff links, money clips, charms, made in part of precious and semi-precious metalware" U.S. Class 28 (International Class 14), glassware-namely, tumblers, bowls and dishes" U.S. Class 33 (International Class 21), "writing paper, stationery, napkins and sheet paper" U.S. Class 37 (International Class 16), "prints and publications, including pamphlets, books, manuals, newsletter, brochures, programs and films" U.S. Class 38 (International Class 16), "souvenirs, pins, trophies, plaques, medallions, medals, banners, patches and emblems" U.S. Class 50 (International Classes 14, 20, 24, 26), "advertisements to raise money to support the Olympic Games" U.S. Class 101 (International Class 35), and services "indicating membership in applicant" U.S. Class 200 (International Class 200), issued on September 18, 1973, renewed;

Registration No. 2471778 for the mark OLYMPIKIDS (in typed form) for "coin albums; photograph albums; scrapbooks; stamp albums; albums for typewriter printwheels and typeballs; decals; art prints; graphic and printed art reproductions; watercolor pictures; autograph books; paper party bags and hats; sandwich bags; book covers;

⁴ We deem the pleadings amended to include the newly-issued registrations. Fed. R. Civ. P. 15.

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children's books, activity books and coloring books; series of fiction and non-fiction books; books relating to sports; pencil boxes and cases; decorative pencil-top ornaments; bumper stickers; calendars, gift wrapping paper; gift, note, Christmas, greeting and occasion cards; trading cards; dry transfer characters; newspaper cartoons and comic strips; copy books and paper; crossword puzzles; paper and printed emblems; paper flags; paper gift wrap bows; arts and crafts paint kits; paper table linen; loose leaf binders; paper mats; paper bath mats; paper placements; paper name badges; notebooks; note pads; note paper; sketch pads; writing paper and tablets; pictures; postcards; posters; cartoon prints; color prints; lithographic prints; song books; paper identification tags; instructional materials relating to sports; pen and pencil trays; wall calendars; paper mache figurines" in International Class 16, "cloth patches for clothing; embroidered emblems; bows and ribbons for gift wrapping; hat ornaments not of precious metal; ornamental novelty buttons and pins" in International Class 26, and advertising services, namely direct mail advertising services, dissemination of advertising matter services and advertising slogan and cartoon character licensing services" in International Class 35 issued on July 24, 2001; and

Registration No. 1892385 for the mark PARALYMPIC (in typed form) for "arranging and conducting athletic events for disabled athletes" in International Class 41, issued on May 2, 1995, renewed.

Because opposer has made the pleaded registrations summarized above properly of record showing current status and ownership in opposer, opposer has established its standing to oppose registration of applicant's mark and its priority is not in issue. See King Candy Co., Inc. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

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Our likelihood of confusion determination under Section 2(d) 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. du Pont de Nemours and 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).

We first note that, in its brief, opposer argues that it has a family of marks. However, opposer did not specifically plead a family of marks, nor has opposer proven that it has a family of marks. "Simply using a series of similar marks does not of itself establish the existence of a family. There must be a recognition among the purchasing public that the common characteristic is indicative of a common origin of the goods." *The Black & Decker Corp. v. Emerson Electric Co.*, ___ USPQ2d ___, Opp. No. 91158891 (TTAB March 23, 2007). Thus, it is necessary, at a minimum, to consider the manner of use and advertising of the various marks and whether the consumers view a part of these marks as the common element tying them together. *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991). Here, opposer argues that "lympic" is the common element but, other than the listing of several registrations that contain "lympic" within a word, opposer has not submitted any testimony or evidence of advertising to show how the common element "lympic" is used to show what

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is traditionally viewed as a family of marks. Although we do not find a family of marks and limit our decision to the individual marks in the above-noted registrations, we have considered the context in which opposer's and applicant's marks appear in the marketplace, specifically that opposer owns several marks that are a variant of the word OLYMPIC for a wide range of goods and services.

A key factor in any likelihood of confusion analysis is the fame of the prior mark. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). Opposer has argued that its OLYMPIC marks are famous and we begin our analysis with this factor, because fame, when present, "plays a 'dominant' role in the process of balancing the du Pont factors." *Recot Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000).

Opposer has submitted sufficient evidence to support its allegation of fame at least as to the core mark OLYMPIC for a wide variety of goods and services. See *Maynard Dep.* at pp. 12-13 (millions of dollars in annual licensing revenue for Olympic marks), 15-16 (100 years of use of various forms of OLYMPIC marks), and 19-20 (comprehensive advertising campaign and broad licensing and sponsorship program for OLYMPIC marks). Moreover, applicant has not disputed the fame of opposer's marks. In view of our

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finding of fame, we accord opposer's marks a wide scope of protection, both in the similarity of the marks and relatedness of the goods.

With regard to the parties' goods and services we first note that the goods at issue need not be identical or directly competitive in order for there to be a likelihood of confusion. Rather, the respective goods need only be related in some manner or the conditions surrounding their marketing be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Applicant's "paper banners" are closely related to opposer's "banners" listed in opposer's Reg. No. 968566. Opposer's "banners" are listed in the former U.S. Class 50, which consists of "merchandise not otherwise classified," Trademark Rule 6.2, 37 C.F.R. §6.2, and could include applicant's "paper banners." At a minimum, they are the same type of good and as such are very closely related. Moreover, opposer testified that it uses its OLYMPIC marks on paper banners. Maynard Dep. pp. 14-15 ("The USOC and its licensees and sponsors use the various registered and unregistered trademarks in connection with numerous goods and services ranging from...banners, bumper stickers and

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other paper goods.") With regard to Reg. No. 2471778 applicant's paper banners are closely related to opposer's "decals," "posters," and "bumper stickers." Further, with regard to the various athletic-competition related services listed in Reg. Nos. 2471778 and 1892385, paper banners are goods that would be commonly associated with such services. In particular, here, where opposer has used its marks on such a wide range of goods and services. Maynard Dep. p. 11 ("The USOC, its licensees and sponsors offer a very wide range of goods and services. In addition to the primary services that the USOC offers related to sports, activities, and competitions, its licensees and sponsors offer goods and services ranging from clothing to telephone services, from beverages to electronic products, from financial services to all sorts of souvenirs.")

Given that the goods are closely related and there is no limitation in the identifications thereof in opposer's registrations and applicant's applications, we must presume that the related goods will be sold in some of the same channels of trade, and will be bought by some of the same purchasers. See *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); and *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994).

To determine the similarity or dissimilarity of the marks we compare them in their entireties in terms of

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appearance, sound, connotation and commercial impression. We make this determination in accordance with the following principles. The test, under this 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 impressions that confusion as to the source of the goods offered under the respective marks is likely to result. Moreover, where the goods are closely related "the degree of similarity [between the marks] necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert. denied, 506 U.S. 1034 (1992).

In comparing opposer's marks OLYMPIC, OLYMPIKIDS and PARALYMPIC with applicant's mark BIBLELYMPICS, we first observe that the word BIBLE is at least suggestive of the subject matter of the paper banners, inasmuch as applicant has stated that its goods and services provided under its mark consist of a religious home personal study. Answer ¶2. We further note that applicant has published a newsletter titled BIBLELYMPICS which contains "Bible scripture text, hymns, contest entry form and other text." Application Ser. No. 76520722; Answer ¶2.

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Applicant's mark incorporates the majority of opposer's OLYMPIC mark and shares the same structure as opposer's PARALYMPIC mark combining the "lympic" suffix with at least a suggestive term. In both cases, applicant's mark BIBLELYMPICS has the same cadence and rhythm of opposer's OLYMPIC and PARALYMPIC marks. With regard to the OLYMPIKIDS mark, the marks share the phonetically identical core element "lympic" and use it in combination with less distinctive matter, Bible and Kids. As to connotation, OLYMPIC is defined as "of or relating to the Olympic Games" and Olympic Games are defined as "a group of modern athletic contests held every four years in a different city."⁵ Thus, the addition of the "lympic" suffix to applicant's mark projects an impression of an OLYMPIC related term, which connotes a contest or competition. Indeed, applicant conducts a contest through its newsletter titled BIBLELYMPICS. Applicant's use of the uncommon "lympic" suffix in combination with the word BIBLE connotes competitions relating to religion. Thus, applicant's mark connotes and projects an impression of a type of competition modeled after or relating to the Olympics. In view thereof, we find that the mark BIBLELYMPICS is similar in appearance,

⁵ The American Heritage Dictionary of the English Language (3d ed. 1992). University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594 (TTAB 1982) aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983) (Board may take judicial notice of dictionary definitions.)

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sound, connotation and overall commercial impression to opposer's marks OLYMPIC, OLYMPIKIDS and PARALYMPIC. Therefore, the parties' marks are substantially similar.

Considering the marks in their entireties, we conclude that the evidence of record as it pertains to the relevant du Pont factors (fame, similarity of the marks, relatedness of the goods and services, and overlapping trade channels) supports a finding of a likelihood of confusion as between applicant's BIBLELYMPICS mark and opposer's OLYMPIC, OLYMPIKIDS and PARALYMPIC marks, such that registration of applicant's mark is barred under Trademark Act Section 2(d).

In view of our determination that opposer is entitled to prevail in this opposition based upon its Section 2(d) claim of priority and likelihood of confusion, we need not reach the merits of opposer's claims brought under Sections 2(a) and 43(c) of the Trademark Act, and Section 220506 of the Olympic and Amateur Sports Act. See *American Paging Inc. v. American Mobilphone Inc.*, 13 USPQ2d 2036, 2039-40 (TTAB 1980), *aff'd without opinion*, 17 USPQ2d 1726 (Fed. Cir. 1990).

Decision: The opposition is sustained as to opposer's claim of priority and likelihood of confusion under Section 2(d) of the Trademark Act.