

Mailed: March 26, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

HI Limited Partnership

v.

Richard E. Wiles

Opposition No. 91167155
to Application No. 78501319
filed on October 18, 2004

Peter F. Schoenthaler of Hill, Kertscher & Wharton, LLP,
for opposer.

Richard E. Wiles, *pro se*.

**Before Quinn, Drost, and Mermelstein, Administrative
Trademark Judges.**

Opinion by Mermelstein, Administrative Trademark Judge:

Applicant seeks registration of the mark HOOTERS
VOLLEYBALL (both in standard characters) for "sports
volleyball competition and league" in International Class
41.¹ HI Limited Partnership opposed registration, arguing
that use of the opposed mark in connection with the
identified services would be likely to cause confusion in
view of its prior use and registration of similar marks for

¹ Alleging a *bona fide* intent to use the mark in commerce.
Applicant has disclaimed the exclusive right to use "volleyball"
apart from the mark as shown.

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related goods. Trademark Act § 2(d); 15 U.S.C. § 1052(d).

We sustain the opposition.

I. Record Evidence

Pursuant to Trademark Rule 2.122, the record in this case includes the pleadings and the file of the involved application. In addition, during its assigned testimony period submitted the following:

- Hooters Magazine - Official Magazine of Hooters Restaurants, Issue 36 (Fall 1999). Filed under notice of reliance, August 14, 2006.
- February 13, 2006, deposition testimony of applicant Richard Wiles. Filed under notice of reliance, August 14, 2006.
- August 4, 2006, testimonial deposition of Michael A. McNeil, Vice President of Marketing for Hooters of America, Inc., filed August 14, 2006. Several exhibits were attached to the deposition:
 - A copy of applicant's trademark application from the USPTO database;
 - Hooters Magazine (July/August 2006);
 - Letter to Steve Deberg from applicant, dated March 7, 2006;
 - Letter to applicant from Peter Schoenthaler, dated February 20, 2006;
 - Notice of deposition.

In addition to the above evidence, opposer attached to its trial brief a copy of its first set of interrogatories to applicant, and applicant's responses thereto. The brief was filed October 26, 2007.

Pursuant to the applicable rule,

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an answer to an interrogatory ... may be made of record in the case by filing ... a copy of the interrogatory and answer ... with any exhibit made part of the answer, ... together with a notice of reliance. The notice of reliance and the material submitted thereunder should be filed during the testimony period of the party that files the notice of reliance.

Trademark Rule 2.120(j)(3)(i) (emphasis added).

Opposer's thirty-day testimony period in this case concluded August 13, 2006, more than a year before the filing of opposer's brief and the attached interrogatories. Because the interrogatory responses were not offered under a notice of reliance during opposer's testimony period, they are untimely and will not be considered.²

Finally, we note that applicant offered no testimony or other evidence, and it did not file a trial brief.

II. Pleadings

Opposer, by its notice of opposition, makes the following significant allegations:

- Opposer, "by and through its authorized licensees ... has since 1980 operated ... a number of sports bar and grill establishments, now numbering more than three hundred ... stores in numerous states...."
- Opposer "has since at least as early as 1980 and 1983, respectively, continuously used, and is today using, the word mark HOOTERS and HOOTERS & OWL DESIGN ... in connection with various goods and services.

² Opposer also attached to its brief copies of applicant's deposition and the Fall 1999 issue of Hooters Magazine. These submissions are also untimely, although it is of no consequence, because they had been previously submitted under a timely notice of reliance. The Board strongly prefers that parties not file copies of papers already in the record. *ITC Entm't Group Ltd. v. Nintendo of Am. Inc.*, 45 USPQ2d 2021, 2022-23 (TTAB 1998).

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- Opposer owns the following U.S. Registrations:
 - Reg. No. 1653233. HOOTERS for "entertainment services in the nature of a television program";
 - Reg. No. 1659704. HOOTERS for "posters, photographs, and calendars";
 - Reg. No. 1557380. HOOTERS for "restaurant and cocktail lounge services";
 - Reg. No. 1590973. HOOTERS for "clothing, namely sweatbands, shirts, pants and jackets";
 - Reg. No. 1652377. HOOTERS and design for "calendars, posters, photographs, magazines of general interest";
 - Reg. No. 1320029. HOOTERS and design for "restaurant and cocktail lounge services";
 - Reg. No. 1602377. HOOTERS and design for "clothing, namely socks, shirts, pants, jackets, shorts, baby bibs, and sun visors";
 - Reg. No. 1534320. Hooters and design for "disk toss toys";
- Opposer and its licensees
 - sponsor[] various sports competitions making use of the HOOTERS Marks, including but not limited to automobile racing, boat racing, golf tournaments, fishing tournaments, and bike racing, among others, hosting sports related television programs and broadcasts making use of the HOOTERS Marks, and operating HOOTERS sports bars and grills which focus on sports activities and competition.
- The HOOTERS marks are famous and well recognized.
- Opposer's "actual, continuous and continuing use of the HOOTERS Marks by and through [opposer] and its licensees, began long prior to any use by Applicant of the mark shown in the '319 Application."
- Use of applicant's mark is "likely ... to cause confusion, to cause mistake, and/or to deceive."

By its answer, applicant denied the salient allegations of the notice of opposition.

IV. Discussion

A. Opposer's Trademarks

In a likelihood of confusion case, the *sine qua non* of the plaintiff's case is proof of its ownership of either a registration or a previously-used trademark.³ Without such ownership, opposer can establish neither standing nor a likelihood of confusion.

As noted above, opposer alleged ownership of several Federal registrations in its notice of opposition, and discussed them in its brief. Although the pleadings are part of the record, because applicant denied opposer's allegations - including opposer's allegation that it owned a number of registrations - it was left for opposer to prove the allegations by competent evidence. As plaintiff, opposer bears the burden of proving such facts as may be necessary to establish both its standing and a valid ground for opposition to registration, including its ownership of any trademark rights superior to those of applicant.

³ "No trademark ... shall be refused registration ... unless it ... [c]onsists of or comprises a mark which so resembles [1] a mark registered in the Patent and Trademark Office, or [2] a mark ... previously used in the United States by another and not abandoned, as to be likely ... to cause confusion...." Trademark Act § 2(d).

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In the case at bar, although opposer alleged ownership of eight registrations in its notice of opposition, it neglected to introduce documents evidencing ownership of them. See Trademark Rule 2.122(d) (ways of introducing registration). And while the registrations were the subject of questions during Mr. McNeil's testimony, the answers to those questions were somewhat unresponsive, and far from clear. The following exchange is typical:

Q Are you also aware that Hooters has a registered trademark for the use of the Hooters mark for sun visors as well as a registration for sports toys?

A Yes, I am. We sell hats, visors in the restaurants and those are very popular items. We sell golf bags, golf umbrellas. We've sold baseball bats, a wide variety of sports equipment that has the Hooters logo on it.

McNeil Depo. at 21. Although counsel asked the witness about several trademark registrations (none of them identified by registration number), the witness's response in each case discussed use, not registration, and Mr. McNeil was never asked to identify a certificate of registration to be offered into evidence.⁴ We cannot conclude on the basis of this testimony that opposer has proven the ownership and validity of its pleaded trademark registrations.

⁴ Ironically, Mr. McNeil was asked to identify a copy of the opposed application, and a copy was submitted as Exhibit 1 to his deposition. This was unnecessary because - unlike opposer's registration - an opposed application is automatically part of the record. Trademark Rule 2.122(b)(1).

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We consider next whether the testimony and evidence of record prove (1) opposer's ownership of "common-law" trademarks and (2) whether opposer established any such rights prior to the filing date of the subject application.⁵

Had opposer introduced its Federal registrations, they would be *prima facie* evidence of opposer's ownership of the marks, the validity of the registrations, and opposer's exclusive right to use of the registered marks in commerce in connection with the identified goods or services. Trademark Act § 7, 15 U.S.C. § 1057. Further, in an opposition proceeding, proof of ownership of a registration automatically confers priority upon the opposer, which cannot be challenged absent a counterclaim for cancellation. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). To the extent opposer relies upon unregistered trademarks, however, it must prove these elements by a preponderance of the evidence.

We find that the evidence establishes opposer's prior ownership and use of the mark HOOTERS in connection with at least some services.

Restaurant Services. According to Mr. McNeil's testimony, opposer operates restaurants under the HOOTERS mark in 46 states and 21 countries and that opposer "spent

⁵ While applicant has apparently not yet used its mark, it is entitled to claim the filing date of its application as a

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over a hundred million dollars since 1991 in media advertising and sponsorships of various properties that [it is] affiliated with to promote the HOOTERS brand." McNeil Dep. at 13-14. Mr. McNeil's statements are supported by applicant's deposition testimony:

Q Are you familiar with the Hooters Girls?

A [Mr. Wiles] I don't know what - when you say - what do you mean?

Q Do you know what they are, Hooters Girls?

A All I know is - I've lived here 35 years, since 1970, and I've been to Hooters - I might average once every year and a half, something like that, and that's it. I mean, I know that most of them are shapely, pretty, and they're nice, and they wear orange.

. . . .

Q But when you applied for the trademark, you were aware of Hooters Restaurants, right?

A Oh, sure.

. . . .

Q Do you consider Hooters Restaurants famous?

A I would say in most of the United States, I think so, yeah.

Q Do you think the Hooters trademark is famous?

A Yes.

It is clear from this testimony that opposer's use of the mark HOOTERS as a trademark in connection with its chain of restaurants was established prior to the filing date of

constructive use date, contingent upon the issuance of a registration. Trademark Act § 7(c).

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the subject application. Applicant admits that it had been to opposer's restaurant at least several times before the filing date of applicant's trademark application, and that opposer's HOOTERS trademark is famous with respect to restaurant services.

Printed Publications. Mr. McNeil testified that for "about at least 15 years, opposer has published HOOTERS Magazine. The magazine is published six times per year, has a circulation of "about 325,000," and is "available in retailers like Seven/Eleven [sic]; Barnes and Noble, Hudson News Stands in airports. It's available on all of the Base Exchange stores at military bases around the world." McNeil Dep. At 14-15. The July/August issue of HOOTERS Magazine was identified and offered in evidence as Exhibit 2 to the McNeil testimony and the Fall 1999 issue was submitted separately under a notice of reliance. The issues of record are similar in content, featuring pictures of "HOOTERS Girls," a variety of sports stories and information, as well as advertisements for sports equipment, alcoholic beverages, and opposer's restaurant services.

The testimony and evidence of record establish opposer's trademark rights in the publication of HOOTERS Magazine, and opposer's priority of such use since well prior to the filing date of the subject application.

Sports Activities: Mr. McNeil testified that the HOOTERS mark has long been used in connection with various sporting events. With particular relevance for this proceeding, his testimony indicates that opposer has

sponsored volleyball events through the years at the local and the national level. A number of years ago, there was a national beach volleyball series that was sponsored by Anheiser Busch that we were associated with as a presenting sponsor. It was televised on ESPN. We did receive some national publicity in conjunction with that. We have had through the years some individual restaurants that have had actual sand beach volleyball courts on the restaurant property in the parking lot.

We've had beach style volleyball tournaments that have happened in our parking lots as promotions before. We've had local sponsorships of ADP volleyball events that have taken place at the individual market level around the country. We've had a lot of association with the sport of volleyball.

McNeil Dep. At 16-17.

As noted previously, opposer bears the burden of proving the existence of (and its ownership in) a common-law trademark. We find that Mr. McNeil's testimony does not meet this burden. While the company has clearly been involved in volleyball games and tournaments, the testimony is ambiguous as to opposer's role in those activities, specifically, whether opposer organized and ran the activities, or whether its role was limited to its use of sponsorships as advertising. While such advertising is not irrelevant to this decision, the mere purchase of

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advertising does not establish that opposer has a trademark for a sports team or tournament.

Moreover, even if we could find that opposer used its mark in the provision of entertainment services in the nature of volleyball competitions, opposer's priority with respect to those services is questionable. Mr. McNeil offered no specifics as to when such services were offered, or how regularly. While it appears that some of these activities have been ongoing for some time, the testimony offered no specifics on when they began and whether they have continued without interruption since that time. Accordingly, we do not consider these volleyball-related activities as establishing opposer's ownership of trademark rights for them.⁶

B. Standing

Opposer's evidence of its prior use of the HOOTERS mark for goods and services shows that opposer is not a mere intermeddler, and has a reasonable belief that it would be damaged by registration of applicant's mark. Therefore, opposer has established its standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000);

⁶ Mr. McNeil also testified to opposer's use of the HOOTERS mark with other sports and related activities, including golf (NGA Hooters Tour and Hooters Match Play Championship), car racing (Hooters Pro Cup), the college football Allstar game (Hooters Hula Bowl), soccer tournaments, boat racing, and softball (Hooters Championship Series), calendars, clothing, and swimsuit

Lipton Indus., Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

C. Likelihood of Confusion

Our determination under Trademark Act § 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 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).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 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); *In re Azteca Rest. Enter., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

1. Fame of Opposer's Marks

If proved, the fame of the prior mark plays a dominant role in the likelihood of confusion analysis. *Bose Corp. v.*

competitions. Again, Mr. McNeil's testimony is not sufficient to establish opposer's prior ownership of a trademark for such uses.

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QSC Audio Prod. Inc., 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992). Fame for likelihood of confusion purposes arises "as long as a significant portion of the relevant consuming public ... recognizes the mark as a source indicator." *Palm Bay Imports, Inc. v. Vieve Clicquot Ponsardin Maison Fondée En 1722*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005).

We usually require a rather substantial showing to prove that a mark is famous for purposes of a likelihood of confusion analysis. *Blue Man Prod. Inc. v. Tarmann*, 75 USPQ2d 1811, 1819 (TTAB 2005) ("In view of the extreme deference that is accorded to a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of a plaintiff asserting that its mark is famous to clearly prove it."). But we need not determine whether the evidence of record supports opposer's claim that its mark is famous, because that fact was admitted by applicant, at least to the extent that opposer uses its HOOTERS mark in connection with restaurant services. *Wiles Dep.* p. 32. Because opposer was entitled to rely on applicant's admission, we consider the fame of

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opposer's mark to be established. HOOTERS is therefore considered a famous mark, entitled to a wide scope of protection.

This factor strongly favors a finding of likelihood of confusion.

2. Similarity of the Marks

Applicant seeks registration of the mark HOOTERS VOLLEYBALL. Opposer has demonstrated use of its HOOTERS mark in connection with restaurant services and printed publications. We find these marks highly similar in appearance, sound, meaning, and commercial impression.

While we must consider the marks in their entireties, it is entirely appropriate to accord greater importance to the more distinctive elements in the marks. As the Court of Appeals for the Federal Circuit observed,

in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.

In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

We find that the dominant portion of applicant's mark is HOOTERS. Applicant has disclaimed any exclusive right to the term "volleyball" - no doubt because it is descriptive, if not generic, for applicant's "sports volleyball

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competition and league." While a disclaimer does not remove the disclaimed element from the mark, it has long been held that descriptive or generic matter has very little trademark significance, and is unlikely to make a strong impression on the potential customer. See *In re N.A.D. Inc.*, 57 USPQ2d 1872, 1873 (TTAB 2000) ("These descriptive, if not generic, words have little or no source-indicating significance.")

On the other hand, the term HOOTERS appears on this record to be fanciful or arbitrary.⁷ In his deposition, applicant testified that "the name 'hooters,' as we know, is in the dictionary, and its [sic] long before Hooters ever existed. It's you know, someone - a woman's breasts or somebody that yells out." Wiles Dep. p. 19. However, applicant's statement of what is in an unspecified dictionary is hearsay, and neither party introduced any other evidence bearing on the meaning of this term.

But even if we consider HOOTERS to be an anatomical reference, it is at most very weakly suggestive of opposer's restaurant services, to the extent that it might be a crude reference to the women employed at opposer's establishments. We thus find HOOTERS to be a generally strong and

⁷ See *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 764-66 (2d Cir. 1976) ("The cases, and in some instances the Lanham Act, identify four different categories of terms with respect to trademark protection. Arrayed in an ascending order which roughly reflects their eligibility to trademark status and the degree of protection accorded, these

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distinctive mark, while we consider "volleyball" to be a very weak element of applicant's mark.

Considered in this context, the marks are highly similar. Applicant has simply appropriated the whole of opposer's trademark and appended the descriptive or generic word "volleyball" to it. The visual impact of both marks is dominated by HOOTERS, and any meaning or connotation carried by the term is likely to apply to both marks in the same way. Likewise, the marks sound very similar because they both begin with the term HOOTERS. As has often been held, the first word of a compound mark is often more likely to make a stronger impact on consumers and the way they remember the mark. *E.g. Wet Seal Inc. v. FD Mgmt. Inc.*, 82 USPQ2d 1629, 1639 (TTAB 2007).

Finally, we note that applicant's own testimony regarding the similarity of the marks:

Q You'd agree with me that Hooters Volleyball and Hooters are somewhat similar in appearance?

A In appearance?

Q Yeah.

A Yeah.

Q and they're similar in sound when you speak them, correct?

A Yes.

classes are (1) generic, (2) descriptive, (3) suggestive, and (4) arbitrary or fanciful.).

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Q Would you agree with me that they're also similar in connotation?

A From the start, yes, but if you took the concept and you went into the volleyball, and it was only the Hooters name, immediately you would know that Hooters was not really represented, the Hooters Restaurant chain.

Q Why do you say that?

A Well, because it wouldn't - it wouldn't have any of the things they're known for, which are, to me - the orange, for example, is the big thing. I mean, that right there, to begin with, would say this is not part of a Hooters chain. It wouldn't be the same swimsuit wear or attire that they wear.

While applicant admits that the marks are similar, he nonetheless asserts that any confusion would eventually be dispelled, apparently because applicant would be using only opposer's main trademark, but not the uniforms worn in opposer's restaurants or any of the other trademarks or trade dress used by opposer in rendering its services. Applicant's defense is unavailing because - even accepting *arguendo* that customers could determine with further investigation that HOOTERS VOLLEYBALL is not related to HOOTERS restaurant and magazine - such a realization would only come after the initial confusion caused by applicant's use of opposer's HOOTERS trademark.

The parties' respective goods and services are both rendered to the general public, are unlikely to be very expensive, and are not of the type typically investigated thoroughly before purchase. Confusion under these

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circumstances is not likely to be dispelled (if at all) until after the decision to purchase.

The similarity of the marks is a factor which strongly favors a finding of likely of confusion.

3. Similarity of Services

"[T]he greater the degree of similarity in the marks, the lesser the degree of similarity that is required of the products or services on which they are being used in order to support a holding of likelihood of confusion." *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 352, 356 (TTAB 1983); *see also, In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) (contemporaneous use of identical or nearly identical marks can lead to the assumption that there is a common source "even when [the] good[s] or services are not competitive or intrinsically related"). Moreover, "[e]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis." *Recot*, 54 USPQ2d at 1898; *see also Hewlett-Packard v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002).

Opposer has established use of its HOOTERS trademark in connection with restaurant services and magazines.

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Applicant here seeks registration of a highly similar mark for a "sports volleyball competition and league." While it is quite obvious that these goods and services are different, that does not end our analysis, particularly when we are faced, as we are here, with an application for a mark which is highly similar to a famous mark.

As noted, opposer's testimony establishes that it operates an extensive chain of restaurants in the United States and abroad. Sports of all types appear to be a main theme for opposer's restaurant services, magazines, and collateral goods and services. Opposer has clearly participated in many sporting events over a number of years. Although we did not find that the evidence establishes opposer's use of HOOTERS as a trademark for such activities, it is nonetheless relevant, because it establishes opposer's very significant involvement in sporting events. As a result, many sports fans - including those who would attend or watch applicant's volleyball games - are likely to have seen the HOOTERS mark on stock cars, football fields, at golf tournaments, and even at beach volleyball tournaments, and draw a connection between sports in general and opposer's sports-themed restaurants and magazines.

Mr. McNeil further testified to opposer's use of its HOOTERS mark on a wide variety of collateral products bearing the HOOTERS mark, including calendars, potato chips,

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hot sauce, clothing, posters, television programs, hats, sun visors, golf bags, golf umbrellas, baseball bats and other sporting equipment, casino services, credit cards, and even an airline. McNeil Depo. at 19-21. Again, the testimony does not establish that opposer owns a trademark for such goods or services. Nonetheless, such widespread use of the HOOTERS mark makes it likely that the public would assume some connection or sponsorship between applicant's use of its mark for a volleyball team and opposer's restaurants on the one hand and opposer's restaurants and magazines on the other. *Turner Entm't Co. v. Nelson*, 38 USPQ2d 1942 (TTAB 1996).

This factor supports a finding of likelihood of confusion.

V. Conclusion

After careful consideration of the evidence of record, we conclude that opposer has established its claim of likelihood of confusion under Trademark Act § 2(d). Applicant has established its ownership of HOOTERS trademarks for restaurant services and magazines, that such use began prior to the filing date of the subject application, and that such use has been continuous. Applicant's mark is highly similar to opposer's, and the services are somewhat related. Given the fame of opposer's mark for its restaurants, its widespread sponsorship of

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various sporting events, and its use of its mark on collateral goods, consumers would almost inevitably assume that applicant's HOOTERS VOLLEYBALL competitions are sponsored by or otherwise connected with opposer. *Turner Entm't Co. v. Nelson*, 38 USPQ2d 1942 (TTAB 1996).

Moreover, the evidence clearly demonstrates that applicant was well-aware of opposer and its marks prior to filing its application, and in fact approached opposer to seek its participation in his volleyball league. Wiles Depo. at 19-21 ("If you guys just want to let me use your name, I'll organize the thing, I'll get it going. It's your choice."). As a newcomer, applicant had a duty to select a mark which would not give rise to a likelihood of confusion. *E.g., Burroughs Wellcome Co. v. Warner-Lambert Co.*, 203 USPQ 191, 200-01(TTAB 1979). As a newcomer with actual knowledge of opposer's famous trademark, applicant had the obligation to do so.

We conclude that registration of applicant's HOOTERS VOLLEYBALL mark would give rise to a likelihood of confusion in view of opposer's previously-used HOOTERS marks.

Decision: The opposition is sustained pursuant to Trademark Act § 2(d).