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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Full Speed Ahead, Inc.
v.
SRAM Corp.

Opposition No. 91171889
to Application Serial No. 78589700
filed on 3/17/2005

Robert J. Adolph and James R. Uhler of Christensen O'Connor
Johnson Kindness PLLC for Full Speed Ahead, Inc.

Richard B. Walsh, Jr. and Michael J. Hickey of Lewis, Rice
& Finersh, L.C. for SRAM Corp.

Before Seeherman, Walsh and Wellington, Administrative
Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

Full Speed Ahead, Inc. (opposer) has opposed the
application by SRAM Corp. (applicant) to register SRAM
FORCE in standard characters for goods identified as
"bicycle parts, namely, gear shifting mechanisms, shifter
grip covers, handlebar grips, derailleurs, brakes, brake
levers, cranks, bottom brackets for frames, handlebars,

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stems, hubs, chains, cassette sprockets, control cables for use with gear shifting and brakes, control cable sealing mechanisms, control cable housing, seat posts, pedals, wheelsets, rims, headsets and quick release levers" in International Class 12 and "clothing, namely, t-shirts, sweatshirts, socks, jackets, aprons, hats, jerseys and short pants" in International Class 25.¹ Opposer filed the notice of opposition on July 7, 2006.

Opposer asserts priority and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), as grounds for the opposition. Specifically, opposer asserts a likelihood of confusion between applicant's SRAM FORCE mark and opposer's K FORCE mark based on opposer's ownership of Registration No. 3198864 for the K FORCE mark² in standard characters for goods identified as "bicycles and parts, namely front forks, bicycle cranks, bicycle rims, seatpost, handlebar, bottom brackets, chainrings, headset bearings, bicycle hubs, bicycle spokes, brake device for bicycles, bicycle chain, handlebar stem, bicycle gears" in International Class 12. Opposer filed the underlying application for the K FORCE mark on March 21,

¹ Application Serial No. 78589700, filed March 17, 2005, claiming a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

² The registration displays the mark in standard characters, as follows: K Force.

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2006, and the registration issued on January 16, 2007, during the pendency of this proceeding. Opposer also claims common law rights in the K FORCE mark with respect to "bicycle parts" from at least as early as 2001.³ Applicant has denied the essential allegations in the notice of opposition.

Opposer and applicant have filed briefs. We dismiss the opposition as to both classes of goods for the reasons stated below.

Before proceeding further we must address the status of a cancellation proceeding applicant filed with respect to opposer's pleaded Registration No. 3198864 for the K FORCE mark, Cancellation No. 92049613. Applicant filed the petition to cancel on June 16, 2008, the same day applicant filed its brief in this opposition proceeding, but applicant made no mention of the cancellation proceeding in its brief. Applicant filed the cancellation proceeding as a separate proceeding, not as a counterclaim in this proceeding. The only mention of the cancellation proceeding in this proceeding occurred in passing in opposer's reply brief. See Opposer's Amended Reply Brief at 4. Recently, both parties filed a consented motion to

³ Opposer also refers to dilution in the notice of opposition. However, opposer did not fully plead a dilution claim, nor did opposer argue the dilution claim in its brief. Therefore, we have given no consideration to a dilution claim in this case.

extend the dates for the discovery conference and initial disclosures in the cancellation proceeding, and the Board denied that motion. See Order of October 28, 2008. In view of the advanced stage of this opposition proceeding, we will decide this proceeding without regard to the cancellation proceeding.⁴

The Record

By rule the record includes the pleadings and the USPTO file for the opposed application. Trademark Rule 2.122, 37 C.F.R. § 2.122. The record in this proceeding also consists of testimonial depositions on behalf of opposer of John Van Enkevort and Eric Hjertberg, including numerous exhibits, and testimonial depositions on behalf of applicant of Milan Milosevic, John Olin and Ronald Ritzler, also including numerous exhibits.

Both parties have stated numerous and varied objections to both testimony and exhibits.

Opposer objects to applicant's Exhibits 22 and 23 which consist of applicant's own answers to certain of opposer's interrogatories. Applicant introduced these exhibits through its own witness during its testimony

⁴ In particular, if applicant had wanted us to consider the outcome of the cancellation proceeding in rendering our decision herein, it should have filed a motion to suspend this opposition proceeding. As noted, applicant has not even mentioned the existence of the cancellation proceeding.

period. Although a party may not introduce its own answers to interrogatories under a notice of reliance, it may submit such responses as an exhibit to testimony if the witness testifies to the accuracy of the responses. Because the witness did so in this case, we overrule the objection.

Opposer also objects to exhibits 24-86 and 93-99 because, opposer argues, they "... were offered by Applicant without adequate foundation in that the witnesses through which these exhibits were offered did not have knowledge thereof adequate to authenticate them." Opposer's Brief at 2. In the absence of a more specific statement of objections as to the particular exhibits, we overrule these objections. We find no general defect with regard to the foundation or the authenticity of these exhibits.

These exhibits relate generally to third-party uses of "FORCE" marks. Mr. Milosevic testified as to the source of these exhibits and, to an extent, as to his familiarity with the products discussed or displayed in the exhibits. Milosevic Test. at 24-60. Mr. Ritzler also testified as to his familiarity with the third-party uses in these exhibits. Ritzler Test. at 25-30.

Applicant also objects to certain testimony and exhibits offered by opposer.

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First, and most importantly, applicant objects to the admission into evidence of Exhibit 1, opposer's K FORCE registration. Opposer objects to this exhibit because applicant did not plead the *registration* in the notice of opposition. We overrule this objection. Although applicant did not plead this *registration* in its notice of opposition, opposer did plead the application from which the registration issued. Notice of Opposition ¶ 3. As we noted above, the registration issued while this proceeding was pending. As a result of the reference in the notice of opposition to the application, applicant had notice as to opposer's potential reliance on the K FORCE registration. Furthermore, at the time opposer introduced the status and title copy of the registration into evidence through the testimony of Mr. Van Enkevort, applicant did not object on the grounds applicant now asserts, nor on any other specific grounds. The only timely potential objection to this exhibit is applicant's objection at the conclusion of the Van Enkevort testimony to all exhibits without specifying any grounds. However, even if there had been a specific timely objection on the grounds now asserted, we would overrule it. Accordingly, we deem the pleadings amended to assert reliance on opposer's K FORCE registration and overrule applicant's objection.

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Applicant also objects to admission of exhibits 3-5 and 9 on the grounds that the exhibits are not relevant. The exhibits in question are: Exh. 3 - an invoice related to the development of the K FORCE mark by an Italian company; Exh. 4 - an article about the K FORCE products featured at a Taipei trade show; Exh. 5 - a photo of K FORCE products displayed at a Tokyo trade show; and Exh. 9 - copies of advertisements for the K FORCE products in an Italian magazine. We recognize that the exhibits relate to activities which took place outside the United States. Opposer argues that they nonetheless had an effect on relevant potential purchasers in the United States. While this "effect" may be limited, in terms of relevance and probative value, we decline to exclude these exhibits entirely, but have considered them for whatever probative value they may have. Accordingly, we overrule applicant's objections to these exhibits. We hasten to add that our decision in this case is not dependent on these exhibits.

Applicant also notes 66 separate objections to opposer's testimony. Many of the objections relate to matters of form only. For example, applicant's objections as to opposer's questions include: "asked and answered," "leading," "compound," "calls for speculation," "vague" and "hypothetical." Objections as to answers include:

"narrative." In a Board proceeding, these types of objections ultimately serve little purpose. In particular, at the point where the parties are briefing the case, maintaining and reiterating these types of objections serves little purpose. The Board is capable of weighing the testimony appropriately without ruling on these types of objections at trial. Accordingly, we overrule the objections by applicant related purely to form.

As to the other grounds applicant asserts here in objecting to testimony, such as, "relevance," "hearsay," and "lack of foundation," we find it unnecessary to address each of those objections specifically. *Cf. Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.*, 77 USPQ2d 1492, 1494 (TTAB 2005). The objections relate principally to the weight to be accorded the testimony in question, and we have assigned weight to relevant testimony, as appropriate. TBMP § 707.03(c).

Lastly, certain of the testimony and exhibits in this case have been filed subject to claims of confidentiality. We find those claims generally reasonable. Therefore, we will respect those claims. This will limit our ability to discuss some matters in the detail we might otherwise provide.

Standing

Because opposer has pleaded and shown that it owns a registration for the K FORCE mark and that it has used the K FORCE mark in commerce, opposer has established standing. *See generally Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987).

Priority

Priority is not at issue in this proceeding, again because opposer has made of record a status and title copy of a valid and subsisting registrations for its K FORCE mark. *See King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). Furthermore, opposer has shown that it began using the K FORCE mark in late 2003, prior to the filing date of the SRAM FORCE application and prior to applicant's use of the SRAM FORCE mark. *Van Enkevort Test.* at 39. This use also serves to establish opposer's priority.

Findings of Fact

Opposer and applicant compete in the sale of bicycle parts. Both sell parts in bulk to original equipment manufacturers, that is, companies which sell fully assembled bicycles, and to aftermarket purchasers. The

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parts in question are principally for road bikes, to a somewhat lesser extent for mountain bikes and to a much lesser extent for other types of bikes, such as BMX bikes.

In the aftermarket, specialized retailers, staffed by knowledgeable personnel, may purchase parts and assemble a bicycle from a set of parts for general sale or to fill a custom order. Also, in the aftermarket, bicycle owners may purchase individual parts or sets of parts through specialized retailers. The bicycle owner may purchase parts to assemble a custom-made bicycle or to replace/upgrade specific parts. The bicycle owner may assemble the bike or install the parts himself or herself, or the owner may rely on a retailer or other specialist to do so.

The bicycle owners/purchasers themselves are typically serious bicycle enthusiasts who know a good deal about the parts they are purchasing. Virtually all purchasers, including those who purchase parts on behalf of bicycle manufactures and those who purchase parts in the aftermarket, are discriminating, sophisticated purchasers.

Bicycle parts range in cost and quality from the basic and less expensive to the high-tech/high-end and more expensive. An assembled bike may range in cost from \$250 to \$10,000. The parts opposer and applicant sell under the

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marks at issue here are generally for high-end, more expensive bikes.

Two leading parts manufacturers, Shimano and Campagnolo, have established a practice of selling sets of compatible parts, identified as a "group set" or "gruppo." A group set ideally includes complete sets of drive-train components, not including the frame, that is, shifters, derailleurs, cranksets, bottom brackets, chains, cassettes, wheel hubs and brake components. Shimano and Campagnolo offer distinct group sets for different tiers ranging from lower-end to high-end sets. Both applicant and opposer aspire to emulate this model in the development and sale of their product lines.

Applicant is a leading designer, manufacturer and seller of bicycle parts. Applicant has used the SRAM mark as its house mark for bicycle parts since 1988. SRAM is the principal mark associated with applicant and its products. The purchasers of bicycle parts generally recognize the SRAM mark. Thus, the SRAM mark is a strong mark in the industry. Applicant began to use its SRAM FORCE mark in April 2006. Applicant has used the SRAM FORCE mark on shifters, controls, brakes, derailleurs, crank sets and bottom brackets. Applicant markets a set of parts under the SRAM FORCE mark as a group set for

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approximately \$1,500 per set, at the upper end, but not at the top tier. Applicant's SRAM FORCE products are sold through normal trade channels for bicycle parts. Bikes using SRAM FORCE parts are in the higher price range for bikes generally, though the identification of goods in the SRAM FORCE application is not limited in this respect.

Applicant is not aware of any instances of actual confusion between its SRAM FORCE mark and opposer's K FORCE mark.

Opposer also designs, manufactures and sells bicycle parts. Opposer has focused its efforts on the design and production of high-tech, lightweight parts. Opposer targets its K FORCE products for use on bikes in the higher price range and the top tier, though the K FORCE registration does not limit the goods to this category. Although the K FORCE registration identifies "bicycles" among its goods, opposer does not make or sell bicycles, only bicycle parts. Furthermore, although the K FORCE registration includes an extensive list of parts in the identification, opposer has only used its K FORCE mark on a limited number of the parts identified. Those parts include handlebars, stems, cranksets, seatposts, saddles, wheel sets, and chain rings. Van Enkevort Test. at 16. Opposer first used the K FORCE mark in commerce at the end of 2003. *Id.* at 39. Although opposer plans to develop and

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sell a full group set under the K FORCE mark, opposer has not done so to date.

Several third parties use marks which include FORCE, the element common to the marks of opposer and applicant, in the sale of bicycles, bicycle parts or accessories.

Those third-party uses include:

RITCHEY FORCE ROAD for bicycle stems (Exh. 41);
RITCHEY ROAD FORCE-K for bicycle tires (Exh. 41);
RITCHEY ORIGINAL FORCE DIRECTIONAL HANDLEBARS for handlebars (Exh. 64);
RITCHEY FORCELITE for stems (Exh. 64);
RITCHEY FORCE COMP for stems (Exh. 64);
FORCE 99 MTB for stems (Exh. 48);
DELTA FORCE for handlebars (Exh. 46);
WORLD FORCE for handlebars (Exh. 44);
AEROFORCE for handlebar clipons (Exh. 28);
PEDAL FORCE for bicycle frames (Exh. 64);
G FORCE for frames (Exh. 64);
GP FORCE for tires (Exh. 56);
CROSS FORCE for bicycles (Exh. 42);
IMMORTAL FORCE for bicycles (Exh. 47);
MOUNTAIN FORCE 24 for bicycles; (Exh. 52);
CIRCLOCROSS FORCE for bicycles (Exh. 64);
CYCLE FORCE SPORT GEL BIKE SADDLE for saddles (Exh. 50);

CYCLE FORCE for bicycle lights (Exh. 50); and

CYCLE FORCE for bicycle foot pumps (Exh. 59).

These examples include the most probative of those in the record related to bicycle parts, as well as examples of uses on bicycles and some types of bicycle accessories. The record also includes other examples of the registration or use of "FORCE" marks. This above list is limited to marks for which there is evidence and/or testimony, beyond registration listings in search reports, to support the use.

Likelihood of Confusion

Section 2(d) of the Trademark Act precludes registration of an applicant's mark "which so resembles a mark registered in the Patent and Trademark Office... as to be likely, when used on or in connection with the goods of the applicant, to cause confusion..." 15 U.S.C. § 1052(d). The opinion in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1977), sets forth the factors to consider in determining likelihood of confusion. We will discuss below each factor which is relevant in this case below.

The Goods and Channels of Trade for the Goods

In comparing the goods and the channels of trade for the goods we must consider the goods as identified in the application and any pleaded registration which is of record. *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods.").

In this case opposer relies both on its pleaded registration and on its common law use of the K FORCE mark on certain goods. Those goods include: handlebars, stems, cranksets, seatposts, saddles, wheel sets and chain rings. Opposer's K FORCE registration identifies the following list of goods which is somewhat broader: "bicycles and parts, namely front forks, bicycle cranks, bicycle rims, seatpost, handlebar, bottom brackets, chainrings, headset bearings, bicycle hubs, bicycle spokes, brake device for bicycles, bicycle chain, handlebar stem, bicycle gears."

Applicant identifies its goods as "bicycle parts, namely, gear shifting mechanisms, shifter grip covers, handlebar grips, derailleurs, brakes, brake levers, cranks, bottom brackets for frames, handlebars, stems, hubs, chains, cassette sprockets, control cables for use with

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gear shifting and brakes, control cable sealing mechanisms, control cable housing, seat posts, pedals, wheelsets, rims, headsets and quick release levers."

The following parts are included in the identification in both the pleaded registration and the opposed application: cranks, rims, seat posts, handlebars, bottom brackets, hubs, brakes, chains, stems and gears. Furthermore, opposer's common law use extends to the following goods also identified in the opposed application: handlebars, stems, cranksets and seatposts. Thus, the respective goods are, at least in part, identical and otherwise closely related. In addition, because the goods are identical in part, it logically follows that the channels of trade for those goods are identical also. The parties do not dispute this conclusion.

Also, opposer argues that there is a likelihood of confusion here, in part, because opposer intends to use its K FORCE mark on a group set of high-end, top-tier parts, and that applicant's use of SRAM FORCE on parts, which opposer alleges to be of lower quality, will impair opposer's ability to do so. We find this argument unpersuasive.

Bicycle parts are sold as part of as well as apart from group sets. Both opposer and applicant sell parts

apart from group sets. In fact, the evidence of opposer's use to date does not indicate use of the K FORCE mark to identify a group set. Van Enkevort Test. at 23, 42 and 164. Furthermore, Mr. Van Enkevort states that opposer had not yet used the K FORCE mark on front forks, headsets, hubs, spokes, brakes, chains, cassettes or derailleurs (gear components). *Id.* Nonetheless, we conclude that even if both parties were to use their respective mark on group sets, whether of the same or different tiers, we would not decide this case differently.

The Strength of Opposer's Mark

Applicant argues, "Opposer's K Force mark is merely one of a crowd of 'FORCE' marks utilized in the bicycle industry." Applicant's Brief at 19. Applicant argues further that, as a result of third-party use, the FORCE component of opposer's mark, the component common to the two marks at issue, is weak. Applicant argues still further that FORCE is weak because it is either merely descriptive or highly suggestive of bicycle parts.

Opposer argues that the examples of third-party use are not relevant because applicant's goods are high end, and the goods in the examples are not sold in that market and that neither applicant nor opposer sells some of the products of these third parties, for example, tires.

Opposer also argues that the examples which are based on registrations, without any evidence of use, should be discounted, and that other evidence of third-party use is otherwise lacking in probative value. Opposer also argues that FORCE is not merely descriptive or suggestive.

We concur with opposer in concluding that FORCE is not merely descriptive of the relevant goods. There is no evidence of record to support that position. However, we concur with applicant in concluding that FORCE is suggestive of both opposer's and applicant's goods in that it suggests strength, power and motion based on its dictionary meaning.⁵ The evidence of third-party registration and use of "FORCE" marks in the bicycle field further supports the conclusion that FORCE, as used in the respective marks, is suggestive.

Applicant has provided evidence of the registration and use of FORCE as an element of marks in the bicycle industry, on bicycles, parts for bicycles and on bicycle accessories. We listed the most probative evidence of third-party use in the Findings of Fact above.

⁵ We take judicial notice of *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) which, in relevant part, defines "force" as "strength or energy exerted or brought to bear; cause of motion or change; ... active power..." *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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We decline to discount the evidence based on the assertion that it does not address the high-end market. The goods in opposer's registration are not restricted to the high-end market, nor are the goods in the application. Furthermore, the record shows that competitors in the industry, in fact, offer goods at different tiers, including higher and lower tiers. In general, we have accorded the evidence of third-party use appropriate weight based on the quality of the exhibit and related testimony.

We also reject opposer's argument that we totally discount the evidence related to goods neither party sells. Even though opposer or applicant may not sell certain goods, that does not necessarily compel the conclusion that the goods are not related for purposes of determining the strength or weakness of a term as used in the relevant field.

The examples of third-party marks noted in the Findings of Facts include bicycles, bicycle parts and bicycle accessories. The parts include parts identified in the opposed application, as well as parts identified in opposer's pleaded registration and as to which opposer has shown common law use. The third-party uses also include related parts, such as, frames and tires, and assembled bicycles. The marks used on parts, such as stems,

handlebars and saddles, goods identified in opposer's K FORCE registration, are most probative, but marks used on other parts, such as tires and frames, are probative also, as are the marks used on bicycles. Finally, the marks used on accessories, such as pumps and lights, possess limited, but some probative value. When we view the evidence of third-party use as a whole, we conclude that FORCE is relatively weak in the bicycle field because it is suggestive and because of third-party use.

Purchaser Sophistication

Applicant argues that the purchasers of bicycle parts are knowledgeable, sophisticated purchasers, and as such, less likely to be confused. Opposer disagrees and argues that even sophisticated purchasers may experience trademark confusion. The evidence shows that the goods at issue here are relatively expensive, and not impulse items. Furthermore, the evidence shows that all classes of purchasers at issue here, those who purchase for original equipment manufacturers, operators of retail and service shops, and bicycle owners/enthusiasts, are knowledgeable and sophisticated. Even opposer's own witnesses confirm this conclusion. Hjertberg Test. at 18 and 76. We find Mr. Van Enkevort's assertion in cross-examination that the purchasers are not sophisticated unconvincing. Van

Enkevort Test. at 88-89. Thus, we conclude that the sophistication of the purchasers favors applicant in this case.

The Marks

To determine whether the marks are confusingly similar, we must consider the appearance, sound, connotation and commercial impression of each mark. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In this case, we note, in particular, that it is appropriate to accord greater importance to the more distinctive elements in the marks than to the less distinctive elements in determining whether the marks are similar. 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 Corporation*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

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Opposer argues that K FORCE and SRAM FORCE are very similar in sound, appearance and commercial impression because FORCE is the dominant portion of each of the marks. Opposer argues further that, "'K' in Opposer's K FORCE mark is understood to be a phonetic reference to 'carbon,' a principal manufacturing component of both Opposer's and Applicant's products..." Opposer's Brief at 13. Opposer also argues that the inclusion of SRAM, applicant's house mark, in applicant's mark is insufficient to distinguish the marks, but rather that the house mark suggests a connection between applicant and opposer, when there is no such connection.

On the other hand, applicant argues that K FORCE and SRAM FORCE differ when viewed in their entirety. Applicant also argues that FORCE, the term common to both marks, is weak, and that the K portion of opposer's mark is dominant, noting further that the marks begin with different elements, SRAM versus K. Most importantly, applicant argues that the presence of SRAM, its recognized house mark, in applicant's mark will preclude confusion.

We concur with applicant and conclude that the marks are not similar when viewed in their entirety.

First, we note, as applicant argues, that the initial elements in the marks differ significantly. *Cf. Presto*

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Products, Inc. v. Nice-Pak Products Inc., 9 USPQ2d 1895, 1897 (TTAB 1988) (“... [it is] a matter of some importance since it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered.”).

Furthermore, and more importantly, the leading element in each of the marks is significant, if not dominant. In the case of opposer’s K FORCE mark, K is at least as significant as FORCE. Although opposer argues that K would be relatively weak because it is a phonetic reference to carbon, we have no evidence that potential purchasers would perceive this reference. Furthermore, even if potential purchasers perceived such a reference, that connotation would not elevate FORCE to a dominant status. As we discussed above, FORCE is a suggestive and relatively weak term as applied to the relevant goods. See *Knight Textile Corp. v. Jones Investment Co.*, 75 USPQ2d 1313 (TTAB 2005).

Furthermore, we conclude that SRAM, applicant’s recognized house mark, is the dominant portion of applicant’s SRAM FORCE mark. *Id.* Again, we concluded above that FORCE is suggestive and relatively weak in the relevant field.

The decision in *Knight Textile* is instructive here. In *Knight Textile* the applicant sought to register NORTON

MCNAUGHTON ESSENTIALS for various items of "ladies sportswear." *Knight Textile*, 75 USPQ2d at 1314. Knight Textile Corporation opposed registration based on its registration for the mark ESSENTIALS for various items of "women's clothing." *Id.* at 1314. In the opinion the Board found that the applicant's goods were "in part identical to and otherwise highly similar to the goods in opposer's pleaded registration." *Id.* at 1315. The Board then concluded, as follows, with regard to the comparison of the marks, "We find that the parties' marks are dissimilar rather than similar when viewed in their entirety in terms of appearance, sound, connotation and overall commercial impression." *Id.* at 1315. The Board explains,

The marks obviously are similar in terms of sight, sound and meaning to the extent they both consist of or include ESSENTIALS. Just as obviously the marks are dissimilar in sight, sound and meaning to the extent that applicant's mark, but not opposer's, includes and begins with the words NORTON MCNAUGHTON, which would be perceived to be applicant's house mark. In terms of overall commercial impression, we find that although the word ESSENTIALS is the entirety of the commercial impression created by opposer's mark, in applicant's mark it contributes relatively less to the commercial impression than does the house mark NORTON MCNAUGHTON. This is because... the word ESSENTIALS is highly suggestive as applied to the parties' clothing items and as it appears in both parties' marks, especially in applicant's mark. See *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Id. at 1315

The Board observed further that, in the *Knight Textile* case, the addition of the house mark was sufficient to distinguish the marks, citing *New England Fish Company v. The Herwin Company*, 511 F.2d 562, 184 USPQ 817 (CCPA 1974).

In *Knight Textile*, the critical factual issue was the strength or weakness of ESSENTIALS. In concluding that ESSENTIALS was highly suggestive the Board relied primarily on a dictionary definition for "essential-s" and "twenty-three extant ESSENTIAL registrations on the register in the clothing field registered to twenty-one different owners." *Knight Textile*, 75 USPQ2d at 1316.

In this case, as applicant argues, we begin from a significantly different starting point in our comparison of the marks. Opposer's mark is not FORCE alone but K FORCE.⁶ Therefore, there is an additional basis to distinguish the marks, in addition to the inclusion of the SRAM house mark in applicant's mark.

As in the *Knight Textile* case, applicant here also provided evidence of several third-party uses, not merely registrations, which corroborate the suggestive meaning and weakness of FORCE in the relevant field. See *In re Red*

⁶ Although at various points opposer asserts that applicant uses FORCE alone, the evidence of such use is sparse. Moreover, the arguments based on the use of FORCE are not relevant because the mark in the opposed application is SRAM FORCE, not FORCE.

Carpet Corp. v. Johnstown American Enterprises Inc., 7 USPQ2d 1404, 1406 (TTAB 1988).

The record here shows that SRAM is recognized as applicant's house mark; opposer has not disagreed with this characterization. Thus, in this case SRAM functions like NORTON MCNAUGHTON in the *Knight Textile* case. Here too the house mark, SRAM, is dominant in forming the commercial impression of applicant's mark. As the Board said in *Knight Textile*, "Based on this evidence, we find that purchasers are able to distinguish among various ESSENTIALS marks by looking to other elements of the marks. In this case that other element is the presence of applicant's house mark NORTON MCNAUGHTON." *Knight Textile*, 75 USPQ2d at 1316 (footnote omitted). In the case before us, purchasers would look to SRAM to distinguish applicant's mark from K FORCE.

Accordingly, we conclude that the marks of applicant and registrant are not similar when viewed in their entireties.

Bad Faith

Opposer also argues that applicant is guilty of bad faith, asserting that applicant adopted its mark with knowledge of opposer's mark and with an intent to trade on opposer's good will. We must look to the record to see

whether opposer has established bad faith. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000).

Opposer bases its claim of bad faith on evidence that certain employees of applicant were aware that opposer had adopted the K FORCE mark and that, although those employees had expressed some concern, applicant proceeded with its adoption of the SRAM FORCE mark with this knowledge.

Applicant argues that it acted in good faith in that it conducted a search for the mark FORCE, that it discovered a number of FORCE marks in the process, and that it adopted the SRAM FORCE mark, rather than FORCE alone, in view of the search results. Applicant denies any intent to trade on the good will of opposer. We find the evidence insufficient in this case to conclude that applicant acted in bad faith. *NASDAQ Stock Market Inc. v. Antartica S.r.l.*, 69 USPQ2d 1718, 1733 (TTAB 1998).

Therefore, we have not considered bad faith as a factor in reaching our conclusions with regard to likelihood of confusion in this case.

Other Factors

In its brief opposer refers to the K FORCE mark as a "famous trademark" at one point, although opposer does not specifically argue that fame is a factor in this case.

Opposer's Brief at 16. For completeness, we note that we have considered opposer's evidence of its use and promotion of the K FORCE mark and find it insufficient to establish that K FORCE is a famous mark. Accordingly, we do not regard fame as a relevant factor in this case.

Also, applicant asserts that there has been no actual confusion with respect to the marks in this case. In view of the evidence and circumstances in this case, including the length, nature and extent of use of the respective marks, we conclude that it is unclear whether there has been a significant opportunity for confusion to occur. Accordingly, we do not regard the lack of evidence of actual confusion as a relevant factor in this case. *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003); *In re Kangaroos U.S.A.*, 223 USPQ 1025, 1026-27 (TTAB 1984).

Conclusion

Finally, after considering all relevant, competent evidence in this case bearing on the *du Pont* factors, we conclude that applicant's SRAM FORCE mark when used in connection with the identified goods in Class 12, namely, "bicycle parts, namely, gear shifting mechanisms, shifter grip covers, handlebar grips, derailleurs, brakes, brake levers, cranks, bottom brackets for frames, handlebars,

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stems, hubs, chains, cassette sprockets, control cables for use with gear shifting and brakes, control cable sealing mechanisms, control cable housing, seat posts, pedals, wheelsets, rims, headsets and quick release levers," is not likely to cause confusion with opposer's K FORCE mark.

Although opposer also opposed registration in Class 25, opposer did not present any evidence or augment with respect to Class 25. Accordingly, for the same reasons we conclude that there would be no likelihood of confusion with respect to Class 12, and for the further reason that opposer has not established any similarity or relatedness of its goods with the goods in Class 25, we likewise conclude that there would be no likelihood of confusion between the respective marks with respect to Class 25.

Decision: We dismiss the opposition.