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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Lominger Limited, Inc.
v.
Maria C. Seddio

Opposition No. 91176811
to application Serial No. 77040804
filed on November 9, 2006

Erin C. Skold of Leonard, Street and Deinard for Lominger Limited, Inc.

Bernard Lau, Esq. for Maria C. Seddio.[1]

Before Cataldo, Taylor and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Maria C. Seddio ("applicant") filed an intent-to-use application for the mark **The Architecture of Talk**, in standard character format, for "consultation in the field of human resources," in Class 35.

[1] We note that although applicant is represented by counsel, she represented herself in her brief. However, because applicant has not revoked her counsel's power of attorney and instructed the Board to send all correspondence to her, we must continue to send all correspondence to Mr. Lau. Trademark Rule §2.18(a) and (b), 37 CFR §2.18(a) and (b). *See also* TBMP §§117.01 and 117.03 (2nd ed. rev. 2004).

Lominger Limited, Inc. ("opposer") filed a notice of opposition against the registration of applicant's application on the ground of priority and likelihood of confusion pursuant to Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d).[2] Specifically, opposer alleged ownership of a family of marks incorporating the word "architect" for "training and consulting related products in the human resources field"[3] and that applicant's mark is likely to cause confusion with opposer's "Architect" family of marks.[4]

Applicant denied the essential allegations in the notice of opposition.

The Record

By rule, the record includes applicant's application file and the pleadings. Trademark Rule 2.122(b), 37 CFR §2.122(b). In addition, opposer introduced the trial testimony deposition of Zoe Hruby, opposer's director of

[2] Opposer also alleged that applicant's mark would dilute the distinctive nature of opposer's trademarks. However, because opposer did not argue the issue of dilution in its brief, we consider that claim to have been waived.
[3] Notice of opposition, ¶3. Opposer also alleged priority of use and likelihood of confusion with Registration Nos. 2887561 and 2887562 both for the mark TALKING TALENT for consulting services in the field of human resources and educational services in the field of human resources, respectively. In view of our decision herein, we need not consider these marks.
[4] Notice of opposition, ¶10. Opposer did not allege that applicant's mark would cause confusion with any specific mark; rather, the claim of likelihood of confusion was limited to opposer's family of marks in their entirety.

strategic alliances, with attached exhibits, and it filed a notice of reliance on the following items:

1. Applicant's responses to opposer's interrogatory Nos. 2, 5, 6, 7, 8, 9, 17, and 22;

2. Applicant's responses to opposer's requests for admission Nos. 5, 6, and 9;

3. Applicant's responses to opposer's amended requests for admission Nos. 1-4, 7, 8, 10-12, and 14; and,

4. Photocopies of opposer's pleaded registrations.[5]

Applicant did not introduce any testimony or evidence.

Standing

Because opposer has properly made its pleaded registrations of record through the testimony deposition of Zoe Hruby, opposer has established its standing.[6] *Cunningham v. Laser Golf Corp.,* 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.,* 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

[5] These registrations were not filed in compliance with Trademark Rule 2.122(d)(2), 37 CFR §2.122(d)(2), because they were not prepared by the U.S. Patent and Trademark Office showing both the current status and current title to the registrations. Accordingly, the registrations filed through the notice of reliance have not been given any consideration. However, we note that applicant properly made the registrations of record during the testimony deposition of Zoe Hruby.

[6] *See* the discussion in footnote 5.

Priority

Applicant admitted that opposer established its "Architect" family of marks prior to applicant's rights in its mark.[7] Accordingly, priority is not at issue in this proceeding.

Likelihood of Confusion

Our determination under Section 2(d) is based on 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, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003).

A. Whether opposer has a family of "Architect" marks.

Opposer claims a family of marks based on the surname "Architect." Applicant has admitted that opposer has a family of "Architect" marks.[8] Accordingly, we find that opposer has a family of marks incorporating the word "architect."

B. Whether opposer's "Architect" family of marks is famous?

Opposer contends that its "Architect" family of marks is famous because opposer is a leader in its field, well-

[7] Applicant's response to opposer's request for admission No. 14.
[8] Applicant's response to opposer's request for admission No. 4 ("Admit, to that Opposer has a family of marks containing the common element ARCHITECT").

known in the market, and recognized by its "Architect" family of marks.[9] Opposer's annual sales are roughly between $22 and $25 million and are attributable to sales of products under the "Architect" family of marks.[10]

This *du Pont* factor requires us to consider the fame of opposer's family of marks. Fame, if it exists, plays a dominant role in the likelihood of confusion analysis because famous marks enjoy a broad scope of protection or exclusivity of use. A famous mark has extensive public recognition and renown. *Bose Corp. v. QSC Audio Products 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 Industries, Inc.,* 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992).

Fame may be measured indirectly by the volume of sales and advertising expenditures of the goods and services identified by the marks at issue, "by the length of time those indicia of commercial awareness have been evident," widespread critical assessments and notice by independent sources of the products identified by the marks, as well as the general reputation of the products and services. *Bose Corp. v. QSC Audio Products Inc.,* 63 USPQ2d at 1305-1306 and

[9] Opposer's Brief, pp. 4-5.
[10] Hruby Dep., p. 49.

1309. Although raw numbers of product sales and advertising expenses may have sufficed in the past to prove fame of a mark, raw numbers alone may be misleading. Some context in which to place raw statistics may be necessary (*e.g.,* the substantiality of the sales or advertising figures for comparable types of products or services). *Bose Corp. v. QSC Audio Products Inc.,* 63 USPQ2d at 1309.

Finally, because of the extreme deference that we accord 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 the party asserting that its mark is famous to clearly prove it. *Blue Man Productions Inc. v. Tarmann,* 75 USPQ2d 1811, 1819 (TTAB 2005).

The evidence of record falls far short of proving that opposer's "Architect" family of marks is famous. First, opposer's contention that it is a leader in the field and well-known in the market is not supported by any evidence; it is simply argument. Second, opposer's contention that it is known by its "Architect" family of marks is supported only by the testimony of opposer's employee.[11] Opposer's testimony is not corroborated by any customers or

[11] Hruby Dep., pp. 42-43 ("most of our clients actually knew us more as the The Leadership Architects, as opposed to our actual name of Lominger . . . it was such a familiar brand to our clients, 'Oh, you're the Architect people,' 'Oh, you do the Architecture stuff.'").

unsolicited media coverage. Accordingly, opposer's claim that it is known as the "Architect people" is not as persuasive as it might have been. Finally, we do not have any context in which to analyze opposer's sales. For example, there is no testimony regarding opposer's market share or the sales figures for comparable businesses, as well as the fact that there is no evidence regarding opposer's advertising expenditures or the advertising expenditures of comparable companies.

In view of the foregoing, there is not sufficient evidence to find that consumers have been so exposed to opposer's "Architect" family of marks that it can be considered famous.

C. The similarity or dissimilarity and nature of the goods and services as described in the application and registrations at issue.

The issue in an opposition is the right of the applicant to register the mark for the services identified in the application (*i.e.*, consultation in the field of human resources). Opposer provides an array of services and products in the field of human resources and organizational development.[12] Also, it has registered, *inter alia,* the following members of its "Architect" family of marks:

Reg. No.	**Mark**	**Products**
2899493	THE LEADERSHIP ARCHITECTS	Consulting services in the field of human resources

[12] Hruby Dep., pp. 11-13, 38, 39, and 45.

Reg. No.	Mark	Products
2238076 2398224	CHANGE!ABLE ARCHITECT	Printed educational manuals and computer software to evaluate and implement management performance action plans
2201618 2148391	CHOICES ARCHITECT	Printed educational materials and computer software to evaluate leaning styles and learning skills
2756993 2895367	INTERVIEW ARCHITECT	Printed educational materials and nonloadable computer programs to evaluate and improve recruiting, analyses and evaluation skills, job performance and job development
1825119 1967221	LEADERSHIP ARCHITECT	Printed educational materials, computer software and multimedia electronic programs to evaluate and improve job performance, leadership skills and leadership development
2155594 2077606	ORGANIZATION ARCHITECT	Computer software and printed materials for the evaluation and implementation of management performance action plans
2180870	PERFORMANCE MANAGEMENT ARCHITECT	Computer software and multimedia electronic programs to evaluate performance of employees and managers
2911373 2652521	SUCCESSION ARCHITECT	Printed materials and computer programs to evaluate leadership and managerial aptitudes and skills for developing and implementing leadership development and succession plans
2509130 2600117	TEAM ARCHITECT	Printed materials and computer programs to evaluate and improve job performance, career skills, and career development

Opposer has registered and applicant is seeking to register their respective marks for consulting services in the field of human resources and opposer's products are otherwise closely related to human resources services.

D. The similarity or dissimilarity of likely-to-continue trade channels.

Because we have found that the parties' services are identical, and opposer's products are closely related to applicant's services, we must presume that the channels of trade and classes of purchasers are the same. *Genesco Inc. v. Martz,* 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part (sic) identical and in-part (sic) related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade"); *In re Smith and Mehaffey,* 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers").

E. The similarity of the marks in their entireties in terms of appearance, sound, meaning, and connotation.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont*

de Nemours & Co., 177 USPQ at 567. In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.,* 9 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.,* 6 USPQ2d 1041, 1042 (TTAB 1988). In comparing the marks, we are mindful that where, as here, the services are identical and opposer's products are closely related to applicant's services, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods and services. *Century 21 Real Estate Corp. v. Century Life of America,* 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Real Estate One, Inc. v. Real Estate 100 Enterprises Corporation,* 212 USPQ 957, 959 (TTAB 1981); *ECI Division of E-Systems, Inc. v. Environmental Communications Incorporated,* 207 USPQ 443, 449 (TTAB 1980).

In addition, in comparing the marks, we are mindful that the test 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 impression so that confusion as to the source of the goods offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.,* 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.,* 23

USPQ 1735, 1741 (TTAB 1991), *aff'd unpublished,* No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.,* 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.,* 190 USPQ 106, 108 (TTAB 1975).

Finally, because we have determined that opposer has a family of marks incorporating the word "architect," specifically, a descriptive or suggestive word or term followed by the word "architect," the question is not whether applicant's mark is similar to opposer's individual marks, but whether applicant's mark would be likely to be viewed as a member of opposer's "Architect" family of marks. *The Black & Decker Corporation v. Emerson Electric Co.,* 84 USPQ2d 1482, 1491 (TTAB 2007).

Applicant contends that consumers would not believe that its mark **The Architecture of Talk** would be viewed as a member of opposer's family of "Architect" marks because applicant uses the word "architecture," not "architect," and because the word "architecture" in applicant's mark is at the beginning of the mark, not at the end of the mark as in opposer's family of marks.[13]

[13] Applicant's Brief, p. 7.

While acknowledging that applicant's mark is not structured the same way as opposer's "Architect" family of marks, we nevertheless find that applicant's mark **The Architecture of Talk** is similar in appearance, sound, meaning and commercial impression to opposer's "Architect" family of marks because the word "architecture" is similar to the "architect" surname of opposer's family of marks. *See In re National Data Corp.,* 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) ("there is nothing improper in stating that, for rational reasons, more or less weight have been given to a particular feature of the mark").

The words "architect" and "architecture" are arbitrary when used in connection with human resources consulting services and products, and thus they are entitled to a broad scope of protection or exclusivity of use. The evidence of record shows that opposer has used the word "architect" in connection with its goods and services to point uniquely and exclusively to opposer as the source of its "Architect" human resources products and services.

The words "architect" and "architecture" look and sound similar, and they also have related meanings. An "architect" is "a person skilled in the art of building: a professional student of architecture or one who makes it his occupation to form plans and designs of and to draw up specifications for buildings and to superintend their

execution."[14] Likewise, "architecture" is defined as "the art or science of building."[15] In other words, an architect is one who practices architecture.

When the terms "architect" and "architecture" are used as part of their respective marks, they create similar commercial impressions (*i.e.,* building something). For example, in the case of opposer's mark THE LEADERSHIP ARCHITECTS, the commercial impression engendered by the mark is people who build leadership. By the same token, commercial impression engendered by applicant's mark **The Architecture of Talk** engenders the commercial impression of building or structuring communication.

In view of the foregoing, when consumers encounter human resources consulting services and products identified by a family of marks incorporating the word "architect," all originating with opposer, it is more than likely that they would expect human resources consulting services identified by the mark **The Architecture of Talk** to have the same source. Otherwise, the word "architect" in opposer's marks would have no trademark significance. Accordingly, we find that applicant's mark **The Architecture of Talk** is similar in

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[14] Webster's Third International New Dictionary of the English Language (Unabridged), p. 113 (1993). The Board may take judicial notice of dictionary evidence. *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).
[15] *Id.*

appearance, sound, meaning, and commercial impression with opposer's "Architect" family of marks.

F. Balancing the factors.

Having concluded that opposer owns a family of marks incorporating the word "architect" in the field of human resources consulting services and products, and having found that the services of the parties are identical and that opposer's products are closely related to applicant's services, as well as the presumption that the goods and services move in the same channels of trade and are sold to the same classes of consumers, we find that consumers would believe that applicant's mark **The Architecture of Talk,** if used in connection with consulting services in the field of human resources, would appear to many to be a member of opposer's "Architect" family of marks.

Decision: The opposition is sustained and registration to applicant is refused.