

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Hearing:
February 23, 2008

Mailed:
August 11, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Monaco Coach Corporation

v.

Mitsubishi Motors North America, Inc.

Cancellation No. 92041358

Seth A. Rose, Mark J. Liss, Anne E. Naffziger, Kevin C.
Parks and Scott S. Adams of Leydig, Voit & Mayer, Ltd. for
Monaco Coach Corporation

David M. Kelly, Douglas A. Rettew and Linda K. McLeod of
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P for
Mitsubishi Motors North America, Inc.

Before Sams, Chief Administrative Trademark Judge; Seeherman
and Kuhlke, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

On December 9, 2002, Monaco Coach Corporation
(hereafter "petitioner") filed a petition to cancel, on the
ground of likelihood of confusion, Registration No. 2336392,
owned by Mitsubishi Motors North America, Inc., (hereafter
"respondent") for the mark ENDEAVOR for "automobiles and
structural parts therefor," which issued on March 28, 2000

from an application based on intent-to-use, filed on April 10, 1995.¹ In particular, petitioner has alleged that it is the owner of Registration No. 1805232 for the mark ENDEAVOR for recreational vehicles, namely motorhomes; that it has been using the mark ENDEAVOR on motorhomes since at least 1992; that it has extensively promoted its ENDEAVOR motorhomes and as a result it has generated substantial goodwill in its mark; that recreational vehicles such as motorhomes and SUVs/automobiles are closely related products; that respondent itself has taken the position that a mark which is used on automobiles would create a likelihood of confusion if it were also used on motorhomes; and that respondent's registration and use of the ENDEAVOR mark is likely to cause confusion, or to cause mistake, or to deceive the public.

In its answer, filed on February 12, 2003, respondent admitted that it sells a variety of cars, trucks and sport utility vehicles (SUVs) and that it planned to begin selling an SUV under the ENDEAVOR mark in 2003; and that it has registered and is using the ENDEAVOR mark for automobiles. It otherwise denied the salient allegations in the petition for cancellation.

¹ At the time the petition was filed, the registration was owned by Mitsubishi Motor Sales of America, Inc. During the course of this proceeding a change of name of the registrant was recorded at the U.S. Patent and Trademark Office (USPTO).

The record in this case is very large and includes the testimony, with exhibits, of petitioner's six witnesses and respondent's eight witnesses. In addition, petitioner submitted six notices of reliance, and respondent submitted sixteen notices of reliance. The submitted evidence is listed at pages 2-4 of petitioner's main brief, and pages 3-4 of respondent's brief, and we will not repeat it here. Except for respondent's objections, which we discuss below, the parties are in agreement as to what is in the record, and therefore we treat even those materials which may not be made of record through a notice of reliance as having being stipulated into the record.²

Respondent has submitted with its brief (Appendix A) an 18-page list of objections to petitioner's evidence. Petitioner has filed a 21-page response. In order to not unduly add to the length of this opinion, we will deal with the objections in a summary manner, addressing the objections as numbered by respondent. As a general comment, we note that respondent has, in part, couched its objections in terms of the purposes for which petitioner has submitted the evidence, citing to statements made by petitioner in its

² We note that petitioner's brief does not list the testimony declarations of respondent's witnesses Susannah Klank and Seth Greenstein. However, petitioner raised no objections to this evidence in discussing arguments based on it, and we regard the omission from the listing as an oversight. The declarations clearly fall within the parties' stipulation that affidavit or

brief, and in this respect has asserted that the evidence is not competent to support the statements or arguments made by petitioner in its brief. To the extent that we find the evidence admissible, we have accorded it only the probative value to which it is entitled.

Objection 1: Overruled. Exhibits 44 and 45 to the Mac deposition are not hearsay because petitioner is not using them to prove the truth of what they say on their face.

Objection 2: Sustained. We cannot treat the N.A.D.A. directory as a business record and it has otherwise not been authenticated. As for the photographs, the objection is also sustained. Mr. Bond was not at the trade show, and cannot authenticate the photographs by merely stating that they were taken by Mr. Mac. However, Mr. Mac testified that he attended the 2004 N.A.D.A. show, and his testimony regarding what he saw and did at the show is admissible.

Objection 3: To the extent that the statements made in the Bond declaration are based solely on the testimony in the Rose affidavit filed in connection with the summary judgment motions (an affidavit that is not of record), it is sustained.³ However, many of the statements in the

declaration testimony could be used to authenticate internet printouts, and these declarations are therefore of record.

³ Respondent has also objected to exhibit 72 (the Bond declaration) because it is based on the Rose testimony affidavit. However, the testimony affidavit was executed subsequent to the execution of the Bond declaration and the Bond declaration was obviously not based on the testimony affidavit. Respondent's

declaration, as well as Mr. Bond's testimony, are based on Mr. Bond's personal knowledge or on evidence that is properly of record, and we have considered that testimony, the evidence, and the arguments based thereon.

Objection 4: Sustained as to the Rose summary judgment affidavit, overruled as to the Rose testimony affidavit. Petitioner has conceded that the summary judgment affidavit was not properly made of record, and has explained that citations in its brief to that affidavit were in error, and that they should have been to the testimony affidavit, which includes the same exhibits and is of record. As for the testimony exhibits, internet printouts are admissible for what they show on their face. Further, Exhibit 12 to the testimony affidavit is an official record of the USPTO.

Objection 5: Sustained in part. The information that the RV dealers **that are** listed in exhibit 72-3 and exhibit 76 (an updated version of exhibit 72-3) also sell automobiles was not taken from petitioner's business records, but was gathered from various employees of petitioner for the purpose of this litigation. This situation is different from that in *In re Texas Eastern Transmission Corp. PCB Contamination Ins. Coverage Litigation*, 870 F.Supp. 1293, 1304 (E.D. Pa. 1992), upon which petitioner relies. In *Texas Eastern*, the Court

objections to the Rose testimony affidavit are discussed in

specifically stated that the witness's reliance on documents distinguished that case from those in which a declarant relies solely on the "say-so" of third parties. However, the objection is overruled insofar as the exhibits are acceptable to show that the companies are petitioner's dealers. Further, Mr. Bond's testimony as to his personal knowledge of one dealership, and that he has viewed the internet websites of some of the dealers, is admissible. With respect to the latter, because of the lack of specificity as to which dealers' websites he viewed, we give this testimony little weight.

Objection 6: This objection pertains to the second affidavit submitted by Mr. Bond in connection with the summary judgment motion. As in the case of Objection 5, the objection as to testimony that particular dealerships of petitioner also sell automobiles, to the extent that the testimony is based on statements made to the witness by other employees of petitioner, is sustained. However, as respondent acknowledges, exhibit 75-C is admissible as a listing of petitioner's ENDEAVOR motorhome dealers. Further, the witness's testimony that he checked the websites of the seven dealers that were purported to sell automobiles and that such websites show the offering for sale of automobiles is admissible, as is Mr. Bond's

connection with Objection 4.

testimony regarding his personal knowledge of the dealer that he visited, as well as his personal knowledge of the website of another dealer, Ricart. The objection to exhibit 75-B is overruled; respondent acknowledges that the exhibit is admissible for what it shows on its face, and petitioner asserts that this is the purpose for which it has been submitted. Further, there is no requirement that the webpages must show the date that they were printed in order to authenticate them.

Objection 7: Overruled. The witness has personal knowledge, gained through his participation in business meetings, that petitioner was pursuing adding automobile dealers as dealers for its motorhomes. We also note that Mr. Mac testified that he attended the 2004 N.A.D.A. show in order to recruit auto dealers to sell RVs. Mac dep., p. 103.

Objection 8: Overruled. The objection was not seasonably raised during the testimony deposition, and therefore petitioner was not afforded an opportunity to overcome any relevancy or hearsay objection. Nor are the testimony and exhibits irrelevant simply because the publication does not advertise specific brands, as opposed to recreational vehicles in general.

Objection 9: Overruled. Although the third-party activities are not for the *identical* goods as those in the registrations at issue, we do not consider them irrelevant.

Objection 10: Overruled. Although it may be entitled to limited probative value, the evidence is admissible.

Objection 11: Respondent has objected to the Board's relying on portions of Dr. Ross's testimony but, presumably because the instances are too numerous, it has not specified the testimony by page and line. For the same reason, we will not go through the five pages of corrections and identify what we consider substantive in nature. Suffice it to say that the Board will give such testimony only the probative weight to which it is entitled.

Findings of Fact

Holiday Rambler, LLC began using the mark ENDEAVOR in 1992 for its Type A (also known as Class A) motorhome, which is a vehicle with a house portion built on a strip chassis, and is typically the largest class of motorhome. A motorhome is a recreational vehicle that has the engine as part of it, so that one drives the motorhome, as opposed to travel trailers or fifth wheels, which have to be towed by a vehicle with an engine. In 1996 Holiday Rambler was acquired by Monaco Coach Corporation, the petitioner herein, and continued to function as petitioner's Holiday Rambler RV division. Unless otherwise indicated, we will use

"petitioner" to refer to both Monaco Coach Corporation and its predecessor-in-interest, Holiday Rambler, LLC.

Petitioner sells its ENDEAVOR motorhomes through a network of dealers who are located in 42 of the 48 mainland states. These dealerships are set up in a similar manner as auto dealerships, with showrooms and outdoor lots, although a single dealer may carry competing brands of motorhomes. The average price of an ENDEAVOR motorhome is \$250-260,000. Petitioner advertises its ENDEAVOR motorhome in industry or special interest publications such as "MotorHome" magazine and the magazine of the Family Motor Coach Association, which is an association of motorhome owners, as well as its own "Holidays" magazine. The product has also been the subject of reviews in "MotorHome" and "Family Motor Coach Association" magazines, and was mentioned in a 2003 "Time Magazine" article about RVs. Petitioner also promotes its ENDEAVOR motorhomes through its own website and advertisements on a third-party website; through coop advertising with its dealers; point of sale materials such as brochures; and trade and retail shows. In addition, petitioner participates in rallies, which are events in which clubs get together. The clubs may be related either by brand or lifestyle.

Respondent manufactures and distributes automotive products, including cars, truck and SUVs. It first used the

trademark ENDEAVOR in 1999, for the 2000 model year of its MONTERO SUV. The word ENDEAVOR was used as an additional designator (trim line) for a special edition line of the MONTERO. Subsequent to that model year, the trademark was not used again until the 2004 model year, when it became the name of a new model of SUV. Sales of this SUV commenced in 2003.⁴

Respondent sells its ENDEAVOR SUV through its dealers who are located throughout the United States. It advertises it through television, both network and cable; radio; consumer publications such as "People" and "GQ" and car enthusiast publications such as "Car & Driver" and "Motor Trend"; the Internet; and direct mail. Respondent also exhibits the ENDEAVOR vehicle at auto shows.

Standing

Petitioner has submitted evidence of use of ENDEAVOR for motorhomes, and its registration for that mark for "recreational vehicles, namely motorhomes."⁵ Accordingly, petitioner has shown that it is not a mere intermeddler, and has therefore established its standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000);

⁴ Because respondent has submitted its sales and advertising figures under seal, we will not set them out in this opinion, but the numbers are substantial.

⁵ Registration No. 1805232, issued November 16, 1983; Section 8 & 15 affidavits accepted and acknowledged; renewed.

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

Priority

Because this is a cancellation proceeding priority is in issue despite the fact that petitioner has made of record its registration for ENDEAVOR. See *Brewski Beer Co. v. Brewski Brothers, Inc.*, 47 USPQ2d 1281, 1284 (TTAB 1998). Thus, we must look to the actual dates of first use proved by both parties, although each party may, in the absence of other evidence, rely on the filing date of the application underlying its respective registration. In this case, petitioner has proven its priority not only by the July 28, 1992 filing date of its underlying application, but by its evidence that it began using the mark ENDEAVOR on motorhomes in 1992. The earliest date of use on which respondent can rely is the October 10, 1995 filing date of its underlying application, which was based on an intent to use the mark; respondent's actual first use was in 1999, when respondent used ENDEAVOR to designate a "trim line" for its MONTERO SUV.

Likelihood of Confusion

Our determination of this issue 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 & 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).

Similarity of the marks

The parties' marks are both the word ENDEAVOR, and each mark has been registered in typed format. The marks are identical in appearance, pronunciation, connotation and commercial impression. This du Pont factor strongly favors petitioner, since the 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 International Forwarding Corp., 222 USPQ 352, 356 (TTAB 1983). See also, L.C. Licensing Inc. v. Berman, 86 USPQ2d 1883 (TTAB 2008).

Fame/Strength of Petitioner's Mark

We turn next to the factor of the fame/strength of petitioner's mark, because this is a significant part of respondent's argument. Respondent's position is that petitioner's mark is so weak that it is entitled to an extremely limited scope of protection, and that limited scope of protection does not extend to prevent respondent's use of the identical mark on automobiles. Thus, the scope of protection to be accorded petitioner's mark has an impact

on the analysis of the du Pont factor of the relatedness of the goods.

First, we point out that petitioner does not claim that its mark is famous, and we agree that the evidence of record does not demonstrate that ENDEAVOR is a famous mark for motorhomes.⁶ On the other hand, we do not regard it as a highly suggestive mark that is entitled to a very limited scope of protection, as respondent contends. The dictionary definitions submitted by respondent do not show that the word ENDEAVOR has a particular meaning when used in connection with motorhomes or, frankly, does it convey even a vague suggestion of the goods.⁷ Nor do the third-party registrations submitted by respondent demonstrate that the term has a meaning in the industry. Third-party registrations are not evidence that the marks shown therein are in use. In re Opus One Inc., 60 USPQ2d 1812 (TTAB 2001). As the Court stated in Olde Tyme Foods Inc. v. Roundy's Inc., 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992), quoting AMF Inc. v. American Leisure Prods., Inc., 474 F.2d 1403, 1406, 177 USPQ 268, 269 (CCPA 1973), "The

⁶ Although petitioner's sales from 1992 through 2006 amounted to \$1.25 billion, because of the high cost of each item, the total number of motorhomes sold during that period was 12,122.

⁷ The definition as set forth in The American Heritage College Dictionary, 4th ed. ©2004, submitted by respondent under its notice of reliance #1, is: "n. 1. A conscientious or concerted effort toward an end; an earnest attempt. 2. Purposeful or industrious activity. tr. To attempt (fulfillment of a responsibility, for example) by employment or expenditure of effort. intr. To work with a set or specified goal or purpose."

existence of [third party] registrations is not evidence of what happens in the market place or that customers are familiar with them...." (punctuation in original). Third-party registrations have probative value only to indicate that a term has been adopted by others in the industry because it has some significance for that industry. Mead Johnson & Company v. Peter Eckes, 195 USPQ 187 (TTAB 1977). Respondent has submitted copies of 32 marks consisting of or containing ENDEAVOR/ENDEAVOUR, and the file wrappers for another 9 applications.⁸ These registrations appear to be for all the ENDEAVOR/ENDEAVOUR marks that are on the register, as they run the gamut of goods/services and classes, ranging from "insecticides for agricultural commercial or domestic use" (Registration No. 2485694) to "dental insurance and underwriting" (Registration No. 2575523) to "plastic safety glasses" (Registration No. 2402925). In fact, the only third-party registration which appears to be even arguably close to motorhomes, in that it involves vehicles, is Registration No. 2846347 for ENDEAVOR for, inter alia, "agricultural tractors; vehicles for earth and material hauling and handling, namely, tractors, semi-tractor trailers." We do not regard any of these registrations as demonstrating that ENDEAVOR has a

⁸ Third-party applications are evidence only of the fact that they have been filed.

suggestive, let alone a highly suggestive, meaning for motorhomes.

Respondent also argues that ENDEAVOR is highly suggestive because it has "significant historical connotations in the transportation and travel field." Brief, p. 30. The historical significance asserted by respondent is that ENDEAVOUR is the name of the first ship of the 18th century explorer Captain James Cook, and is also the name of NASA's space shuttle orbiter.⁹ In support of this argument, respondent has submitted 192 articles from printed publications taken from the NEXIS and Westlaw databases;¹⁰ the transcripts of 167 television or radio mentions of the space shuttle or the ship, taken from the NEXIS database,¹¹ and 24 exhibits (most of which each contain numerous listings, such that the actual number of pages is in excess of 600) consisting of webpages retrieved by various searches of the Internet.

⁹ Both the ship and the space shuttle use the British spelling.

¹⁰ Twelve of the submitted articles are from wire service reports. Although in certain circumstances, such as those involving specialized scientific activities, we assume that the relevant consumers will be aware of these reports, here the consumers are the public at large. Thus, we accord the wire service reports limited probative value. In re Cell Therapeutics Inc., 67 USPQ2d 1795 (TTAB 2003).

¹¹ Respondent submitted the transcripts under Notice of Reliance # 5. We point out that such materials do not constitute printed publications and therefore are not acceptable for submission under a notice of reliance. However, as previously noted, because petitioner has treated all the evidence submitted by respondent as being of record, we consider the transcripts to have been stipulated into the record.

To provide a sense of what has been submitted, there are 12 articles and 1 wire service report from 2006. The most recent article (June 11, 2006) is from the Biloxi, Mississippi "Sun Herald," and lists things that occurred "today in history." The second item in this list, after the marriage of Henry VIII to Catherine of Aragon, is, "In 1770, Capt. James Cook, commander of the British ship Endeavour, discovered the Great Barrier Reef off Australia by running onto it." Other listed items are that in 1942 the United States and the Soviet Union signed a lend-lease agreement, and that in 1963, Buddhist monk Quang Duc immolated himself on a Saigon street to protest the government of South Vietnamese President Ngo Dinh Diem. The next three articles, all of which appear to be from Rhode Island papers,¹² mention Captain Cook's ship Endeavour in connection with the discovery of another of Captain Cook's ships off the coast of Rhode Island. The fifth article (the 4th is a wire service report, also about a wreck found in Rhode Island) is in the May 14, 2006 "The Daily News of Los Angeles," and is about the space shuttle Atlantis, and that an assemblywoman has authored a joint resolution to ask the California Legislature to send a request to the U.S.

¹² Two of the articles are from the "Providence Journal," which is identified as being in Rhode Island; the third is from the "Evening Gazette," with no city or state listed; however, the article is from the "news local" section, and the article is about an event in Rhode Island.

government to send Atlantis to Palmdale, CA after NASA retires it. In the course of the article there is a brief mention that Atlantis was the last in the budget for the space shuttle fleet, but the destruction of Challenger led to the creation of Endeavour from space shuttle parts. Two other articles in 2006 (Exhibits 7 and 9) discuss a report on the investigation of the safety of the 2002 launch of the Endeavour.

We will not discuss in detail the remaining articles, the television and radio transcripts and the Internet excerpts.¹³ It is clear that references to ENDEAVOR, whether the space shuttle or Captain Cook's ship, appear through the years. The question, however, is whether these sporadic references to the name Endeavour are so noticeable that they would make an impression on the public, such that purchasers seeing the mark ENDEAVOR on motorhomes would

¹³ Although the evidence submitted by respondent is certainly large in the physical sense of numbers of pages and weight, much of it appears to be irrelevant or redundant or of limited probative value. For example, respondent has submitted the results of its searches of Amazon.com for both "Endeavour James Cook" and "Endeavour Captain Cook" in their entirety, although both searches retrieved many of the same titles. Since the purpose of the evidence is to show consumer recognition of the ship name Endeavour, rather than what a search of various terms would retrieve, to provide duplicate listings of books was unnecessary and only adds bulk to the paper file. Further, many of the listings have no relevance to the issue at hand. The fact that the listing for the book "The Life of Captain James Cook" includes an excerpt that uses "endeavour" as a verb shows nothing whatsoever about recognition of the ship name, while the listing for "James Herriot's Yorkshire: A Guided Tour with the Beloved Veterinarian Through the Land of All Creatures Great and Small and Every Living Thing, Gloriously Photographed and Memorably Described" does not even have a reference to "Endeavour."

recognize it as the name of the space shuttle or Captain Cook's ship. Because so many of the references to ENDEAVOUR are in passing, particularly those that are more recent, we find that at the time of trial consumers were not likely to connect petitioner's ENDEAVOR mark with either the space shuttle ENDEAVOUR or Captain Cook's ship ENDEAVOUR.¹⁴ In

¹⁴ We note that as part of the publicity for the introduction of the ENDEAVOR SUV respondent arranged for a former astronaut to be at respondent's manufacturing facility when the first ENDEAVOR SUV rolled out. This event received some publicity, particularly in an article in Bloomington, IL's "Pantagraph" (January 18, 2003), while an article in the "San Jose Mercury News" (January 31, 2003) highlighted that respondent's ENDEAVOR was named after the space shuttle. However, the few other articles regarding the introduction of respondent's vehicle have rather minor mentions of the space shuttle. For example, the Car Notes column in the January 30, 2003 "Chicago Tribune" discusses, in the first paragraph, Cadillac sales, while in the second paragraph it first discusses who the first ECLIPSE was given to, and then that the ENDEAVOR was given to the payload commander "on the first Endeavor space-shuttle mission in 1992." In view of the limited publicity regarding the derivation of respondent's mark, we find that consumers would not make a connection between the ENDEAVOR space shuttle and either motorhomes or automobiles at the time of trial.

We have also considered the evidence regarding the focus group assembled by respondent in 2002 to get reactions to the name ENDEAVOR for an SUV. This evidence was submitted under seal, so it is difficult for us to discuss it in terms of what it showed or to respond to respondent's arguments. We will say that neither Captain Cook, his ship nor the space shuttle ENDEAVOUR was mentioned in any of the responses. And, although respondent's witness stated that the imagery associated with the space shuttle was one of the attributes that affected the choice of the name ENDEAVOR, in fact the only mention of any space shuttle was a negative one in terms of a trademark choice for an SUV, and indicates that the person responding was unclear about a connection between ENDEAVOR and a space shuttle.

As for whether ENDEAVOR might be suggestive of the attributes of a space craft because someone in a focus group would bring up the space shuttle, we consider the responses of the focus group to be of little or no probative value with respect to the suggestiveness of ENDEAVOR for motorhomes. The associations a focus group might make between a word and an automobile are different from the legal concept of a term's suggestiveness of characteristics of the goods.

saying this, we recognize that petitioner's advertising shows its motorhomes in campgrounds and other nature settings, and that the motorhomes are promoted to consumers interested in the outdoor life. However, it is a far cry from such advertisements to the mark's suggesting that the motorhomes have the qualities of the space shuttle and/or Captain Cook's ship or even of exploration, or that consumers viewing the advertisements would understand ENDEAVOR as having such a meaning.

Respondent has also asserted that the third-party registrations it submitted for goods and services outside of the transportation area are relevant in this case to show the historical suggestiveness of ENDEAVOR, as they all issued from applications that were filed after 1989 (when ENDEAVOUR was chosen as the name for the space shuttle). This argument belies respondent's position that ENDEAVOUR would be recognized as the name of Captain Cook's ship, since the ship sailed two centuries earlier. As for the argument that the third-party registrations for so many different goods and services show the significance of the space shuttle name, the mere fact that there are registrations in different classes for different goods and services does not prove this point. From the manner in which ENDEAVOR is used in some of the marks, it is clear that the term is being used for its dictionary meaning of "a

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conscientious or concerted effort toward an end; an earnest attempt" or "purposeful or industrious activity." See, e.g., Registration No. 2144051 for JOINT ENDEAVOR for consultation services with healthcare providers, Registration No. 2492792 for DOMINIONS OF OUR ENDEAVOR for musical group entertainment services; Registration No. 2965794 for DIGITAL ENDEAVORS for consulting services in the field of computer hardware and software; Registration No. 3019659 for ENDEAVOR UNIVERSITY for educational services. The dictionary meaning also seems to apply to ENDEAVOR for talent and literary agency services (Registration No. 2810152). Nor is there any apparent connection between the space shuttle and such goods or services as pharmaceutical preparations for the treatment of hormonal conditions and diseases (Registration No. 2475985), commercial printing paper (Registration No. 1786131) and body lotion, cologne and perfume (Registration No. 2971246). In sum, the third-party registrations do not show that ENDEAVOR has been adopted because it has a historical significance.

Finally, to the extent that petitioner's mark may be considered to have had a suggestive significance when adopted, any suggestiveness has been overcome by the many years of use, advertising and sales of motorhomes under the mark ENDEAVOR.

Accordingly, we find that petitioner's mark is not highly suggestive, and that, contrary to respondent's position, it does not deserve only a limited scope of protection.¹⁵

Similarity of the Goods

The fact that the marks are identical has an impact on our determination of whether the goods are related, because "even when goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

¹⁵ Respondent has cited *Champion Home Builders Co. v. American Motors Corp.*, 197 USPQ 333 (E.D. Mich 1978), stating that this decision found no likelihood of confusion between the identical marks CONCORD for a motorhome and for an automobile, in particular because CONCORD is a familiar name with well-known historic and geographical connotations. However, that case was an action brought on the grounds of trademark infringement and unfair competition, and the decision involved a motion for a preliminary injunction. It was not a trial in which no likelihood of confusion was found; rather, the Court denied the motion because the plaintiff had not demonstrated the likelihood of its success on the merits. The Court stated that the improbability of such success was "buttressed by the nature of the domestic passenger automobile market. The consuming public, including the plaintiff's potential customers, well understands the nature of a passenger automobile model name." *Id.* However, a proceeding before the Board is different from a trademark infringement action, and the constraints on the Board are different from those on a federal district court. Because the parties' registrations are for ENDEAVOR per se, and the registrations are entitled to the presumptions of Section 7(b) of the Trademark Act, we cannot treat the marks as model names which will be used in conjunction with house marks, and therefore the nature of model names that was a factor in the Court's decision does not come into play in this proceeding. We also point out that ENDEAVOR has not been shown to have the well-known historic and geographical connotations that CONCORD does.

In viewing the relatedness of the goods, we note that respondent's goods are identified in its registration as "automobiles," and that the type of vehicle on which respondent has always used its mark is an SUV. Although some of the witnesses have viewed SUVs as different from automobiles, including one employee of respondent who stated that an SUV is classified as a light truck, petitioner has not claimed that respondent has failed to use its mark on its identified goods. Accordingly, in discussing the relatedness of the goods, we will refer to respondent's goods as "automobiles," but with the understanding that the identification encompasses SUVs. We also point out that any distinction between an SUV and another type of automobile would not have an effect on our decision herein, because our determination of likelihood of confusion must be based on an analysis of the mark as applied to the goods identified in respondent's registration vis-à-vis the goods recited in petitioner's registration, rather than what the evidence shows the goods to be. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). In other words, for purposes of our analysis, respondent's goods are considered to be any types of automobiles, including SUVs.

There has been a great deal of testimony regarding how similar/dissimilar the goods are. Petitioner has pointed

out that both automobiles and motorhomes are vehicles which are driven on the same roads and have engines, tires, DVD players and power adjustable seats, and that both can be used for such activities as tailgating at sporting events, towing and hauling, and traveling in campgrounds.

Respondent, on the other hand, has shown that petitioner's motorhomes have things that automobiles do not, such as showers and kitchens, and that they can be used as a temporary place to live. We need not engage in an extended discussion of this point; it is obvious that the goods are not identical, and that one cannot substitute for the other. However, it is well-established that it is not necessary that the goods or services of the parties be similar or competitive, or even that they move in the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods or services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. See *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

Here, the respective goods can certainly be encountered by the same persons. People who purchase and use motorhomes also have and use automobiles. In fact, because of the effort required to hook up and unhook a motorhome, as well

as the size of such a vehicle, people who use a motorhome often travel with an automobile attached as a "dinghy" to the motorhome so that it will be available to them when the motorhome is settled in a campground. In fact, "MotorHome" magazine has been publishing dinghy towing guides for at least six years, thus showing how prevalent this practice is. Mac dep., ex 34. Moreover, people who use motorhomes as a vacation home will use an automobile as their "regular" vehicle when they are not traveling in the motorhome. Thus, although certainly not all people who purchase and use automobiles will also purchase and use motorhomes, people who purchase and use motorhomes purchase and use automobiles. Further, because automobiles are used by the motorhome users as their "local" transportation when the motorhome is hooked up at a campground, the automobile plays a complementary role to the motorhome.¹⁶

The relatedness of automobiles and motorhomes is also shown by the fact that engines and structural parts made by motor vehicle manufacturers are used in motorhomes. A motorhome is essentially a housing unit that is built on a motor vehicle chassis, and it operates through the use of

¹⁶ Respondent has presented testimony as to the specific towing requirements for its ENDEAVOR SUV. However, as we have previously stated, we must consider the issue of likelihood of confusion with respect to "automobiles" in general, including the subset of SUVs, not just respondent's particular vehicle. The record is clear that motorhomes can and frequently do tow automobiles, including SUVs.

engines and other mechanical parts that are found in automobiles and trucks. Major components of the mechanical portion of the motorhome are frequently manufactured by the same companies that manufacture automobiles and trucks. For example, Ford makes a chassis for Class A motorhomes, including for third-party motorhome manufacturers Fleetwood and Winnebago, while Chevrolet engines are used in Fleetwood, Winnebago and Damon RVs. Mr. Carroll testified that "there's up to 30, 40 models that are made in this industry with Ford or Workhorse chassis with Chevy engines, at least." P. 54-55. And respondent's witness P.K. Shrivastava testified that Toyota chassis have been used in motorhomes.

Because the mechanical/structural part of the motorhome is an important feature to the purchaser, since that is what makes the motorhome run, motorhome manufacturers and resellers indicate the brand of the engine and chassis in motorhome brochures and advertisements and window stickers. For motorhome manufacturers that use the Ford chassis, the Ford logo appears in the hub of the steering wheel. For motorhomes that are built on a truck cab, the trademark of the cab is visible on the grill. See, for example, the cover of the January 2006 issue of "MotorHome" magazine, which features a photo of the Seneca motorhome, with the

Chevrolet logo prominently displayed on the grill. Mac dep., exhibit 21.

Because consumers are made aware of the brands for the "motor" portions of motorhomes, if they see the identical mark ENDEAVOR on both a motorhome and on an automobile and parts for that automobile, they are likely to believe that there is an association or sponsorship with respect to the source of the motorhome and the automobile.¹⁷

Petitioner has asserted that "when third-party, large and well-known automobile manufacturers have sought to use marks used by Petitioner on motorhomes, they have requested Petitioner's permission." Brief, p. 8. Petitioner has submitted evidence that an automobile manufacturing company purchased, for use on an SUV, a mark that petitioner had used for its motorhomes, and licensed back the mark to petitioner. Another mark that is owned by petitioner and is used for its motorhomes has been licensed to an automobile manufacturer for use on sports cars. Although the parties have discussed this evidence in terms of whether or not by these actions third parties have viewed the use of the same mark on motorhomes and automobiles as likely to cause confusion, in fact this evidence also shows the relatedness

¹⁷ We note respondent's argument that the same marks have been used on different entities' motorhomes and automobiles, but, as discussed infra, we do not find the evidence submitted by respondent persuasive, particularly with respect to the use of the mark at issue in this proceeding.

of the goods. Because licensed use inures to the benefit of the licensor/trademark owner, these licensed uses show that both automobiles and motorhomes emanate from the same source under the same mark.¹⁸

It is also interesting that respondent does not take the position that there can never be confusion by the use of the same mark on motorhomes and automobiles:

Mitsubishi is not suggesting that a likelihood of confusion could never be found if the same mark is used for motorhomes and automobiles. Rather, as the cases indicate, a finding of likelihood of confusion may be appropriate where the mark is arbitrary and not diluted, like the MIRADA mark at issue in *In re Eldorado Motor Corp.*, 6 USPQ2d 1732 (TTAB 1988).

Brief, p. 36, n. 16. In this case, respondent's mark is as arbitrary as MIRADA, which means "to glance or to view." In *re Eldorado Motor Corp.*, supra at 1734. As noted, we have already found that the dictionary meaning of ENDEAVOR does not suggest the characteristics of motorhomes, and the evidence of record does not persuade us that consumers would recognize this mark, when used for a motorhome, as

¹⁸ Respondent has suggested that there may have been reasons that these automobile companies approached petitioner for the assignments/licenses other than that they believed that there was likelihood of confusion between the use of the same mark for motorhomes and automobiles. Whatever the motives these companies had for seeking an assignment or license, the fact remains that licensed uses inure to the benefit of the trademark owner, and are evidence of use of the same trademark for both motorhomes and automobiles.

referencing the space shuttle or Captain Cook's ship. Even if one could say that ENDEAVOR vaguely suggests that a motorhome allows the purchaser to undertake new activities, that suggestiveness is no greater than "to glance or to view" would be in suggesting that an automobile will either allow one to see new sights or that it is so attractive that people will take second look at it.

We find that the du Pont factor of the similarity of the goods favors petitioner.

In reaching our conclusion that the parties' goods are related, we have given little weight to the evidence that at one time General Motors manufactured both motorhomes and automobiles. Activities from twenty-plus years ago would not have an impact on consumer awareness today. We recognize that petitioner has submitted evidence that there is a nostalgic market for the GM motorhome and an avid group of GMC motorhome enthusiasts, and further that there are current (at the time of trial) resources for people who still own GMC motorhomes, i.e., the "GMC Motorhome News" newsletter (petitioner's notice of reliance #6) with information for people who still own GMC motorhomes, and the gmcmotorhome.com website (Exhibit 14 to Rose testimony affidavit) that advertises itself as "the Internet resource for classic GMC motorhomes." Although these motorhome enthusiasts and current and former owners would be aware

that automobiles and motorhomes have been manufactured by the same source, we cannot ascertain from the evidence of record whether this group would amount to a significant number of motorhome purchasers.

Channels of Trade

As noted, the consumers of motorhomes and automobiles are the same; purchasers of motorhomes generally also have automobiles. Both motorhomes and automobiles are sold through dealers, who have showrooms and lots where motorhomes or automobiles are displayed. There has been much discussion about whether the same dealers offer both motorhomes and automobiles and, if so, whether the lots are in the same place or would be perceived as separate because of an intervening side street or the like. Respondent has, in particular, submitted evidence that neither its ENDEAVOR SUVs, nor any of its MITSUBISHI automobiles, are sold at the same dealerships that sell ENDEAVOR motorhomes. Petitioner, on the other hand, has submitted testimony that some motorhomes dealers also sell automobiles, and has also submitted evidence of third-party Internet websites that offer both automobiles and motorhomes. In some respects, the question is not whether a substantial number of dealerships sell both motorhomes and automobiles or, if so, whether they are displayed in close proximity. Rather, the question is whether consumers will encounter both types of

goods under circumstances that are likely to cause confusion. Here, we find that is the case.

As noted, both automobiles and motorhomes are sold in the same kind of environment, i.e., through dealers with showrooms and lots where the vehicles are displayed. Both types of goods are sold to the same classes of consumers, and as the evidence shows, consumers that purchase motorhomes also purchase automobiles. The mere fact that motorhomes and automobiles are sold on different lots does not necessarily avoid confusion; on the contrary, consumers are likely to ascribe the separate locations for the sale of motorhomes and automobiles to the differences in the goods, rather than assuming that the goods emanate from different sources.

Moreover, when it comes to the sale of used cars and motorhomes, the evidence shows that these items are frequently advertised together. Petitioner made of record a number of issues of "Illinois Auto & RV," "Indiana Auto & RV," "Michigan Auto & RV," and so on, which publications are a venue for individuals and companies to advertise vehicles that are for sale. Both automobiles and RVs appear on the same page, sometimes next to each other. For example, an ad for Auto & RV Center of Beach Park in the August 14-20, 2002 issue of "Illinois Auto & RV" displays photos and other information for twelve vehicles; the four in the center

column are RV's, while the four in the column to the left are automobiles and the four in the column to the right are SUVs and a van.

Respondent has asserted that resale activities for automobiles and motorhomes should not be considered because these are not the normal channels of trade for the parties. Brief, p. 41. Apparently respondent takes the position that it sells its automobiles only as new vehicles. However, as we said previously, we must consider the parties' goods as they are identified in the respective registrations, and therefore we must deem the goods to travel in all channels of trade appropriate for those goods. It is obvious from the evidence of record that automobiles and motorhomes are sold as both new and as used vehicles, and therefore we must consider the likelihood of confusion in terms of the channels of trade for used vehicles as well as new.

This du Pont factor favors a finding of likelihood of confusion.

Conditions of Purchase

Both petitioner's and respondent's goods are expensive items that for the most part will be purchased with care. Petitioner's motorhomes sell for between \$250,000 and \$260,000, and respondent's automobiles sell for between \$25,000 and \$35,000. And as the Board stated in ruling on a summary judgment motion in this proceeding, "as purchaser

sophistication increases, the likelihood of confusion decreases." However, this does not mean that merely because goods are expensive and are purchased with care there can be no likelihood of confusion. See *Tiffany & Co. v. Classic Motor Carriages Inc.*, 10 USPQ2d 1835 (TTAB 1989) (likelihood of confusion found between TIFFANY for jewelry and CLASSIC TIFFANY for automobiles). One reason that care in the purchasing decision generally favors a finding of no likelihood of confusion is that consumers will note the trademarks involved, and will recognize any differences between them. In the present case, though, the trademarks are identical, and therefore even a consumer who examines respondent's trademark carefully will not be able to distinguish it from petitioner's trademark. Moreover, any sophistication that purchasers of motorhomes may bring to the purchase of an automobile is not likely to avoid confusion in this case, because motorhome purchasers are aware that automobile manufacturers make parts that are used in motorhomes, and therefore will know that this relationship exists between the goods.

Accordingly, because of the particular circumstances of this case, we do not view the care with which the parties' products are purchased as ameliorating the likelihood of confusion, and this du Pont factor does not favor respondent to the extent it otherwise might.

Number of similar marks in use on similar goods

Respondent makes the statement that three of the ENDEAVOR marks that have been registered by the USPTO "are in use and have co-existed in the marketplace for several years, not only with each other but also with other third-party marks in the transportation field, including ENDEAVOUR for sailboats and catamarans." Brief, p. 31. Two of the registered marks that respondent references are respondent's registration which is the subject of this proceeding, and petitioner's pleaded registration. The only third-party registration in the "transportation" field is ENDEAVOR for "agricultural tractors; vehicles for earth and material hauling and handling, namely, tractors, semi-tractor trailers." We do not regard such goods to be in the "transportation" field, as respondent characterizes it. Nor, as we previously stated, is a registration evidence of use of the mark.

In an attempt to show third-party uses of ENDEAVOR, respondent has submitted the pages from the websites www.endeavortractors.com, www.endeavourcats.com and www.endeavourowners.com. As shown by its objections to petitioner's website evidence, respondent is well aware that webpages cannot be used to prove the truth of what is stated in the webpages. Thus, the webpages from www.endeavortractors.com, which contain photographs of

tractors but which do not offer them for sale, are not evidence of use of the trademark ENDEAVOR for agricultural tractors.¹⁹ With respect to the endeavourecats.com and endeavourowners.com webpages, at most they show that some individuals are offering for sale what are asserted to be pre-owned ENDEAVOUR boats. The only other evidence of third-party use is the testimony of petitioner's witness Richard Bond. When he was asked, "Are you familiar with an Endeavor used in connection with a boat?" he responded, "Vaguely, yes," but when asked what he knew about it, he said, "I actually don't recall much of it at this point." Bond dep. p. 92. He knew nothing about Endeavor used in connection with a tractor.

Respondent has not shown any significant evidence of third-party use of ENDEAVOR marks. There is no probative evidence of use of ENDEAVOR for agricultural vehicles, and the evidence of use of ENDEAVOUR for boats is minimal; there is no evidence, for example, of the numbers of such boats that have been sold, or evidence of any significant advertising. Based on the evidence of record, we cannot conclude that the consuming public has been so exposed to third-party use of ENDEAVOR for similar products that they

¹⁹ Even if we could accept the webpages as evidence of the truth of the matters shown therein, i.e., that there are agricultural tractors with the trademark ENDEAVOR, we have no evidence of sales, etc., from which we could conclude that the public would be familiar with the mark for these goods.

would assume that ENDEAVOR automobiles must have a different source from ENDEAVOR motorhomes.²⁰

Lack of evidence of actual confusion

In the three years between respondent's first use of ENDEAVOR for its automobile and the time of trial respondent has had substantial sales of its vehicles, and has done substantial advertising and promotion. Although the numbers of petitioner's sales and its expenditures for promotion and advertising are not as substantial as respondent's, they must still be considered significant. As a result, respondent asserts that the lack of evidence of any instances of actual confusion is telling.

²⁰ The fact that there is no significant evidence of third-party use distinguishes this case from *Westward Coach Manufacturing Company v. Ford Motor Company*, 388 F.2d 627, 156 USPQ 437 (7th Cir. 1968), in which the Court found no likelihood of confusion between MUSTANG for trailers and MUSTANG for automobiles, in part because MUSTANG had been used on aircraft, automobile mufflers, automobile springs, automobile and truck brake linings, farm tractors, motorcycles, rebuilt automobile engines, storage batteries, hand trucks, truck engines, truck mountable cranes, and numerous other items. We also point out that this case involved common law trademark infringement and unfair competition, and therefore that factors not relevant to a likelihood of confusion in connection with registrability came into play, including that "Ford's MUSTANG was plainly identified as a Ford product in advertising and otherwise." 156 USPQ at 441. It is also interesting to note that "Ford [the defendant] apparently concedes the likelihood that Westward's MUSTANG-marked products will be mistaken for products of Ford." *Id.* This had no role in the Court's decision, though, because the Court believed that reverse confusion was not actionable. As the Board noted in *In re Eldorado Motor Corp.*, *supra* at 1734, "Since the famous *Big O Tire Dealers* case of 1976, [*Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co.*, 408 F.Supp. 1219, 189 USPQ 17 (D. Colo. 1976), *aff'd* 561 F.2d 1365, 195 USPQ 417 (10th Cir. 1977), *cert. denied* 434 U.S. 1052 (1978)], the doctrine of 'reverse confusion' has been widely endorsed. See 2 McCarthy, *Trademarks and Unfair Competition*, §23:1 E. at pages 48-50 (2d ed. 1984)."

We do not agree. First, the time period in which the parties have used their respective marks is relatively brief in terms of making a conclusion as to what the lack of confusion signifies. It is well recognized that evidence of actual confusion is very difficult to obtain and therefore, despite the amount of sales and advertising, lack of such evidence for a period of only three years (from the time respondent introduced ENDEAVOR as its own line of SUV in 2003) is insufficient for us to conclude that there is no likelihood of confusion. Second, it is not clear that the witnesses for either party were in a position to know whether there had been any instances of actual confusion. Petitioner's witness James Mac testified that any such confusion would be raised with the salespeople at the dealers, and that the salespeople were unlikely to report this to the dealers or that it would reach people at petitioner's corporate level. As for respondent, although it took the testimony of its manager for customer relations who has responsibility for its corporate call center, the calls that come into the center are generally about warranties, service problems and the like. It is not clear that purchasers of ENDEAVOR automobiles who were confused about an association between the SUVs and ENDEAVOR motorhomes would voice those questions through the call center.

Third, it is possible that the lack of evidence of actual confusion thus far results from the particular manner in which the parties' goods are currently marketed, with ENDEAVOR being used to indicate a model of motorhome and a model of automobile, and with petitioner's and respondent's house mark or logo or trade name being used as well. It may be the presence of the house mark/logo/trade name that has prevented any instances of actual confusion. However, in making our decision about likelihood of confusion, we must consider only the mark shown in the respective registrations, because Section 7(b) of the Statute provides that the registration is prima facie evidence of the registrant's exclusive right to use the mark shown in the registration for the goods identified in the registration. Thus, petitioner's registration gives it the right to use ENDEAVOR per se for motorhomes, including using it as its primary mark, while if respondent were allowed to maintain its registration, it could use ENDEAVOR for automobiles without reference to any other mark, such as MITSUBISHI or the Mitsubishi logo.

Accordingly, in our likelihood of confusion analysis we consider this du Pont factor to be neutral.

Any other probative facts

Respondent's survey

Respondent submitted a survey which purports to show that confusion between ENDEAVOR for automobiles/SUVs and ENDEAVOR for motorhomes is not likely. However, we have found several serious flaws in the survey, as a result of which it is not entitled to any probative value.²¹

The most egregious flaw we find in the survey is the determination of the relevant universe. Respondent limited its survey to purchasers and prospective purchasers of automobiles and SUVs, but did not screen for persons who were purchasers or prospective purchasers of motorhomes. As a result, the interviewees may not have included any people who were familiar with motorhomes or with petitioner's mark. As respondent's own witness (the designer of the survey) stated, "if it's a name you've never seen before, then you couldn't be confused." p. 81. Thus, by not including in the survey people who are purchasers/prospective purchasers of motorhomes, respondent effectively excluded from the survey people who would have seen petitioner's mark, the

²¹ We note that the testimony of respondent's witness, who conducted the survey, and petitioner's witness, who critiqued it, has been submitted under seal, as have the exhibits they introduced through their testimony, including the survey itself. In taking the testimony of their other witnesses the parties initially designated the entire testimony deposition as confidential, and subsequently submitted redacted versions in which only truly confidential material was submitted under seal. It appears that there was an oversight in not submitting redacted copies of the testimony related to the survey, since the parties have discussed the protocol, questions and results of the survey in their briefs. Therefore, in discussing the survey we have not treated any of the material as confidential.

very people who, if confusion were likely, would be confused. It is no surprise then, that the survey found absolutely zero people who associated ENDEAVOR with a motorhome; such a result was practically guaranteed because the relevant consumers were not included in the survey.²²

Respondent has argued that its survey is acceptable because the proper survey universe is buyers of the junior user's goods. Brief, p. 45. However, what respondent fails to recognize is that purchasers of motorhomes are also purchasers of automobiles/SUVs, and therefore must be considered as buyers of the junior user's goods. By not screening for and thereby including purchasers or prospective purchasers of motorhomes in the universe, respondent has excluded a key portion of the buyers of the junior user's goods.

Further, respondent asserts that its survey is acceptable as following the format used in *Union Carbide Corp. v. Ever-Ready Inc.*, 531 F.2d 366, 188 USPQ 623 (7th Cir. 1976). In what has come to be called the Eveready survey, approximately 2000 people were interviewed, with

²² Respondent's witness testified that it was most unusual to have a result of absolutely zero. As McCarthy states, "In any survey, there will always be some interviewees who are bored, hurried or just plain contrary and whose responses must be filtered out through control questions." 6 McCarthy on Trademarks and Unfair Competition § 32:187 (4th ed.). The fact that respondent obtained such an unusual result in this case can as easily be viewed as an indication that the survey itself was flawed than as proof of no likelihood of confusion.

half being shown a photograph of the defendant's Ever-Ready lamp and half being shown its blister pack of Ever-Ready light bulbs. Questions similar to those in the present survey were asked. Interestingly, there were no screening questions as to whether the interviewees were purchasers or prospective purchasers of batteries and flashlights (plaintiff's goods) or lamps or light bulbs. However, the Court did state that "The survey was directed to the relevant universe. Almost anyone would be likely to have purchased bulbs, lamps, batteries or flashlights. Thus a survey of the general population was appropriate." Id. at 188 USPQ 643. Further, it is clear from the Court's comments that it believed that people in general were aware of plaintiff's mark: "We find it difficult to believe that anyone living in our society, which has daily familiarity with hundreds of battery-operated products, can be other than thoroughly acquainted with the EVEREADY mark." Id. at 188 USPQ 637. Against this background, it would have been unnecessary for a screening question to determine whether the universe included purchasers of the defendant's goods who were also purchasers of the plaintiff's goods:

In the present case, however, we cannot consider motorhomes to be a product with which the public in general is familiar. Although petitioner has taken the position that its mark is used for a very popular and well-known line

of motorhomes, and that it has substantial goodwill in its mark, that popularity is in the area of motorhomes, not vehicles as a whole:

Customers of recreational vehicles have a great deal of brand loyalty, which demonstrates the distinctiveness and strength of Petitioner's mark. In this particular instance, Petitioner's customers and potential customers are acutely aware of its ENDEAVOR products and brand.

Brief, p. 20. Thus, although respondent based its questions on the Eveready survey, we consider the circumstances in the present case to be sufficiently different that, by not insuring that the interviewees were purchasers or prospective purchasers of motorhomes, or even had used a motorhome, the survey does not have the probative value that it was found to have in the Eveready case.²³

Aside from the problems with the universe, the survey has another flaw which entitles it to little probative value. One of the very limited screening questions²⁴ that was asked of prospective interviewees was:

²³ If the number of people interviewed were larger, one might be able to conclude that the interviewees included purchasers of motorhomes. However, in the instant survey only 217 people were interviewed. The Court in Eveready had criticized a survey done in General Motors Corporation v. Cadillac Marine & Boat Co., 226 F.Supp. 716 (W.D. Mich 1964), in part because the sample was of "only about 150 persons."

²⁴ Other questions included the age of the prospective interviewee, whether he/she had recently been interviewed for a research survey, and whether he/she or a family member worked in advertising, market research or for a company that distributes motor vehicles. Thus, the question about motor vehicles was likely viewed as more important.

In the past year or the next year, which of these types of products have you purchased or leased or been involved in purchasing or leasing, or plan to purchase or lease or be involved in purchasing or leasing,

with the following items listed on a card that was given to the individual: passenger car; sports utility vehicle (SUV); truck; van/minivan; other automobile. We agree with petitioner that this list set up certain expectations for the interviewee, such that when he/she was asked "What other motor vehicles are made by the company that makes an SUV [or "automobile"] with that name," they were likely to interpret the term "motor vehicles" as referring to the list given to them as part of the screening question. The fact that the screening questions were asked in the public area of the mall and the interviewee answered the main interview questions in a private area in the mall does not mean that the list of "motor vehicles" they were shown would not affect their responses. The survey took place immediately after the survey questions were asked, so they would not have forgotten the screening questions when they were asked the remaining questions. Further, both the main survey and the screening question were about motor vehicles, and the interviewees would consider the entire survey, including the screening questions, as part of a single interview, such that the screening question would have an effect on the

survey respondents' view of what constituted a "motor vehicle" for purposes of the survey.

Accordingly, we do not consider respondent's survey to show that confusion is not likely.

Pattern of Coexistence of RV/Automobile Marks

In the "Facts" section of its brief respondent contends that "there is a widespread practice of using highly suggestive marks like ENDEAVOR for motorhomes and automobiles/SUV's by different entities." p. 25.

Respondent does not discuss this assertion in the "Argument" section, and we will touch on it very briefly. First, we have found that ENDEAVOR is not a highly suggestive mark. Second, the evidence of use of third-party marks submitted by respondent is somewhat questionable. Much of the support for the dates that a particular mark was used is based on vehicle appraisal guides and the like, on website printouts, and on Wikipedia articles. However, periodicals and webpages are not evidence of the truth of the statements made therein. Further, there are inherent problems regarding the reliability of Wikipedia entries because Wikipedia is a collaborative website that permits anyone to edit the entries. As a result, if such evidence is submitted, it is the better practice to corroborate the information with evidence from reliable sources. In re IP

Carrier Consulting Group, 84 USPQ2d 1028, 1032-1033 (TTAB 2007).

Even if we accept that the dates listed at pages 25 and 26 of respondent's brief are supported by the evidence, there has not been overlap with all of the marks. For example, AMC AMBASSADOR stopped being used for automobiles in 1974, AMBASSADOR was not used for a motorhome until 1983-84, and then not again until 2000-2006; PONTIAC SAFARI stopped being used for an automobile in 1989, and was not used for a motorhome until 1991; DODGE CHALLENGER stopped being used for an automobile in 1983 and was not used for a motorhome until 1991. In addition, the various exhibits on which respondent relies generally use the "house mark" along with the trademark, which can also be a distinguishing factor. Here, of course, we must consider the marks at issue to be ENDEAVOR per se, without a house mark. In any event, the fact that other marks may have coexisted for both automobiles and motorhomes does not compel such a finding in this case. We have no information about the circumstances during the time the trademarked products coexisted; the marks may have been used under license, or there may have been third-party uses that resulted in marks that were not as strong as petitioner's mark herein. We must assess the issue of likelihood of confusion based on the record adduced in this proceeding. For similar reasons, we are not

persuaded by the evidence submitted by petitioner that third parties have brought proceedings asserting likelihood of confusion between the same marks for cars/trucks and for motorhomes.

Lack of Bad Faith

Respondent has asserted that it adopted its mark in good faith, and we agree that there is no evidence that it had any bad intent in adopting its mark. However, the fact remains that respondent knew of petitioner's trademark in 1995, when it obtained a search report that listed the registration, and knew of petitioner's use of the mark on motorhomes in November 2000 (response to Interrogatory 14, petitioner's notice of reliance #3). Further, the Board's notification letter of the petition to cancel was mailed to respondent on January 8, 2003. It was only after that date that respondent began selling SUVs under the mark ENDEAVOR per se (use of ENDEAVOR with MONTERO to indicate a trim line of MONTERO had occurred only in the 2000 model year), and the bulk of respondent's advertising expenditures did not commence until after the cancellation proceeding was instituted. See *Broderick & Bascom Rope Company v. The Goodyear Tire & Rubber Company*, 531 F.2d 1068, 189 USPQ 412 (CCPA 1976) (axiom about resolving doubt against the latecomer applies even if the latecomer floods the marketplace after opposition has been filed).

Thus, we think it appropriate to reiterate the well-established principle that any doubt on the issue of likelihood of confusion must be drawn in favor of the prior user, and against the newcomer. See, for example, *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977); *A.H. Robins Company, Incorporated v. Ecsco Pharmaceutical Corp.*, 190 USPQ 340 (TTAB 1976).

Conclusion

After considering all of the relevant du Pont factors, we find that the evidence weighs in favor of finding a likelihood of confusion between the use of ENDEAVOR for motorhomes and the identical mark ENDEAVOR for automobiles/SUVs.

Decision

The petition for cancellation is granted.