

Paper No. 12
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THIS DISPOSITION IS NOT
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SEPT 11, 97

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dirck Hecking

Serial No. 74/475,911

Scott A. Horstemeyer of Hopkins & Thomas for Dirck Hecking.

Matthew Kline, Trademark Examining Attorney, Law Office 104
(Sidney Moskowitz, Managing Attorney).

Before Sams, Simms and Hairston, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Dirck Hecking to
register the mark STARSHIP AIRLINES in typed capital letters
("AIRLINES" is disclaimed) for "air transportation of
persons."¹

Registration has been refused by the Trademark
Examining Attorney² pursuant to Section 2(d) of the
Trademark Act, 15 U.S.C. 1052(d), on the ground that the use
of applicant's mark for the identified services would be

¹Application Serial No. 74/475,911 filed January 3, 1994,
alleging a bona fide intention to use the mark in commerce.

²We note that during the course of examination, the file of this
case was to reassigned to another Trademark Examining Attorney.

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likely to cause confusion with five registered marks, three of which are owned by the same entity.

Applicant has appealed. The case has been fully briefed, but no oral hearing was requested.

Registration No. 1,867,803

The Examining Attorney has refused registration under Section 2(d) on the basis of the above registration for the mark



(TRANSPORTATION INC. has been disclaimed) for "freight transportation services, namely, the transportation of goods of others by land and air; truck transportation services."³

Turning first to the marks, we agree with the Examining Attorney that, when compared in their entireties, applicant's and registrant's marks are very similar. In considering the marks, we recognize that the disclaimed portion of each mark cannot be ignored. *Giant Food, Inc. v. National Food Service, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983) However, there is nothing improper in giving more weight, for rational reasons, to a particular feature of a mark. Here, we have given more weight to the

³Issued December 13, 1994.

STARSHIP portion of both applicant's and registrant's marks because of the descriptive nature of the remaining wording in the marks, i.e. AIRLINES and TRANSPORTATION INC. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). It is the STARSHIP portion of the marks customers are most likely to remember. Further, the star design in registrant's mark does very little in the way of distinguishing the registered mark from applicant's mark because the design simply reinforces the significance conveyed by the word STARSHIP.

Turning next to the services, it should be noted that it is not necessary that services be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient that the services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under circumstances that would give rise, because of the marks used in connection therewith, to the mistaken belief that the services originated from or are in some way associated with the same source. In re International Telephone & Telegraph Corp., 197 USPQ 910 (TTAB 1978)

In order to show the relationship between applicant's services and registrant's services of transporting goods by air, the Examining Attorney made of record a number of registrations which indicate that entities have registered a single mark for the transportation of persons by air, on the

one hand, and the transportation of goods by air, on the other hand. For example, SPRITE-FLIGHT JETS and design is registered for, inter alia, "transportation of passengers and/or goods by air"; MARTINAIR is registered for "transportation of passengers and/or goods by air and cargo handling"; a stylized eagle design is registered for "transportation of passengers and cargo by air"; THE CARIBBEAN IS OUR BUSINESS and WE ARE THE CARIBBEAN, are registered for "transportation of passengers and/or goods by air"; FLY AWAY VACATIONS and design is registered for, inter alia, "transportation of passengers and goods by air"; and a design of the nose of an airplane is registered for, inter alia, "transportation of passengers and/or goods by air". Thus, these registrations serve to suggest that the listed services are of a type which emanate from a single source. In re Mucky Duck Mustard Co., Inc., 6 USPQ2d 1467 (TTAB 1988).

We find, therefore, that the respective services are sufficiently related that customers familiar with registrant's services of transporting goods by air offered under the mark STARSHIP TRANSPORTATION INC. and design would be likely to believe, upon encountering STARSHIP AIRLINES for transportation of persons by air, that the services originate from a common source.

Registration No. 1,365,463

The Examining Attorney has refused registration under Section 2(d) on the basis of the above registration for the mark



for "airplanes and structural parts thereof."⁴

The Examining Attorney, in an attempt to demonstrate that these goods and applicant's services are related, submitted copies of third-party registrations which cover transportation of persons by air, on the one hand, and airplanes and parts thereof, on the other hand. However, all but two of the registrations issued under Section 44(e) of the Trademark Act and are not based on use in commerce. Such registrations are incompetent to establish, in and of themselves, these goods and services may emanate from, or be associated with, a single entity, much less that purchasers in this country have become accustomed to seeing the goods and services emanate from a single source under a single mark. In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1786 (TTAB 1993), citing In re Mucky Duck Mustard Co., Inc., supra. The remaining two third-party registrations, while based on use in commerce, are owned by a single party and

⁴Issued October 15, 1985; Sections 8 & 15 affidavit filed.

are insufficient evidence to establish that these services would be expected to emanate from the same source.

On the basis of this record, we are unable to conclude that applicant's services of transporting persons by air are related to registrant's airplanes and parts thereof. Thus, notwithstanding any similarities between the marks involved herein, we find that there is no likelihood of confusion.

Registration Nos. 1,668,825; 1,668,826; and 1,669,756

Finally, the Examining Attorney has refused registration under Section 2(d) on the basis of the above registrations for the marks STAR/SHIP ATLANTIC⁵, STAR/SHIP MAJESTIC⁶, and STAR/SHIP OCEANIC.⁷ These registrations are owned by Premier Cruise Lines, Ltd., and cover, in relevant part, "transportation of passengers by boat."

In connection with this refusal, the Trademark Examining Attorney submitted third-party registrations which cover transportation of persons by air, on the one hand, and transportation of persons by boat, on the other hand. However, there are problems with these registrations as they likewise issued under Section 44(e). For the reasons discussed above, such registrations are not particularly probative of whether transporting persons by air and transporting persons by boat are related services which would be expected to emanate from the same source. In view

⁵Issued December 17, 1991.

⁶Issued December 17, 1991.

⁷Issued December 24, 1991.

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thereof, and in the absence of any other evidence demonstrating the relatedness of the involved services, and because applicant's mark STARSHIP AIRLINES and the cited marks STAR/SHIP ATLANTIC, STAR/SHIP MAJESTIC and STAR/SHIP OCEANIC create different commercial impressions, we find that there is no likelihood of confusion.

Our decision in connection with this refusal is based on the limited record before us. In the context of a subsequent inter partes proceeding involving the same issue but a different record (e.g., evidence of the fame of the cited mark and/or evidence that these services are commonly promoted together under the same or similar marks), we could well reach a different conclusion.

Decision: The refusal to register is affirmed, but only on the basis of cited Registration No. 1,867,803.

J. D. Sams

R. L. Simms

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial and

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