

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT
OF THE TTAB

JAN. 19,99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Travel Impressions, Ltd.
v.
Intrav Receptive Services, Inc.

Opposition No. 100,065

Michael T. Platt, Mark A. Bergsman and Bonnie G. Klein of
Dickinson, Wright, Moon, Van Dusen & Freeman for Travel
Impressions, Ltd.

Brian J. Hundertmark of Roberts & Hundertmark for Intrav
Receptive Services, Inc.

Before Hohein, Hairston and Wendel, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Intrav Receptive Services has filed an application to
register the mark "TEDDY BEAR TOURS" for "travel agency
services[,] namely, arranging travel tours".¹

Travel Impressions, Ltd. has opposed registration on
the ground that, since at least as early as 1976, it continuously
"has used designs of a teddy bear ... to identify and distinguish

¹ Ser. No. 74/616,241, filed on December 29, 1994, which alleges a
bona fide intention to use the mark in commerce. The word "TOURS" is
disclaimed.

[the] arranging [of] travel tours and related services"; that it is the owner of a valid and subsisting registration for a mark, "consisting of the design of a teddy bear" as shown below,



for the services of "arranging travel tours";² that applicant's mark "is the identical literal equivalent" of opposer's teddy bear design mark; that the respective marks "conjure up the same mental image or suggestion"; and that applicant's "TEDDY BEAR TOURS" mark, when used in connection with its services, so resembles opposer's registered teddy bear design mark as to be likely to cause confusion, mistake or deception.

Applicant, in its answer, has denied the salient allegations of the notice of opposition.

The record includes the pleadings; the file of the opposed application; and, as part of opposer's case-in-chief, the testimony, with exhibits, of one of its three co-presidents and chief executive officers, Jeffrey D. Tolkin, and the testimony, with exhibits, of a self-employed graphics designer, Katherine Willis Burk. Opposer, as the rest of its case-in-chief, has submitted notices of reliance upon certain of applicant's responses to opposer's first set of interrogatories and requests

² Reg. No. 1,362,505, issued on September 24, 1985, which sets forth dates of first use of 1976; combined affidavit §§8 and 15.

for production of documents; various official records of the Patent and Trademark Office ("PTO") consisting of third-party registrations and application drawings of marks containing the words "TEDDY BEAR" and/or depictions of teddy bears; dictionary definitions of the term "teddy bear"; and copies of two children's books featuring illustrations of teddy bears.

Applicant, although it did not take testimony, furnished as its case-in-chief a notice of reliance upon opposer's various responses to certain of applicant's interrogatories, requests for production of documents³ and requests for admissions; copies of third-party registrations for marks featuring teddy-bear and other bear designs;⁴ a dictionary definition of the term "teddy

³ It is pointed out that under Trademark Rule 2.120(j)(3)(i), responses to requests for production of documents are not listed as constituting proper subject matter for a notice of reliance. Moreover, under Trademark Rule 2.120(j)(3)(ii), documents obtained through a request for production may not be made of record by a notice of reliance alone unless they also qualify, as happens to be true of only some of the documents filed by applicant, either as official records or printed publications, available to the general public in libraries or in general circulation, within the meaning of Trademark Rule 2.122(e). Nevertheless, inasmuch as opposer, in its main brief, has treated such responses and documents as forming part of the record, the evidence is deemed to constitute a stipulation of the facts of the case, as provided by Trademark Rule 2.123(b)(2), and has accordingly been given consideration.

⁴ Opposer, in its main brief, "objects to the introduction of the registrations" on the basis that applicant "did not assert acquiescence as an affirmative defense." Specifically, opposer points to applicant's statement in the notice of reliance that opposer "has been aware of other marks that are similar to its registered mark and has acquiesced in their use" and argues that "[a]n unpleaded defense cannot be relied upon by the defendant unless the defendant's pleading is amended (or deemed amended), pursuant to FED.R.CIV.P. 15(a) or (b), to assert the matter," which is not the case in this proceeding. However, as applicant correctly notes in its brief, its notice of reliance also specifies, among other things, that the evidence is relevant and admissible inasmuch as it demonstrates that "the marks at issue are not similar" and that "the registered mark is weak". In view thereof, the third-party

bear"; and excerpts from a printed publication.⁵ Briefs have been filed, but an oral hearing was not requested.

Opposer's priority of use of its registered mark is not in issue inasmuch as the record satisfactorily establishes that its pleaded registration is subsisting and owned by opposer. See King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). Specifically, the testimony of Mr. Tolkin indicates, with respect to the introduction of a plain copy of its pleaded registration, that such exhibit "is the registration of our teddy bear mark" and that the registration is "active," it "has been in continuous use since it was filed" and it has had all statutory declarations of use and incontestability filed in connection therewith. In addition, opposer's discovery responses state, among other things, that opposer "is the owner

registrations have been considered for whatever probative value they may have for such purposes.

⁵ Such excerpts, consisting of certain pages from the 1994 edition of Travel Law by Thomas A. Dickerson, have been objected to by opposer in its reply brief on the grounds that "the treatise has not been shown to be a publication in general circulation, as required for publications entered in evidence by Notice of Reliance under Trademark Rule 2.122(e)," and "the matter is offered to prove the truth of the matter asserted and is hearsay." Opposer's objection is denied. Aside from the fact that a legal "treatise," as opposer characterizes the Travel Law book, would likely be available to the general public in most major libraries, it is settled that, like dictionaries, the Board may properly take judicial notice, for the truth of the matter stated therein, of information appearing in standard reference works, such as encyclopedias and treatises. See, e.g., In re Hartop & Brandes, 311 F.2d 249, 135 USPQ 419, 420 (CCPA 1962) at n. 6. By its notice of reliance, applicant in essence was inviting the Board to take judicial notice of the factual information contained in the excerpts from the Travel Law treatise and opposer, although it had a full and fair opportunity to counter such evidence, offered nothing during its rebuttal testimony period. Accordingly, we have considered the excerpts furnished by applicant for their appropriate probative value as to the asserted sophistication of travel agent purchasers.

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of U.S. Registration No. 1,362,505 for a teddy bear logo" and reveal that a combined declaration under Sections 8 and 15 of the Trademark Act was timely filed and accepted. (Answer to Interrogatory No. 7 of Applicant's Second Set of Interrogatories and supplemental response to Request No. 1 of Applicant's First Set of Requests for Production of Documents.) Moreover, and in any event, the record demonstrates that opposer is in fact the prior user of its pleaded mark, having continuously used its teddy bear logo since 1976, while applicant, since it did not commence use of its "TEDDY BEAR TOURS" mark until May 1995, can at best claim the December 29, 1994 filing date of its application as the earliest date upon which it can rely in this proceeding.⁶ Accordingly, as applicant acknowledges in its brief, the only issue to be determined is whether its "TEDDY BEAR TOURS" mark, when used in connection with travel agency services, namely, arranging travel tours, so resembles opposer's registered mark for the identical services of arranging travel tours that confusion is likely as to the origin or affiliation of such services.

According to the record, opposer is engaged "in the business of selling air land vacations through travel agents to the consuming public." (Tolkin dep. at 6.) In particular, opposer acts as a "tour operator/wholesaler" by "arranging and providing all of the services and accommodations [offered] in

⁶ See, e.g., *Zirco Corp. v. American Tel. & Tel. Co.*, 21 USPQ2d 1542, 1544 (TTAB 1991) [under Section 7(c) of the Trademark Act, an intent-to-use applicant may rely upon the filing date of its application as its constructive date of first use of its subject mark].

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connection with [its] advertised vacations," including hotels, rental cars and air fares. (Response to Interrogatory No. 2 of Applicant's First Set of Interrogatories.) Its tour packages cover such vacation destinations as Florida, Hawaii, Las Vegas, Mexico and the Caribbean and it plans to reintroduce tour packages to Europe in the summer of 1997.

Although opposer has its headquarters on Long Island, New York and maintains offices only in Bethlehem, Pennsylvania, Atlanta, Georgia and Honolulu, Hawaii, opposer has a coast-to-coast sales force, including agents in Ohio, North Carolina, New Jersey, Maryland, Virginia and Washington, as well as a national account representative who "deals with [travel] agencies from California to Maine to Florida to Washington." (Tolkin dep. at 39.) Such persons provide opposer with "person-to-person contact with travel agencies to encourage agencies to book ... [its travel] packages." (Id.) On average, opposer's sales force "book[s] approximately 200,000 to 250,000 people a year." (Id. at 38.)

As a way to distinguish itself in the minds of travel agents, opposer in 1976 selected a mark consisting of "a smiling[,] curved, friendly teddy bear in a 'travel' pose" in order "to convey an image of a company that focuses on service, is warm, cuddly, user friendly and focused on vacations and leisure." (Id. at 8.) Since the adoption thereof in 1976, opposer has continuously used a teddy bear design in the format shown in its pleaded registration as well as in a variety of

other poses and costumes, all of which reflect a vacation and/or leisure theme and which are recognizable as the same teddy bear character. Such character is named "TIMOTHY," which "is an acronym which stands for Travel Impressions mascot out to help you." (Id. at 11.)

Opposer, since about 1989, has marketed its tour packages to travel agents by holding several trade shows each year at which representatives of airlines, hotels, rental car companies, attractions and tourist boards have booths. The products and services offered by such firms "are bookable through" opposer. (Id. at 13.) In addition to use of its teddy bear design, in various poses and costumes, on flyers announcing such shows, Mr. Tolkin testified that:

[A]t these trade shows we use our teddy bear front and center. And by that I mean we have a bear costume where we have an employee walk around as the bear. We give away a prize to the agent who can correctly tell us what TIMOTHY stands for.

We have used the bear consistently in our materials and at times have played off the bear theme by using the word "bear" in various manifestations. For instance, one year we used ... BEAR-ZAAR ... to connote a carnival atmosphere and have used the word "bear" in various uses along those lines.

(Id. at 13-14.)⁷ Opposer currently presents its trade shows "in Raleigh, Charlotte, Atlanta, Baltimore, Philadelphia, New Jersey

⁷ Similarly, in 1993 opposer distributed a "BEARGAINS" flyer touting its vacation travel packages, while a flyer in 1995 invited travel agents to receive "THE 'BEAR FAX'" concerning specials on its travel tours through a "weekly 'Bearnains' fax." (Tolkin dep. Exhibits 7 and 9.)

and Long Island and ... [has] in the past conducted shows in Albany, Westchester and southern Connecticut." (Id. at 14.)

Opposer, as noted previously, has used its teddy bear design, in the format shown in its pleaded registration, since 1976 in connection with its services of arranging travel tours. Among other things, opposer utilizes such mark, as well as variations thereof, on its invoices, business stationery, incentive offers to travel agents and advertising literature. In addition, beginning in the early 1980s, opposer has given away to travel agents small plush or stuffed teddy bears as promotional items for its services. The reason therefor, according to Mr. Tolkin, is that:

[W]e are constantly fighting for shelf space in an agent's mind. They have an incredibly difficult job to remember and be knowledgeable on products throughout the world and then to try and remember which source to book those products through.

We have found that this teddy bear is the finest item that we can leave with a travel agent. Most travel agents are women and as such, they love the teddy bear on their desk and with the ribbon that says Travel Impressions it reminds them as to who we are. Even the male travel agents like the bear as it is a cuddly, soft, warm item and it reinforces the impressions that we would like them to have of our company.

(Id. at 30.) Opposer annually distributes between 50 to 2,000 of such bears through its sales representatives, at its trade shows and educational seminars, and to agents taking special trips to familiarize themselves with opposer's travel tour packages. Opposer, over the years, has also given away to travel agents

note paper holders featuring its name, telephone number and a depiction of its "TIMOTHY" teddy bear.

Approximately 98 percent of the tour packages offered by opposer are sold through travel agents, while the remaining two percent of its tours are "private label programs for entities where we do take a booking from the general public". (Id. at 57.) Opposer, as a service for the travel agents who sell its tour packages, processes the issuance of vouchers for airline tickets, hotels, rental cars and attractions, once a tour has been paid for, and sends out a "bear facts" booklet which provides customers with "some practical advice on how to make their trip a little more pleasant." (Id. at 38.)

Opposer is not familiar with any other companies which use a teddy bear logo in connection with arranging travel and vacation tours, Mr. Tolkin testifying that "[t]he only company that I know that is infringing on our teddy bear trademark is [applicant,] Intrav." (Id. at 40.) Such knowledge, Mr. Tolkin indicated, was based upon a report of an employee of opposer who saw a teddy bear design in a brochure by applicant which was available at a travel agents of the Carolinas convention held in January 1996. Although he conceded, when asked on cross-examination whether he was aware of any use of the words "bear" or "teddy bear," or a depiction of such, as mark for travel-related services by parties other than applicant, that "[t]here may be some use of a bear or teddy bear ... in the sense that travel is a very large umbrella," Mr. Tolkin further testified

that he was "not aware of any such use or depiction ... in a segment of the business similar to mine." (Id. at 55-56.)

As to whether opposer's registered mark is a depiction of a teddy bear and would be recognizable as such, opposer offered the testimony of Ms. Burk, who indicated that teddy bears possess the following general characteristics and traits:

Teddy bears have little round ears and [a] little round muzzle. Usually a button nose, sometimes not. Stitches for a mouth, happy. Round paws. Sometimes they're two-toned. Sometimes they have clothes on. Mostly, they're very friendly.

(Burk dep. at 25.) In particular, when shown a copy of opposer's pleaded registration and asked what the mark shown therein was a drawing of, she stated that "[t]hat's a teddy bear going on vacation." (Id. at 25-26.) Moreover, when asked to explain why she thought such mark shows a teddy bear, she explained that "he's got that little round face and little round ears and button eyes and stitched on nose". (Id. at 26.) For the same reasons, Ms. Burk also identified various other poses and illustrations of "TIMOTHY" as those of a teddy bear and, from looking at their faces, stated that they were representations of the same teddy bear. As to whether, as applicant contends, each of such poses and illustrations could be that of just a cartoon bear, she replied:

"It's a cartoon of a teddy bear. I mean, the rendering of it is cartoon-like. But it is a bear, a teddy bear.

(Id. at 27.)

Opposer also introduced, in addition to Ms. Burk's testimony, drawings of teddy bears in two children's books and

copies of various third-party registrations and application drawings of marks which contain the words "TEDDY BEAR" and/or illustrations of teddy bears. Such evidence shows how others have depicted teddy bears and that, by comparison, opposer's registered mark would likewise be regarded as a teddy bear. The record further reveals that the term "teddy bear" is defined as:

"[a] child's toy bear, usually stuffed with soft material and covered with furlike plush" -- The American Heritage Dictionary of the English Language (3d ed. 1992) at 1843 and The American Heritage Dictionary (2d coll. ed. 1982) at 1248; and

"a stuffed toy bear" -- Webster's Third New International Dictionary (1971) at 2348, which also contains the following

as an illustration of the term so defined.

While there is relatively little information about applicant, the record indicates that, like opposer:

Applicant is a tour operator/wholesaler. It arranges and provides all of the services and accommodations [needed] in connection with packaged vacations and tours. Depending on the package, Applicant makes arrangements for hotels, attractions, events, [and] transportation. The packages are sold through tour operators and travel agents. As part of its business, Applicant is offering packaged programs for individuals travelling to Florida. These individual programs are packaged under the banner of TEDDY BEAR TOURS.

(Answer to Interrogatory No. 1(A) of Opposer's First Set of Interrogatories and Request for Production of Documents.) To

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date, however, applicant has used its "TEDDY BEAR TOURS" mark only in connection with a brochure, issued in May 1995, entitled "FLORIDA SIGNATURE VACATIONS". Such brochure prominently features, on both the cover page and an inside page, depictions of a teddy bear character which, as reproduced below, is also engaged in various vacation and leisure activities:

Applicant markets its services of arranging travel tours by participating in trade shows, sending direct mail to travel agencies and tour operators, and making personal visits to travel agencies. Opposer, however, is not aware of any instances in which a person has contacted opposer thinking he or she was contacting applicant and admits that it has no knowledge of any other incidents of actual confusion between its teddy bear mark and applicant's "TEDDY BEAR TOURS" mark involving either travel agents or the general public.

Applicant, in attempting to show that a bear design is in common use in the travel field, introduced copies of various third-party registrations for marks featuring a teddy-bear or other bear designs. None of the registrations containing a teddy-bear design, however, is for the same services as those rendered by the parties to this proceeding, while those registrations which arguably include such services as arranging travel tours and the like are for readily distinguishable bear designs involving grizzly bears, panda bears or koala bears.

Finally, in an effort to establish the nature of a travel agent's job, the excerpts provided by applicant from the treatise Travel Law indicate among other things that travel agents act as retailers by marketing travel services to consumers on behalf of the suppliers the agents represent; that travel agents are, in a sense, information specialists upon whom consumers rely in making their travel arrangements; and that travel agents are paid primarily by suppliers and tour operators on a commission basis.

Turning to consideration of the pertinent factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, we find that opposer has demonstrated that there is a likelihood of confusion as to source or sponsorship from the contemporaneous use of the parties' marks in connection with the legally identical services of arranging travel tours. In this regard, since both parties market their services, including Florida vacation packages, through travel agents, the

channels of trade and the principal customers for such services are the same. The fact, moreover, that travel agents are knowledgeable and discriminating consumers when it comes to selecting or recommending travel packages for themselves or their customers does not mean, as applicant argues, that they are necessarily sophisticated or otherwise knowledgeable in the field of service marks or that they are immune from confusion as to origin or affiliation. See, e.g., *Wincharger Corp. v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289, 292 (CCPA 1962); *In re Decombe*, 9 USPQ2d 1812, 1814-15 (TTAB 1988); and *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983). This would especially be the case where, as here, legally equivalent marks are utilized by the parties in connection with legally identical travel tour arrangement services. Furthermore, contrary to applicant's contentions, the respective marks are substantially identical in overall commercial impression; there is no evidence of any significant third-party use of the term "teddy bear" and/or teddy-bear or other bear designs, in connection with arranging travel tours or similar travel services, so as to indicate that marks which consist of or include such elements are weak and, thus, are only entitled to a narrow scope of protection; and the absence of any known instances of actual confusion is not a meaningful factor in the circumstances of this case.

In particular, it is well settled that marks which respectively consist of a picture or design and the word that describes that picture or design are legal equivalents and hence are given the same significance in determining the question of

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likelihood of confusion. See, e.g., Izod, Ltd. v. Zip Hosiery Co., Inc., 405 F.2d 575, 160 USPQ 202, 203 (CCPA 1969) [pictorial representation of a feline animal's head (which may be seen as that of a tiger's) and words "TIGER HEAD"]; Shunk Manufacturing Co. v. Tarrant Manufacturing Co., 318 F.2d 328, 137 USPQ 881, 883 (CCPA 1963) [representation of man wearing kilts and tam and word "SCOTCHMAN"]; In re Duofold Inc., 184 USPQ 638, 639-40 (TTAB 1974) [design of golden eagle and words "GOLDEN EAGLE"]; and In re Penthouse International Ltd., 175 USPQ 42, 43 (TTAB 1972) [picture of key and word "KEY"]. Here, as to the overall commercial impression engendered by their respective marks, the parties agree that whether opposer's design mark is the legal equivalent of applicant's "TEDDY BEAR TOURS" mark is a question of fact which depends both upon whether one mark evokes the other mark and whether purchasers of the services of arranging travel tours are likely to make the translation or association.

Applicant asserts that opposer "fails to demonstrate the first requirement and provides no evidence or argument regarding the second." Specifically, in light of the dictionary definitions of the term "teddy bear," applicant maintains that (footnotes omitted):

[A] teddy bear is a special form of stuffed toy. Opposer's Timothy character does not behave like a stuffed toy. It engages in various activities that a stuffed toy could not accomplish, such as water skiing, playing golf, swimming, flying an airplane, and celebrating the new year. However, these are activities in which a cartoon character such as Yogi Bear or the costumed Timothy character present at trade shows, could engage.

....

Opposer relies on the testimony of its co-president and [a] graphics designer to claim that its Timothy character evokes the image of a teddy bear. As can be expected, the co-president testified that the character was a teddy bear and stated the characteristics of the design as including a smile, ... round face and body, curved paws and feet, and fluffy ears. Likewise, the graphics designer testified that teddy bears have little round ears, little round muzzles, happy mouths, round paws, and friendly demeanor. Clearly, though, these characteristics can be similarly applied to any number of cartoon characters and animals that are not teddy bears

....

Opposer's brief refers to cases in which word-picture equivalency was found. These cases are clearly distinguishable from the instant matter. In each of these cases, the word mark and the design were identical matches and a finding of equivalency was appropriate. However, in the instant case, the marks are TEDDY BEAR TOURS and a cartoon of what could be a bear or other animal, but which has no clear association to a teddy bear.

Finally, Opposer claims that the trade dress of the parties provides evidence that the marks project a confusingly similar commercial impression. In its claim, Opposer states that Applicant "uses" its mark in conjunction with a teddy bear logo. However, Opposer does not support this assertion. It refers to a marketing brochure issued by Applicant in 1995, a brochure that has not been reprinted. While Opposer's evidence would support the assertion that Applicant, at one time more than two years ago, used a teddy bear logo in conjunction with its mark, the evidence does not support its assertion that Applicant currently "uses" such a logo.

Applicant's word mark and Opposer's design marks [sic] clearly do not evoke one another. Rather, Applicant's mark evokes the thought of teddy bears and Opposer's mark

evokes the thought of a cartoon character
.... Additionally, no showing has been made
by Opposer that consumers are likely to make
a translation between the two marks.

Applicant's arguments, simply put, are not supported by the record. Opposer has plainly shown that its "TIMOTHY" logo is a representation of a teddy bear and would be so regarded by both travel agents and members of the general public. In particular, Ms. Burk's testimony is unrebutted that opposer's mark, even though cartoon-like, is a design of a teddy bear since, as further evidenced by many of the other teddy-bear depictions in the record, it possesses the attributes typical of such a bear. The "TIMOTHY" character depicted in opposer's mark, moreover, is still recognizable as the same teddy bear even when engaging in a variety of vacation and leisure activities. The record also reveals that for many years opposer has promoted its services by playing upon a teddy-bear theme, utilizing such give-away items as small stuffed or plush teddy bears and imprinted note-paper holders with a teddy bear design, having an employee dress up in a bear suit at the trade shows it hosts, sending out its "bear fax" informational booklets and distributing advertising flyers variously touting a "BEAR-ZAAR," "BEARGAINS" and "THE 'BEAR FAX' ". In addition, the children's storybooks made of record by opposer demonstrate that it is not uncommon for teddy bears to be engaged in animated activities, like opposer's "TIMOTHY" teddy bear, even though a teddy bear, by definition, is basically a children's stuffed toy.

It is clear, therefore, that opposer's teddy bear mark evokes the term "TEDDY BEAR" and that applicant's "TEDDY BEAR

TOURS" mark, given the genericness of the word "TOUR" as used in connection with the services of arranging travel tours, evokes the image of a teddy bear. Applicant, in the only demonstrated use of its mark in the record, has in fact displayed its mark in its advertising literature in conjunction with several different designs of a teddy-bear character, some of which designs, like opposer's "TIMOTHY" teddy bear, are engaged in various vacation and leisure activities. Plainly, opposer has proven that its teddy bear mark and applicant's "TEDDY BEAR TOURS" mark, when considered in their entireties, are legal equivalents and that, as such, they project the same commercial impression when used in connection with the identical services of arranging travel tours. Confusion as to the origin or affiliation of such services is therefore likely to occur.

In reaching this conclusion, we additionally note that when used as service marks for the arranging of travel tours, both a teddy-bear design and the term "TEDDY BEAR" are arbitrary or fanciful designations and hence constitute strong marks which are entitled to a broad scope of protection in the absence of a showing of appreciable third-party use of marks which contain such designations and which are for the same or substantially related services as those provided by applicant and opposer. On the present record, however, there is no evidence of any third-party use of marks which contain a depiction of a teddy bear and/or the words "TEDDY BEAR" for services which are the same as or even arguably related to travel tour arrangement services rendered by the parties.

Specifically, applicant's reliance on various third-party registrations for marks which feature teddy-bear and other bear designs does not establish that the marks which are the subjects thereof are in actual use and that the purchasing public is consequently familiar with them. See, e.g., *Smith Brothers Manufacturing Co. v. Stone Manufacturing Co.*, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973) ["in the absence of any evidence showing the extent of use of any of such marks or whether any of them are now in use, they provide no basis for saying that the marks so registered have had, or may have, any effect at all on the public mind so as to have a bearing on likelihood of confusion."] As stated in *AMF Incorporated v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973):

[L]ittle weight is to be given such registrations in evaluating whether there is likelihood of confusion. The existence of these registration is not evidence of what happens in the market place or that customers are familiar with them nor should the existence on the register of confusingly similar marks aid an applicant to register another likely to cause confusion, mistake or to deceive.

Lastly, our conclusion that confusion is likely is not altered by the lack of any incidents of actual confusion during a period of just over two years of contemporaneous use by the parties of their respective marks. This is because the absence of any instances of actual confusion is a meaningful factor only where the record indicates that, for a significant period of time, an applicant's sales of its services or goods and any advertising thereof have been so appreciable and continuous that, if confusion were likely to happen, any actual incidents thereof

would be expected to have occurred and would have come to the attention of one or both of the parties. See, e.g., Gillette Canada Inc. v. Ranir Corp., 23 USPQ2d 1768, 1774 (TTAB 1992). In this case, not only is a two-year period a relatively short interval, but there is no indication as to the extent of applicant's sales and advertising of its services under its "TEDDY BEAR TOURS" mark, nor is there any evidence that the parties have in fact been providing their services of arranging travel tours in the same localities. The lack of any instances of actual confusion, therefore, is not indicative of an absence of a likelihood of confusion.

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

G. D. Hohein

P. T. Hairston

H. R. Wendel
Administrative Trademark Judges,
Trademark Trial and Appeal Board