

THIS DISPOSITION IS NOT
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Hillerich & Bradsby, Co.

v.

Carol Anne Spils

Opposition No. 108,443
to application Serial No. 75/066,212
filed on March 1, 1996

Laura D. Robertson of Middleton & Reutlinger for Hillerich & Bradsby, Co.

Carol Anne Spils, pro se.

Before Seeherman, Quinn and Holtzman, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Hillerich & Bradsby, Co. has opposed the application of Carol Anne Spils to register the mark GRAND SLAM and design, as shown below, for "board game comprised primarily of game board depicting a baseball field, and 4 types of category

question cards regarding 'places', 'objects', 'animals/people', and 'miscellaneous'."¹

Opposer has based its opposition on the ground of likelihood of confusion, Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d).² Specifically, opposer has alleged that it is a manufacturer of sporting goods; that it licenses its marks for use in connection with non-sporting goods; that it has, since prior to the filing date of applicant's application, used the mark GRAND SLAM in connection with golf clubs, baseball and softball bats, and batting gloves and other goods; that it owns registrations for the mark GLAND SLAM for, inter alia, baseball and softball bats and batting gloves; and that applicant's use of her mark is likely to cause confusion or mistake or to deceive.

In her answer applicant has admitted that she has sent letters to companies to request that they license

¹ Application Serial No. 75/066,212, filed March 1, 1996, asserting a bona fide intention to use the mark in commerce.

² In its notice of opposition opposer also asserted that applicant's use of her mark may disparage or falsely suggest a connection between applicant's goods and opposer. However, opposer did not refer to this ground in its brief, and we have therefore given it no consideration.

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applicant's board game, and has otherwise denied the salient allegations of the notice of opposition. She has also asserted affirmatively that the parties' goods are different, and that the term "grand slam" is extensively used and therefore that opposer's rights in the term are narrowly circumscribed.

The record includes the pleadings; the file of the opposed application; the testimony, with exhibits, of Bill Williams, opposer's vice president of public relations; and applicant's responses to opposer's requests for admission, submitted by opposer under a notice of reliance. Applicant submitted no evidence, and only opposer filed a brief. An oral hearing was not requested.

The record shows that opposer manufactures sporting goods equipment, and also operates the Louisville Slugger Museum, which is dedicated to the relationship between the Louisville Slugger brand and the game of baseball. Opposer began using the mark GRAND SLAM in 1924, and has used the mark on, inter alia, wood and aluminum baseball bats, including youth or "Little League" wood bats, batting gloves, golf irons, golf woods and golf gloves. It owns registrations for GRAND SLAM in typed form for golf clubs, baseball and softball bats³ and batting gloves⁴ and in

³ Registration No. 1,985,686, issued July 9, 1996.

⁴ Registration No. 1,997,809, issued September 3, 1996.

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script form, for wooden golf clubs, iron golf clubs and baseball bats.⁵

The mark GRAND SLAM is used on various LOUISVILLE SLUGGER baseball and softball bats, and appears in relatively large letters on the barrel of the bat. It is this end of the bat which is visible when the bats are displayed in stores. Opposer has advertised its bats in its LOUISVILLE SLUGGER catalogs, 50,000 to 60,000 of which are distributed each year. The catalogs are given to opposer's retail customers and to consumers who request catalogs; catalogs are also distributed at trade shows and tournaments.

Opposer also uses the mark GRAND SLAM on various golf clubs. Woods, irons and shafts, which feature the mark on the heads and shafts, are advertised in opposer's POWERBILT catalogs. These catalogs are distributed to golf professional customers and to consumers, with 50,000 to 75,000 catalogs produced each year.

Opposer has continuously used its GRAND SLAM mark on its baseball and golf products for decades. Mr. Williams testified that "in baseball it is the only example that I am aware of a product that has the Grand Slam name on it..." p. 22.

⁵ Registration No. 816,085, issued October 4, 1966; Section 8 and 15 affidavits filed; renewed.

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Annual sales of opposer's baseball and softball products bearing the mark GRAND SLAM ranged from \$100,000 to \$200,000 in the early 1990's to around \$1 million or more from 1994 through 1997, with total revenue during this period of more than \$5 million, representing sales of 660,000 items.

Opposer's GRAND SLAM baseball products are characterized as "economically priced." They are used by church leagues and Boys' Clubs, rather than pro players or high school or college teams. Mr. Williams testified that the bats are purchased on impulse, with the customers' recognizing the mark LOUISVILLE SLUGGER as indicating a quality product, and the price then being the determinative factor.

Although Mr. Williams did not specifically testify about the outlets in which opposer's GRAND SLAM products are sold, he did say that baseball equipment in general is sold in sporting goods stores, retail outlets, mass merchant stores, toy stores, drug stores, general merchandise stores like Sears, at batting cages and batting ranges, through direct response mail order, and on the Internet. He also testified that any of these trade channels could include board games.

Finally, Mr. Williams testified that opposer has licensed marks for various products, including stuffed and

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plush toys, small plastic toy pitching machines and batting tees, video baseball games, books and publications, and apparel. The record does not indicate which marks have been licensed for which goods, or whether the mark GRAND SLAM has been used on any of the licensed items, although Mr. Williams did state that the GRAND SLAM mark was available to be licensed.

As noted above, applicant did not submit any evidence.

Priority is not in issue, in view of opposer's registrations for GRAND SLAM which are of record. In addition, the record shows that opposer has been using the mark GRAND SLAM for baseball and softball bats and golf clubs since prior to the filing date of applicant's application.

Turning then to the issue of likelihood of confusion, we find that the marks are extremely similar. Opposer's mark is GRAND SLAM, registered in both typed and script form, while GRAND SLAM is the only verbal portion of applicant's mark. As such, it is the portion by which people would refer to the product. Although marks must be compared in their entireties, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark. **In re In re National Data Corp.**, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Moreover, in view of the design element in

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applicant's mark and the nature of the goods on which both marks are used, the significance of GRAND SLAM in both marks, as a baseball term, is the same.

With respect to the goods, although opposer's baseball bats and batting gloves are obviously different in nature from applicant's identified board game, both involve the game of baseball. Further, applicant's mark includes, in prominent fashion, a bat, which is the same item on which opposer uses its GRAND SLAM mark. In addition, the record shows that marks used for baseball bats are licensed for use on a wide variety of items, including toys. It is not necessary that the goods 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 they are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods 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 (TTAB 1978).

Here, in addition to the baseball-related connection of the parties' goods and the evidence of licensing of opposer's marks for toys, the record shows that baseball

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equipment such as opposer's is sold in toy stores and other retail outlets in which board games such as those identified in applicant's application can be sold. Thus, the parties' goods must be deemed to travel in the same channels of trade. The evidence also shows that the goods can be sold to the same classes of consumers, applicant's having admitted that her goods are intended to be sold to all persons ages ten to adult, which would certainly encompass the same consumers who purchase and use opposer's adult and youth bats.

We would also point out that, although the mark GRAND SLAM is suggestive of baseball bats and of a game depicting a baseball field, there is no evidence, as applicant asserted in her answer, that the term "grand slam" is commonly used or that opposer's rights in its mark are narrowly circumscribed. On the contrary, the evidence shows that opposer has used its mark GRAND SLAM for bats for more than 70 years, has advertised it for many years in its catalogs, and that no other parties sell baseball-related products under the mark GRAND SLAM. Thus, opposer's mark GRAND SLAM must, on this record, be considered a strong mark.

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Having considered all of the relevant duPont factors,⁶ we find that applicant's use of the mark GRAND SLAM and design for a board game consisting primarily of a game board depicting a baseball field and question cards is likely to cause confusion with opposer's mark GRAND SLAM, depicted in both typed and script form, for baseball and softball bats.

Decision: The opposition is sustained.

E. J. Seeherman

T. J. Quinn

T. E. Holtzman
Administrative Trademark Judges
Trademark Trial and Appeal Board

⁶ **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973)