

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 22, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re EZSHOP International, Inc.

Serial No. 75/030,088

Glenn A. Gundersen and Stephanie E. Thier of Dechert Price
& Rhoads for EZSHOP International, Inc.

Deborah E. Lobo, Trademark Examining Attorney, Law Office
107 (Thomas S. Lamone, Managing Attorney)

Before Hairston, Chapman and Bucher, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

EZSHOP International, Inc., a Delaware corporation,
has filed an application for registration of the mark
"EZSHOP" for "providing home shopping services via
television and computer, featuring clothing, home

furnishings, jewelry, electronics, collectibles, cosmetics, and exercise equipment." ¹

The Trademark Examining Attorney issued a final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's proposed mark, "EZSHOP," when used on these online home shopping services, so resembles the registered mark, "EASY SHOP" as applied to "mail, telephone and fax ordering services featuring toys," as to be likely to cause confusion, or to cause mistake, or to deceive.²

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. We reverse the refusal to register.

In the course of rendering this decision, we have followed the guidance of In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973), that sets forth the factors which, if relevant, should be considered in determining likelihood of confusion.

We turn first to the similarity or dissimilarity of the respective marks in their entireties, as to appearance, sound, connotation and commercial impression. The

¹ Serial No. 75/030,088, in International Class 42, filed December 8, 1995, based upon an allegation of a *bona fide* intention to use the mark in commerce.

² Registration No. 1,870,128, issued on December 27, 1994. The registration sets forth first use dates of September 1, 1993.

Trademark Examining Attorney contends that the marks are nearly identical phonetically. She points out that both share the same connotation and commercial impression -- namely, the ease and convenience of these shop-at-home alternatives to shopping at one's local retail outlet. Applicant, in turn, argues that registrant's mark is highly suggestive and thus it is a weak mark. Applicant conceded that while the marks might well share nearly identical pronunciations, the non-conventional spelling of "easy" (i.e., the two letters "E•Z" in applicant's mark combined with the word "SHOP" without a space between them) creates a significant difference in the appearance of these respective marks.

We agree with applicant that registrant's mark is highly suggestive. Registrant's mark touts the fact that it is convenient or "easy" to "shop" for toys using registrant's mail-order services. Hence, we find that this highly suggestive mark should be accorded a narrow scope of protection, and this key factor comes down in applicant's favor.

We turn next to the similarity or dissimilarity in the nature of the services as described in the instant application and the cited registration. The Trademark Examining Attorney takes the position that "home shopping"

characterizes both of these services. By contrast, applicant notes that registrant explicitly limits itself to fax, mail and telephone services without any reference to cutting edge technology like online computers or interactive cable television services. The instant application does not include traditional mail-order services. Rather, applicant claims intentions to use this mark on interactive shopping services. Applicant argues it is this one-step shopping for merchandise online (without reliance on any other media) that is the attraction of online computer and/or interactive cable television buying services. In addition, registrant's mail-order services are limited to the field of toys. However, toys are not among the product category enumerated by applicant.³ Accordingly, this second key du Pont factor also comes down in applicant's favor.

Under the third du Pont factor, we look at the similarity or dissimilarity of established, likely-to-continue trade channels. In light of the reliance of registrant's customers on the traditional mail-order media

³ Although the Trademark Examining Attorney argues for the first time in her appeal brief that applicant's "electronics" and "collectibles" could well include children's toys, the record contained no support for this proposition. Furthermore, since this argument was raised in a tardy manner, applicant had no opportunity to counter this argument with evidence.

for shopping from home, applicant argues that there is absolutely no overlap in the channels of trade with the high tech world of electronic shopping represented by online computers or interactive television. We agree with applicant that these disparate channels of trade help to underscore the differences between these services.

Under the fourth du Pont factor, we look at the conditions under which and buyers to whom sales are made. In determining the degree of care such consumers would exercise, we conclude that we are dealing herein with members of the general public seeking to purchase merchandise for their personal needs without leaving home. This prototypical consumer is not deemed to be especially discerning or sophisticated. This factor favors a finding of likelihood of confusion -- the position taken by the Trademark Examining Attorney.

Accordingly, in spite of the fact these marks are substantially identical phonetically, and although all the potential consumers herein are ordinary purchasers, we do not find a likelihood of confusion. Inasmuch as we have noted the narrow scope of protection to be accorded the cited mark; the visual differences in these highly suggestive marks; the fact that there appear to be several key distinctions in the nature of applicant's and

registrant's services; and, that given their respective media, applicant and registrant have separate channels of trade; we find the likelihood of confusion in the marketplace to be *de minimis*.

Decision: The refusal to register is reversed.

P. T. Hairston

B. A. Chapman

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board