

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

Trademark Trial and Appeal Board

In re Gramaw, Inc.

Serial No. 75/128,212

Arthur G. Yeager, Esq. for Gramaw, Inc.

Andrew P. Baxley, Trademark Examining Attorney, Law Office 104
(Sidney I. Moskowitz, Managing Attorney).

Before Simms, Hohein and Wendel, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Gramaw, Inc. has filed an application to register the
mark "BEST BUDGET INNS" and design, as reproduced below,

as a service mark for "motel services featuring restaurants".¹

¹ Ser. No. 75/128,212, filed on July 1, 1996, which alleges a date of first use anywhere of January 1, 1993 and a date for first use in commerce of October 18, 1993. The words "BEST BUDGET INNS" are disclaimed and the mark is described as follows: "The mark consists in part of four stylized dollar signs. In addition, the letter S in the word BEST is represented by a dollar sign."

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its services, so resembles the mark "BEST INNS OF AMERICA" and design, which is registered, as illustrated below,

for "motel services,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed,³ but an oral hearing was not requested. We affirm the refusal to register.

² Reg. No. 1,117,458, issued on May 1, 1979, which sets forth dates of first use of April 1974; renewed. The word "INNS" is disclaimed.

³ As the Examining Attorney correctly points out in the objection raised in his brief, the information attached to applicant's initial brief concerning certain third-party registrations is untimely under Trademark Rule 2.142(d) and such accordingly does not form part of the record in this appeal. We hasten to add, however, that even if the evidence were to be considered, it would make no difference in the result herein inasmuch as it is settled that a mere listing of third-party registrations or the submission of copies thereof does not demonstrate that the subject marks are in actual use to such an extent that the purchasing public is familiar with them and has learned to distinguish the marks by elements other than the feature(s) common thereto. As stated by the court in *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973):

We have frequently said that little weight is to be given such registrations in evaluating whether there is likelihood of confusion. The existence of these registrations 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.

Turning first to consideration of the respective services, applicant admits in its initial brief that its motel services "are identical" to those of the registrant. We agree that such services, as identified in the application and registration, are indeed identical in part and, for all practical purposes, are essentially the same inasmuch as motel services often feature restaurant services. Clearly, if motel services were to be rendered under the same or similar marks, confusion as to the source or sponsorship of such services would be likely to occur.

Considering, therefore, the marks at issue herein, applicant argues that, when considered in their entireties, "the design elements of each of the respective marks as well as the non-disclaimed inclusion of the words OF AMERICA in registrant's composite mark clearly obviates the similarity between the marks in sound, ... meaning, ... appearance, and ... commercial impression to the public." Applicant, in particular, stresses that the presence of the dollar signs in its mark, which are absent from registrant's mark, "engenders in the minds of the public ... low cost or money saving ... services," a connotation and commercial impression which is lacking in registrant's mark. In view thereof, and in light of the laudatory meaning of the term "BEST" in the respective marks, applicant insists that confusion as to source or sponsorship is not likely.

See also *In re Hub Distributing, Inc.*, 218 USPQ 284, 285 (TTAB 1983). Moreover, and in any event, none of the marks in the third-party registrations is as similar to applicant's mark as is the mark in the cited registration.

We concur with the Examining Attorney, however, that such confusion is likely since, as correctly and persuasively pointed out in his brief:

When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *In re Drug Research Reports, Inc.*, 200 USPQ 554 (TTAB 1978); [and] *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729 (TTAB 1976). For this reason, ... greater weight [must be given] to the word portions of the marks in determining whether there is a likelihood of confusion. Although the applicant has disclaimed BEST BUDGET INNS and the registrant has disclaimed INNS, disclaimers do not remove the disclaimed portions from the marks for purposes of determining likelihood of confusion. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 USPQ 669, 223 USPQ 1281 (Fed. Cir. 1984); [and] *In re MCI Communications Corp.*, 21 USPQ2d 1535 (Comm'r Pats. 1991).

In addition, the disclaimers in the third-party registrations made of record by the Examining Attorney,⁴ as well as the excerpts from his search of the "NEXIS" data base⁵ and an

⁴ Specifically, a registration for the mark "GLOBAL BUDGET INNS OF AMERICA" for "motel services" includes a disclaimer of the words "BUDGET INNS"; a registration for the mark "BUDGET INN" and design for "motel and lodging services" disclaims the words "BUDGET INN"; a registration for the mark "AMERICAN BUDGET INN" and design for "motel services" includes a disclaimer of the words "BUDGET INN"; and a registration for the mark "BUDGET INN CLEAN & COMFY" and design includes a disclaimer of the words "BUDGET INN".

⁵ The following examples are especially pertinent (**emphasis added**):

"[Vancouver] offers travel packages of performance tickets, a choice of discounted rooms at 27 hotels (from **budget inns** to luxury properties), plus round-trip Seattle-Vancouver rail tickets on Amtrak." -- Seattle Times, December 1, 1996;

article submitted by applicant from Consumer Reports,⁶ show that the terms "budget" and "budget inns" are generic designations for a category of lower-priced lodging or motel services. In view thereof, and in light of the obvious generic significance of the word "inns" in the respective marks,⁷ the Examining Attorney contends that:

Despite the marks' different design components and the registrant's addition of the geographically descriptive wording OF AMERICA to its mark, the applicant and the registrant both combine the laudatorily descriptive word BEST with generic wording for a type of lodging.

"We stayed once again at a **budget inn**, the Nuevo Hotel Boston (\$22 double)." -- International Travel News, September 1996;

"After being stuck for years between upscale business hotels they couldn't afford and **budget inns** that didn't meet their needs, the midlevel executives who travel finally have gotten the attention of the hotel industry." -- Orlando Sentinel, June 15, 1996;

"Courtyard is Marriott's chain of limited-service hotels, priced under full-service luxury hotels but more expensive than **budget inns**." -- Denver Post, April 25, 1996; and

"Anguilla is an island with ... gourmet restaurants, sun-bleached beach shacks, deluxe resorts, **budget inns**, ... and a new post office." -- Travel Weekly, April 11, 1996.

⁶ Such article, which appeared in the June 1998 issue, not only lists the ratings of nine "BUDGET HOTELS," but also states that (**emphasis added**): "The best **budget** hotels--many are motels, or low-rise roadside lodging with ample parking--include *Sleep Inn* and *Budgetel*, with a nightly rate of \$50."

⁷ As requested by the Examining Attorney in his brief, we judicially notice that Webster's II New College Dictionary (1995) defines "inn" in relevant part as "1. A lodging house serving food and drink to travelers : HOTEL". It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Based on the foregoing, the common use of BEST followed immediately by generic words (including INNS) for a type of lodging gives the respective marks essentially the same meaning. The Examining Attorney submits that the marks' having ... essentially the same meaning outweighs the differences between them. Based on that similarity, the [E]xamining [A]ttorney submits that prospective lodgers are likely to have a mistaken belief that the applicant is a lower-price spin-off of the registrant

We agree with the Examining Attorney that, except for the inclusion therein of the additional image or notion of a budget-priced motel, the commercial impression projected by applicant's mark, which principally combines the laudatory term "BEST" (in the stylized format "BE\$T") with the generic designation "BUDGET INNS," is essentially the same as that engendered by registrant's mark, which also primarily features the laudatory term "BEST" in conjunction with the generic word "INNS" and the subordinate, geographically descriptive words "OF AMERICA". Thus, and even assuming that customers would in fact notice the differences between the design elements of registrant's "BEST INNS OF AMERICA" and design mark and applicant's otherwise substantially similar "BE\$T BUDGET INNS" and design mark, it would not be unreasonable for them to assume mistakenly that applicant's motel services are a lower-priced or budget version of the motel services provided by registrant and that the same entity therefore provides or sponsors both. Any possible doubt which we may have with respect to this conclusion must, of course, be resolved in favor of the registrant. See In

re Pneumatiques Caoutchouc Manufacture et Plastiques Kelber-Columbes, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

Accordingly, we find that consumers familiar with registrant's "BEST INNS OF AMERICA" and design mark for motel services would be likely to believe, upon encountering applicant's substantially similar "BEST BUDGET INNS" and design mark for motel services featuring restaurants, that such essentially identical services emanate from, or are otherwise sponsored by or affiliated with, the same source.

Decision: The refusal under Section 2(d) is affirmed.

R. L. Simms

G. D. Hohein

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