

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB NOV. 29, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Tiara Motorcoach Corporation

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Serial No. 75/181,451

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**Bobby B. Gillenwater and Melissa A. Vallone**  
of Barnes & Thornburg for Tiara Motorcoach Corporation.

**Cindy B. Greenbaum**, Trademark Examining Attorney, Law  
Office 104 (Sidney Moskowitz, Managing Attorney).

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Before Hanak, Wendel and Rogers, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Tiara Motorcoach Corporation has filed an application  
to register the mark TIARA INTERNATIONAL MOTORCOACH  
CORPORATION and design, as shown below, for "vehicles,  
namely, conversion vans, minivans, pick-up trucks [and]  
sport utility vehicles."<sup>1</sup>

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<sup>1</sup> Serial No. 75/181,451, filed October 15, 1996, claiming first  
use dates of May 28, 1996.

Disclaimers have been made of the words INTERNATIONAL MOTORCOACH CORPORATION and the visual representation of the globe at the request of the Examining Attorney and of the word TIARA at the applicant's initiative.

Registration has been finally refused under Section 2(d) of the Trademark Act on the ground of likelihood of confusion with the registered marks TIARA in the following stylized format

for automobiles<sup>2</sup> and TIARA for vans and trucks and structural parts therefor and van conversions.<sup>3</sup> Although the first registration was originally issued to a different entity, the Office records show both registrations being presently owned by Ford Motor Company.

Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

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<sup>2</sup> Reg. No. 1,085,976, issued February 21, 1978. Section 8 affidavit accepted, first renewal.

Applicant represents that it is a licensee of Ford Motor Company (Ford) under the second cited registration for TIARA and thus is entitled to use the mark TIARA pursuant to this licensee. Applicant, however, has never made any licensing agreement of record. Furthermore, applicant acknowledges that this use inures to the benefit of Ford and that its license to use is not the equivalent of Ford's consent for applicant to register the mark. Nonetheless, applicant insists that it should be allowed to register its "own distinctive design mark" which incorporates the TIARA mark of its licensor Ford. Applicant argues that its voluntary disclaimer of the word TIARA indicates its disclaimer to any right to exclusive use of Ford's mark per se.

The Examining Attorney correctly points out that even though applicant may have voluntarily disclaimed any rights in the word TIARA, applicant's mark must still be considered in its entirety, including all disclaimed matter, in determining the likelihood of confusion under Section 2(d). See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re MCI Communications Corp.*, 21 USPQ2d 1534 (Comm'r Pat. 1991). Applicant's voluntary disclaimer of the word TIARA does not remove the

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<sup>3</sup> Reg. No. 2,000,159, issued September 10, 1996.

word from our analysis of the similarity of applicant's mark to the marks of the cited registrations.

As such, the word TIARA is clearly the dominant portion of applicant's mark. Although the descriptive terms INTERNATIONAL and MOTORCOACH CORPORATION cannot be ignored, the fact remains that purchasers are more likely to rely upon the non-descriptive portion as the indication of source. This is particularly true when the descriptive portion has been graphically relegated to a subordinate status, as is the case here. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993). Although applicant places great emphasis on the design features of its mark, pointing to the globe and wreath designs, the type styles and sizes of the wording, and the overall impact of the shape of the design, these features would certainly not be the portion of the mark which would be more likely to be remembered and relied upon by purchasers of applicant's vehicles. It is the word portion by which the vehicles would be identified and thus it is the word portion which must be accorded more weight. See *Ceccato v. Manifattura Lane Gaetano Marzotto & Figli S.p.A.*, 32 USPQ2d 1192 (TTAB 1994); *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). Furthermore, the most outstanding design feature is the global

representation, which serves more to emphasize the "international" description of applicant's company rather than create a separate impression as an indication of source. Cf. *Ceccato v. Manifattura Lane Gaetano Marzotto & Figli S.p.A.*, *supra* [coat of arms reinforces meaning of word mark].

Accordingly, we find applicant's composite mark to be highly similar to the cited TIARA marks, the overall commercial impression for all focusing on the word TIARA.

Insofar as the goods are concerned, applicant's conversion vans, minivans and pick-up trucks are fully encompassed by and thus identical with the "vans and trucks" of the cited registration for TIARA (typed). Applicant's sport utility vehicles and the "automobiles" of the registration for TIARA in a stylized form are at the very least closely related, the two types of vehicles often being purchased interchangeably. Although applicant attempts to liken the situation here to that in *Westward Coach Manufacturing Co., Inc. v. Ford Motor Co.*, 388 F.2d 627, 156 USPQ 437 (7<sup>th</sup> Cir. 1968), a similar distinction in the two types of vehicles involved cannot be made. In that case the mark MUSTANG was being used on sports cars and trailers and campers, respectively. The court found these types of vehicles not to be "similar goods similarly

marketed." The same is clearly not true here; it is common knowledge that many manufacturers of standard automobiles also produced sports utility models.

Thus, we are convinced that use by applicant of its composite mark featuring the word TIARA for its particular vehicles, in the face of the registered TIARA marks for automobiles, vans and trucks would be likely to lead to confusion. Inasmuch as applicant has failed to establish that registrant Ford Motor Company has consented to the registration of applicant's particular design mark which fully incorporates registrant's TIARA mark, applicant has no contractual basis for appropriating registrant's mark. While registrant may presently control the quality of the vehicles being marketed by applicant under its TIARA design mark, there is no assurance that this will be the case in the future. Instead, if applicant is permitted to register its TIARA design mark, the situation may well arise in which potential purchasers will be faced with vehicles emanating from two entirely separate sources bearing the highly similar TIARA marks.

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Decision: The refusal to register under Section 2(d)  
is affirmed and registration is refused to applicant.

E. W. Hanak

H. R. Wendel

G. F. Rogers  
Trademark Administrative Judges,  
Trademark Trial and Appeal Board

**Ser No.** 75/181,451