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SEPT 2, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Yong K. Kim

Serial No. 75/228,796

Terry M. Gernstein for Yong K. Kim.

Jill Alt, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Hohein, Hairston and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks to register the mark UTA MAKES HIGH
TECH EASIER (in typed form) for services recited in the
application as "training services in the fields of science,
communications and economics directed to work-world related
skills; educational services, namely, conducting classes,
courses, workshops, conferences, and seminars in the fields

of science, communications and economics directed to developing work-world related skills."¹

Registration has been refused under Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the ground that applicant's mark, as applied to applicant's services, so resembles the mark depicted below,

which is registered for services recited as

educational services, namely, providing college and graduate level courses of instruction, continuing education courses and seminars, and opportunities for students to participate in research programs; and entertainment services, namely, college sport games and events rendered live and through the media of radio and television, musical concerts and entertainment, and performances of dramatic works

as to be likely to cause confusion, to cause mistake, or to deceive.²

¹ Application Serial No. 75/228,796, filed January 21, 1997. The application is based on use in commerce, with October 1996 alleged as the date of first use of the mark anywhere and first use of the mark in commerce.

² Registration No. 1,230,436, issued March 8, 1983. Combined §§8 and 15 affidavit accepted. The registration contains the following statement: "The mark consists of the letters UTA." The record owner of the registration is Board of Regents, The University of Texas System.

When the refusal was made final, applicant appealed. Applicant and the Trademark Examining Attorney have filed briefs, but applicant did not request an oral hearing.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We turn first to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a

specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applying these principles to the present case, we find that applicant's mark is confusingly similar to the cited registered mark. The letters UTA comprise the dominant feature of applicant's mark UTA MAKES HIGH TECH EASIER, because they appear first in the mark and because they, unlike the remainder of the mark, appear to be arbitrary as applied to the recited services. The letters UTA appear in the mark as the subject of the sentence or slogan which comprises the mark; the remaining wording, i.e., MAKES HIGH TECH EASIER, immediately and directly refers the speaker, hearer or reader of the mark back to the letters UTA. Thus, although the mark as a whole comprises a slogan, the letters UTA are the focal point of that slogan, and thus are the focal point of the mark. In short, the dominant feature in the commercial impression created by applicant's

mark, and the feature that purchasers are most likely to recognize or recall as the source-indicating feature of applicant's mark, are the letters UTA.

Likewise, registrant's mark is dominated by, indeed it consists of, the letters UTA. We are not persuaded by applicant's argument that the registered mark would not immediately be perceived as the letters UTA. Although the letter "T" in the registered mark is slightly stylized, and might be recognized by persons already familiar with registrant as being somewhat evocative of the University of Texas' "Longhorns" mascot, it nonetheless clearly is a "T", and would be readily perceived as such by anyone viewing the mark. The registered mark looks like the letters UTA, it would be pronounced as the letters UTA, its connotation is of the letters UTA, and the commercial impression created by the registered mark is that of the letters UTA.

Moreover, the fact that registrant's mark is depicted in stylized lettering does not suffice to legally distinguish the marks. Because applicant seeks to register his mark in typed form, applicant would not be limited to such format alone. Instead, applicant would be entitled to present his mark in various stylized lettering forms, which legally would include a form, like registrant's, in which the "T" in applicant's UTA designation is depicted with an

elongated crossbar covering the adjacent letters "U" and "A", and in which the letters themselves are displayed in a typestyle similar to that used in the registered mark.

See, e.g., Phillips Petroleum Co. v. C.J. Webb, Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971).

Thus, the dominant feature and the focus of applicant's mark, UTA, is essentially identical to the registered mark. Having considered the marks in their entirety, we conclude that they are so substantially similar that, if used in connection with related services, source confusion is likely.

We also find that the educational services recited in registrant's registration are related to and even encompass the educational services recited in applicant's application. Applicant argues that the courses and continuing education seminars offered by universities such as registrant's do not include instruction designed to provide students with "work-world" skills in the fields of science, communications and economics, and that registrant's educational services therefore are distinguishable from the sort of educational services offered by applicant. This argument not only is unsupported by any evidence in the record, it is contrary to common knowledge and experience, which reveal that

science, communications and economics are among the subjects of instruction offered by universities, and that university students and continuing education students following courses of instruction in those subjects are doing so, for the most part, in hopes of obtaining knowledge and skills they can use in what applicant calls the "work-world."

In any event, the issue is not whether applicant's recited educational services are identical to or even competitive with registrant's educational services. Rather, the issue is whether the respective educational services are sufficiently closely related that confusion as to source, sponsorship or affiliation is likely to result if the services are offered to the public under the confusingly similar marks involved in this case. *See In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984). Clearly, they are.

We are not persuaded by applicant's argument that registrant's mark is a weak mark which is entitled only to a limited scope of protection. Applicant has presented no evidence that any third party uses the designation UTA in connection with educational services, or that purchasers are so familiar with such third-party uses that they would not be confused by the similarity between applicant's mark

and registrant's mark. Nor are we persuaded that potential purchasers are necessarily so sophisticated and careful that they would be immune to confusion as to the source of such closely related educational services, offered under such confusingly similar marks, as are involved in this case.

In short, we have considered all of the evidence of record pertaining to the relevant *du Pont* factors, and conclude that a likelihood of confusion exists.

Decision: The refusal to register is affirmed.

G. D. Hohein

P. T. Hairston

C. M. Bottorff

Administrative Trademark Judges
Trademark Trial and Appeal Board