

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB DEC. 20, 99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Mrs. United States National Pageant, Inc.*

Serial No. 75/272,603

Joseph Scafetta, Jr. for Mrs. United States National Pageant,
Inc.

Tracy L. Fletcher, Trademark Examining Attorney, Law Office 115
(Tomas Vlcek, Managing Attorney).

Before Cissel, Hohein and Holtzman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Mrs. United States National
Pageant, Inc. to register the mark shown below for "entertainment
services in the nature of beauty and talent pageants."¹

Miss Teen
UNITED STATES PAGEANT

¹ Application Serial No. 75/272,603, filed April 10, 1997; alleging dates of first use anywhere in January, 1992 and in commerce in September, 1996. The words "TEEN" and "UNITED STATES PAGEANT" have been disclaimed.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when used in connection with applicant's services, so resembles the previously registered mark MISS TEEN USA for "entertainment services; namely, promoting and conducting beauty pageants" as to be likely to cause confusion.²

When the refusal was made final, applicant appealed. Briefs have been filed. An oral hearing was not requested.

In any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services. See *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999) and *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998).

In this case, there is no dispute that the services, as identified in the application and registration, are virtually identical. Both applicant and registrant operate beauty pageants. Thus, we turn our attention to the marks.

² Registration no. 1,660,124; issued August 10, 1991; Sections 8 & 15 affidavit filed; the word "TEEN" has been disclaimed; Section 2(f) as to "USA."

Arguing that there is no likelihood of confusion, applicant contends that "USA" and "UNITED STATES" are distinguishing features of the respective marks and that the only undisclaimed portion of its mark, the stylized term "MISS," is "different" than the typed word "MISS" in the registration. Applicant maintains that pageant producers and contestants are sufficiently sophisticated to recognize the different sources of the respective services and further argues that applicant is not aware of any actual confusion.³

We find that the marks are similar in sound, appearance and commercial impression. Both marks begin with the identical phrase "MISS TEEN," conveying the impression that the same age group competes and the same title is bestowed in both pageants. "MISS TEEN" is immediately followed in both marks by the national designation "UNITED STATES" or its abbreviated equivalent "USA." There is simply no basis for applicant's claim that the two forms

³ Applicant also persists in its arguments that the outcome of a prior opposition between itself and registrant (Opposition No. 92,171) as well as applicant's success in obtaining unchallenged registrations of other marks for the same services should be "persuasive" that the marks involved in this appeal "are not confusingly similar." These arguments miss the point. While the services may be the same, both the mark involved in the opposition and the marks for which applicant has obtained registrations are different from the mark involved in this appeal. Thus, the outcome of that opposition and any alleged coexistence on the register of those other marks is irrelevant to the question of whether the mark involved in this case is registrable. If applicant and registrant agreed that the marks in this case are not likely to cause confusion, applicant could have obtained and submitted registrant's written consent to the registration of this mark.

of the same geographic designation are distinguishing features of applicant's and registrant's marks. Finally, the presence of the word "PAGEANT" in applicant's mark, as the name of the services, does nothing to distinguish applicant's mark from the cited mark.

Moreover, there are only slight visual differences in the two marks, including a modest stylization of the "MISS TEEN" portion of applicant's mark. Contrary to applicant's claim, this stylization is of little significance when evaluating likelihood of confusion. We note that registrant's mark is depicted in typed form. This means that registrant is free to present its registered mark in a variety of forms and styles, including a stylization similar to that used by applicant. See *Phillips Petroleum Co. v. C. J. Webb, Inc.*, 442 F.2d 1376, 170 USPQ 35 (CCPA 1971) and *In re Fisher Tool Co., Inc.*, 224 USPQ 796, 797 (TTAB 1984).

Applicant's arguments concerning purchaser sophistication and the absence of actual confusion are unsupported and unpersuasive. Applicant has submitted no evidence as to the relative sophistication of pageant contestants or the degree of care one would use in selecting a pageant to enter. In fact, the typical pageant contestant may have little sophistication in this field. Further, there is no evidence that pageant "producers," regardless of that group's level of sophistication, are even considered potential customers for these services. Applicant

does not even address the large group of potential purchasers, namely pageant spectators, who may clearly not be sophisticated or likely to make the fine distinctions necessary to distinguish these marks.

Finally, with the absence of any evidence to support applicant's claim that there has been no actual confusion, that claim can be given no consideration. In any event, it is unnecessary to show actual confusion in establishing likelihood of confusion.⁴ *Weiss Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1547, 14 USPQ2d 1840 (Fed. Cir. 1990).

We find, based on the foregoing, that purchasers familiar with registrant's beauty pageants offered under the mark MISS TEEN USA, would be likely to believe, upon encountering applicant's stylized mark MISS TEEN UNITED STATES PAGEANT for the same services, that such pageants emanate from or are otherwise sponsored by the same source.

⁴ Applicant urges the Board to "resolve any doubts about this particular application as to the issue of likelihood of confusion by allowing [the mark] to be published for opposition." To the extent that there is any doubt on the issue of likelihood of confusion, which in this case there is not, it is well settled that such doubt must be resolved in favor of the prior registrant. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

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Decision: The refusal to register is affirmed.

R. F. Cissel

G. D. Hohein

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