

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB OCT. 6, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Dayton Hudson Corporation
v.
Greatland Corporation

Opposition No. 98,231
to application Serial Nos. 74/546,560 and 74/546,586
filed on July 7, 1994

L. Paul Burd, Robert W. Gutenkauf and Gina M. Tiefenthaler
of Burd, Bartz & Gutenkauf for Dayton Hudson Corporation.

Terence J. Linn and Timothy A. Flory of Van Dyke, Gardner,
Linn & Burkhart, LLP for Greatland Corporation.

Before Cissel, Quinn and Hairston, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Greatland Corporation has filed applications to
register the marks GREATLAND in typed form and

for the following goods and services:

computer software and instructional manuals sold as a unit for financial/banking and mortgage institutions and accounting/tax, real estate and legal fields; electronically created documents in the form of computer software for creating forms used in the financial/banking, mortgage, accounting/tax and legal fields and other regulated business applications, and pre-recorded video and audio tapes and cassettes relating to such fields in class 9;

printed informational publications for the mortgage, financial/banking, accounting/tax, real estate and legal fields, namely manuals, brochures, leaflets, booklets, printed forms for the financial/banking, legal, mortgage, real estate, accounting/tax and other business fields; printed receipts, envelopes, stationery, printed advertising sheets distributed for use by third parties; labels, cards for use in business and folders in class 16; and

general printing services; direct and wholesale distributorship services and mail order catalog services for printed and electronically created documents, forms and printed supplies, manuals, informational brochures, booklets and leaflets, and computer programs and software for the fields of mortgage, financial/banking, accounting/tax, legal, real estate and other regulated businesses in class 42.¹

Registration has been opposed by Dayton Hudson Corporation under Section 2(d) of the Trademark Act on the ground of likelihood of confusion between applicant's mark and opposer's previously used and registered marks. Opposer is the owner of valid and subsisting registrations for the following marks: TARGET GREATLAND for "retail department

¹ Serial Nos. 74/546,560 and 74/546,586 respectively, both filed July 7, 1994 under Section 1(b) of the Trademark Act.

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store services"²; TARGET GREATLAND and design for "retail department store services"³; GREATLAND for "thermally insulated clothing, namely, underwear, socks, gloves and mittens and boots"⁴; "propane camp stoves, propane camp lanterns and battery operated fluorescent lanterns and heaters"⁵; "tote bags and backpacks"⁶; "sleeping bags"⁷; "tents"⁸; "thermally insulated coolers, vacuum bottles, cooking pots, sheets, comforters, throws, blankets, clothing, namely, thermal underwear, sweaters, sweatshirts, gloves, hats, coats, jackets, jeans, nightshirts, footwear, belts, shirts, scarves, hosiery, pet food"⁹; "artificial Christmas trees"¹⁰; and "processed nuts, fruit juices and fruit drinks"¹¹.

Applicant, in its answer, denied the salient allegations of the likelihood of confusion claim.

² Registration No. 1,639,404 issued March 26, 1991; Sections 8 & 15 affidavit filed.

³ Registration No. 1,641,791 issued April 16, 1991; Sections 8 & 15 affidavit filed.

⁴ Registration No. 1,384,422 issued February 25, 1986; Sections 8 & 15 affidavit filed.

⁵ Registration No. 1,585,514 issued March 6, 1990; Sections 8 & 15 affidavit filed.

⁶ Registration No. 1,585,673 issued March 6, 1990; Sections 8 & 15 affidavit filed.

⁷ Registration No. 1,585,723 issued March 6, 1990; Sections 8 & 15 affidavit filed.

⁸ Registration No. 1,606,455 issued July 17, 1990; Sections 8 & 15 affidavit filed.

⁹ Registration No. 1,641,912 issued April 23, 1991; Sections 8 & 15 affidavit filed.

¹⁰ Registration No. 1,649,583 issued July 2, 1991; Sections 8 & 15 affidavit filed.

¹¹ Registration No. 1,861,063 issued November 1, 1994.

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The record consists of the pleadings; the files of the involved applications; testimony (with exhibits) taken by both parties; and stipulated rebuttal testimony.¹² The following materials were submitted under notices of reliance: status and title copies of opposer's pleaded registrations; opposer's responses to applicant's interrogatories and requests for admissions; excerpts from printed publications; and applicant's responses to opposer's interrogatories and request for production of documents. Both parties filed briefs on the case, but an oral hearing was not requested.

Opposer, Dayton Hudson Corporation, is one of the largest retail merchandisers in the United States. Since 1962 opposer has operated a chain of retail self-service Target discount department stores which offer a variety of products and services. In 1990 opposer developed new, larger self-service discount department stores called TARGET GREATLAND. According to opposer, the mark TARGET GREATLAND was selected to differentiate the new stores from the original Target stores. TARGET GREATLAND stores are larger, with wider aisles, and offer more goods and services. As of 1996 there were 49 TARGET GREATLAND stores operating in 11 states. At both its Target and TARGET GREATLAND stores

¹² Applicant has stipulated that opposer offers photofinishing services which include the printing of calendars and greeting cards featuring photographs.

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opposer sells and provides many and varied goods and services such as are normally sold and provided in discount department stores, including many under the mark GREATLAND. Opposer promotes its retail stores and the goods and services offered therein in newspapers, advertising circulars, and on television and radio. In 1995 sales of GREATLAND merchandise totaled over \$250 million.

Applicant is a national supplier of computer software and printed documents in the fields of finance, mortgages, tax and accounting. Applicant's products and services are mostly compliance-based products for regulated fields or industries and are sold through catalog orders, phone sales or personal contact by a sales representative. Applicant's customers are professionals and businesses within the financial, mortgage and accounting and tax industries.

Inasmuch as status and title copies of opposer's registrations are of record, there is no issue with respect to opposer's priority. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

We turn our attention then to the issue of likelihood of confusion. It is opposer's position that confusion is likely because the respective marks are identical and/or substantially similar and the respective goods/services are closely related. Applicant, on the other hand, while

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conceding that its mark GREATLAND in typed capital letters has some similarity to opposer's marks, argues that confusion is not likely because of the differences in the parties' goods and services.

With respect to the marks, we agree with opposer that its marks TARGET GREATLAND and GREATLAND are identical or otherwise substantially similar in sound, appearance and commercial impression to applicant's marks GREATLAND and GREATLAND and design.

With respect to the goods and services, opposer acknowledges that its goods/services and the goods/services in connection with which applicant intends to use its mark are not similar. (Brief, p. 12.) However, opposer maintains that the conditions surrounding the marketing of the parties' goods and services would give rise to public confusion.

First, opposer notes that "[it] sells thousands of third-party (marked) goods at its Target and TARGET GREATLAND stores" which are "identical in kind and nature" to those specified in applicant's application. (Brief, p. 12-13). In particular, opposer points to computer software and instructional manuals for tax preparation, pre-recorded video and audio tapes and cassettes, printed informational publications, envelopes, stationery and folders. The problem with this argument, however, is that in our analysis

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of likelihood of confusion, we must compare opposer's goods and services offered under the marks TARGET GREATLAND and GREATLAND, not the goods and services of third parties which are offered under different marks, with the goods and services named in applicant's application. As opposer has acknowledged, its goods and services and those set forth in applicant's applications are not similar.

Also, opposer notes that applicant's applications include "general printing services" and that it provides general printing services in the form of photofinishing services, which include custom printing of calendars and greeting cards featuring photographs. While we recognize that photofinishing services may encompass the printing of some materials, this is insufficient to establish that general printing services and photofinishing services are related services.

Further, opposer points out that applicant offers mail order catalog services and argues that mail order catalog services are within the scope of natural expansion of opposer's retail department store services. However, opposer has ignored that applicant's mail order catalog services are for products used in the fields of mortgages, financial/banking, accounting, tax, legal, real estate and other regulated businesses. There is nothing in this record to indicate that mail order catalog services in these types

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of goods are within the scope of natural expansion of retail department store services. Also, it is obvious that the products applicant intends to sell by mail order are unlike the consumer items which are sold by department stores by mail order.

In this case, it is apparent that opposer and applicant operate in distinct fields and their respective goods and services are very different on their faces. Moreover, opposer has failed to show that the parties' goods and services are related in any meaningful way. Likelihood of confusion must be established on sound, viable, grounds rather than on supposition and surmise. As the Court stated in *Witco Chemical Co. v. Whitfield Chemical Co.*, 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969):

We are not concerned with the mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations, but with the practicalities of the commercial world with which trademark laws deal.

Thus, notwithstanding the identity/similarity between the parties' marks, we find that there is no likelihood of confusion in this case.

Finally, although opposer has contended that its marks are famous, the evidence falls short of establishing the fame of opposer's TARGET GREATLAND and GREATLAND marks. While it appears that opposer has enjoyed some success with its TARGET GREATLAND and GREATLAND stores and merchandise,

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we cannot conclude, based on the present record, that the marks have become famous. Compare: Kenner Parker Toys v. Rose Art Industries, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992).

Decision: The opposition is dismissed.

R. F. Cissel

T. J. Quinn

P. T. Hairston
Administrative Trademark Judges
Trademark Trial and Appeal Board