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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Atmel Corporation
v.
Bedini Electronics, Inc.

Opposition No. 103,356
to application Serial No. 74/725,454
filed on September 5, 1995

Thomas Schneck of Law Offices of Thomas Schneck for Atmel
Corporation

Thomas G. Walsh of Walsh & Associates for Bedini
Electronics, Inc.

Before Simms, Walters and McLeod, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Atmel Corporation (opposer), a California corporation,
has opposed the application of Bedini Electronics, Inc.
(applicant), a Nevada corporation, to register the mark shown
below:

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for the following goods: electronic stereo amplifiers, pre-amplifiers, audio speakers, processors, audio enhancement devices and systems, namely a binaural spacial electronic processor.¹ In the notice of opposition, opposer asserts that it has a wholly owned subsidiary, DREAM S.A., a French societe anonyme; that since 1991, that subsidiary has used the trade name and trademark DREAM in the United States in connection with digital signal processors for audio applications; that applicant's mark so resembles the subsidiary's previously used mark as to be likely to cause confusion, to cause mistake or to deceive; and that the phrase "DYNAMIC REALISTIC & ENHANCED AUDIO FOR MULTIMEDIA" is merely descriptive of multimedia audio products and that opposer's subsidiary has a right to describe its goods by this phrase. The Board granted opposer's motion to amend its pleading to assert the additional grounds that applicant has never used its asserted mark on amplifiers, pre-amplifiers, speakers, processors and audio enhancement devices as individual items; and that the application contains an overly broad description of applicant's goods, which may block opposer's pending application to register its mark for "processors".

¹ Application Serial No. 74/725,454, filed September 5, 1995, claiming use in commerce since May 15, 1995. In the application, applicant has disclaimed exclusive rights to the words "ENHANCED AUDIO" and "MULTIMEDIA".

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In its answer, applicant has denied the essential allegations of the notice of opposition and has asserted, as affirmative defenses, that opposer has no proprietary rights in the pleaded mark and that this opposition is barred by acquiescence, laches and estoppel because of opposer's delay of two years. Applicant also asserts that it adopted its mark without knowledge of any rights that opposer may possess.

Only opposer has taken testimony. The record consists of depositions of opposer's witnesses, with accompanying exhibits, and dictionary definitions, relied upon by opposer's notice of reliance. Only opposer has filed a brief, and no oral hearing was requested.

Opposer has briefed only the issue of likelihood of confusion, and that is the only issue that we shall consider. Also, because applicant offered no testimony or evidence and did not file a brief, we shall not consider any affirmative defense pleaded by applicant.

Opposer took the testimony of Claus Dorner, an employee of DREAM, S.A. Mr. Dorner testified that DREAM sold integrated circuits bearing the name DREAM in the United States from 1990 until 1997. Over the years, about one million integrated circuits were sold. These products were also displayed at trade shows.

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DREAM integrated circuits are used for sound synthesis and sound processing. These sound synthesis processors (also called digital signal processors) are used to make multimedia sound cards for playing games on personal computers to synthesize music, to add sound effects and to improve the sound of a multimedia device. Mr. Dorner testified that these goods are sold to manufacturers and to engineers who design circuit boards. DREAM sound processors may be mounted on circuit boards with other integrated circuits. One customer, Crystal Semiconductor, used DREAM integrated circuits with its own integrated circuits to make chip sets, which were in turn used by others for personal computers or for electronic musical instruments and arcade games.

Mr. Dorner also testified that DREAM digital sound processors, made by opposer and opposer's European subsidiary, were to be shown at an April 1998 trade show.

According to the testimony of Mike Ross, opposer's vice president and general counsel, DREAM S.A. is a wholly owned subsidiary (of a wholly owned subsidiary). Mr. Ross testified that, since the acquisition in May 1996, DREAM S.A. has sold integrated circuits with the mark to customers outside of the United States, which customers have placed DREAM integrated circuits into larger systems such as music synthesizer devices, some of which have been shipped to this

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country under various brand names. Mr. Ross further testified that a third party uses the DREAM mark on digital signal processors with permission. Recently, although opposer has not introduced a DREAM integrated circuit product into this country, opposer was planning to do so during the third or fourth quarter of 1997.

When asked about possible confusion as a result of applicant's use of its mark on its goods, Mr. Dorner testified, at 50:

A. I see a big problem, problems related to that for a customer. This can be misleading and will be to a higher percentage be misleading in order to make him believe that inside of the box there is one of the well-known Dream sound processors installed.

Q. But to your knowledge this company is not one of your customers; is that correct?

A. Bedini Electronics never showed up in our records as one of our customers.

Q. So as far as you're concerned they have no right from Atmel or Dream, S.A. to use the Dream mark; is that correct?

A. That's absolutely correct.

Opposer argues that it has established its standing as well as its priority. With respect to the issue of likelihood of confusion, opposer argues that the dominant part of each mark is the term DREAM, and that applicant's

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goods include processors, which are the same goods on which opposer's subsidiary uses the trade name and trademark DREAM.

Upon careful consideration of this record and opposer's arguments, we conclude that opposer has prior use² of the trade name and trademark DREAM and that applicant's mark, used on its goods, is likely to cause confusion with opposer's mark and trade name. Concerning the marks, both are dominated by the term DREAM or D.R.E.A.M., such that, if applicant's mark in its entirety and opposer's mark and trade name were used on related goods, confusion would be likely to result. Here, opposer designs and sells integrated circuits and processors used in musical instruments and sound cards for computers and video games. Applicant uses its mark on stereo amplifiers, speakers, processors and "binaural spacial electronic processors." In the face of opposer's testimony that both parties are using their marks in connection with sound processors and that opposer's goods are similar to applicant's audio products, we have no testimony, evidence or argument from applicant to the contrary. We conclude that purchasers, aware of opposer's DREAM trade name and mark used for integrated circuits and processors for musical applications, who then

² In the absence of evidence, applicant is limited to the filing date of its application as the earliest date on which it may rely.

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encounter applicant's similar mark in connection with its goods, which include processors, are likely to believe that these goods all come from the same source or are sponsored or approved by the same entity.

Decision: The opposition is sustained and registration to applicant is refused.

R. L. Simms

C. E. Walters

L. K. McLeod
Administrative Trademark Judges,
Trademark Trial and Appeal Board