

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
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THIS DISPOSITION IS NOT
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lykos

MARCH 30, 00

Opposition No. 106,963

Anheuser-Busch,
Incorporated

v.

Sydney Goldstein

Before Cissel, Chapman, and Wendel, Administrative Trademark
Judges.

By the Board:

Sydney Goldstein seeks to register the mark THE QUEEN
OF BEERS for "beers" in International Class 32.¹
Registration has been opposed by Anheuser-Busch, Inc. on the
ground that applicant's mark so resembles opposer's
previously used and registered mark KING OF BEERS for
"beer,"² as to be likely, if used in connection with
applicant's beers, to cause confusion, or to cause mistake
or to deceive. Opposer also alleges that it has extensively
marketed and sold beer in interstate commerce under its

¹ Application Serial No. 75/107730 filed May 21, 1996, alleging a
bona fide intent to use the mark in commerce.

² Registration No. 847,980 issued April 23, 1968, Section 8
affidavit accepted, Section 15 affidavit acknowledged, setting

"famous" KING OF BEERS trademark and that the KING OF BEERS trademark has "become well-known to consumers."³

Applicant, in its answer, admits that opposer brews beer; that opposer has used the KING OF BEERS trademark prior to the filing date of the involved application; that opposer is the owner of a valid and subsisting registration for the mark KING OF BEERS, Registration No. 847,980; that opposer has extensively marketed and sold beer in connection with its "famous" KING OF BEERS mark; and that opposer's KING OF BEERS mark is "well-known" to consumers. Applicant denies the remaining salient allegations of the notice of opposition.

This case now comes up for consideration of opposer's motion for summary judgment on the issue of likelihood of confusion, and applicant's cross-motion for summary judgment that there is no likelihood of confusion. The motions are fully briefed.

Opposer argues that it is undisputed (1) that opposer owns a valid, incontestable registration for the mark KING OF BEERS; (2) that opposer has prior use; (3) that KING OF BEERS is a famous trademark; (4) that the goods at issue are identical; and (5) that applicant has admitted in her

forth 1951 as the date of first use and first use in commerce. The term "BEERS" is disclaimed.

³ Notice of Opposition, Paragraphs 2 and 5.

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response to discovery interrogatories that she intends to market her beer in the same trade channels as opposer.

Relying on the principle that famous marks must be accorded a broad scope of protection, as well as case law establishing that purchasers of inexpensive items such as beer are more likely to be confused as to the source such products, opposer maintains that because of the fame of opposer's mark, prospective consumers would believe that beer labeled with applicant's mark THE QUEEN OF BEERS emanates from the same source which is responsible for the KING OF BEERS beer, and assume that opposer has introduced a new beer. *See Beer Nuts v. Clover Club Foods Co.*, 805 F.2d 920, 231 USPQ 913 (10th Cir. 1986)

As evidentiary support, opposer submitted (1) the affidavit of Michael Labroad, opposer's vice-president of BUDWEISER® marketing, attesting to opposer's prior use of the pleaded mark as well as the fame of the KING OF BEERS trademark; and (2) the affidavit of one its attorneys, Kathryn Ross, introducing a photocopy of the certificate of registration for opposer's pleaded mark, KING OF BEERS, and applicant's responses to interrogatory Nos. 4, 11, 15 which relate to applicant's use of the mark, applicant's intended trade channels for distribution of its beer, and the fact that applicant did not acquire rights in THE QUEEN OF BEERS mark from any third party.

Applicant argues that opposer's mark is famous, which eliminates confusion that may otherwise arise;⁴ that the fact that applicant's mark "calls to mind" the existence of opposer's mark does not establish likelihood of confusion; and that dissimilarities in the marks alone warrants judgment in applicant's favor. In its brief (p. 1), applicant stated it agreed that the issue of likelihood of confusion could be decided on summary judgment.

As evidentiary support, applicant has submitted a declaration attesting that she was aware of opposer's KING OF BEERS trademark, but she did not intend to trade on the fame of the mark; and she included a sample label showing use of applicant's mark.⁵

The purpose of summary judgment is one of judicial economy, that is, to save the time and expense of a useless trial where no genuine issue of material fact remains and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected

⁴ Applicant cites the Board decision in *Kenner Parker Toys v. Rose Art Industries Inc.*, which can be found at 1992 TTAB LEIXS 39, but the U.S. Court of Appeals for the Federal Circuit reversed the Board's decision in that case. See *Kenner Parker Toys v. Rose Art Industries Inc.*, 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992).

⁵ Although the sample label shows use of the involved mark in combination with the name Sophie McCall, the Board's determination of likelihood of confusion must be based on the marks shown in the drawing of the involved application and pleaded registration. See *United Foods Inc. v. J.R. Simplot Co.*, 4 USPQ2d 1172 (TTAB 1987).

to change the result. *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 222 USPQ 741 (Fed. Cir. 1984). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The evidence submitted in support of each party's motion for summary judgment must be viewed in the light most favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

There are no genuine issues of material fact regarding opposer's standing or priority of use due to applicant's answer admitting opposer's ownership and validity of opposer's pleaded registration. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

In determining whether there is any genuine issue of material fact regarding likelihood of confusion, we must consider the evidentiary factors set forth in *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973) ("*du Pont*"). As stated earlier herein, applicant has conceded (1) that the goods in question are

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identical, namely, beer; (2) that applicant intends to market its beer in the same trade channels as opposer; (3) and that opposer's mark, KING OF BEERS, is a famous trademark for beer.

We are therefore left with determining whether there is a genuine issue of material fact as to the similarity or dissimilarity of the parties' marks in their entirety as to appearance, sound, connotation and commercial impression under *du Pont*. Of related significance in this particular case is the fifth *duPont* factor, fame, and applicant's concession regarding the fame of opposer's mark. It is well established that famous or strong marks enjoy a wide latitude of legal protection. *Sure-Fit Prods. Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 160, 117 USPQ 295, 296 (CCPA 1958); *Kenner Parker Toys Inc. v. Rose Art Industries Inc.*, 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992); *Century 21 Real Estate Corp. v. Century Life of America*, 15 USPQ2d 1079 (TTAB 1990), *corrected*, 19 USPQ2d 1479 (TTAB 1990); *Nina Ricci S.A.R.L. v. E.T.F. Enterprises Inc.*, 9 USPQ2d 1061 (TTAB 1988); *rev'd on other grounds*, 889 F.2d 1070, 12 USPQ2d 1901 (Fed. Cir. 1989). In *Kenner Parker Toys, supra*, the Federal Circuit held that "a mark with extensive public recognition and renown deserves and receives more legal protection than an obscure or weak mark," and that "the Lanham Act's tolerance for similarity between competing

marks varies inversely with the fame of the prior mark."

Kenner Parker Toys, 22 USPQ2d at 1456. As the court emphasized:

When an opposer's trademark is a strong, famous mark, it can never be "of little consequence". The fame of a trademark may affect the likelihood purchasers will be confused inasmuch as less care may be taken in purchasing a product under a famous name.

Id., citing *Specialty Brands v. Coffee Bean Distribs.*, 748 F.2d 669, 671, 223 USPQ 1281, 1282 (Fed. Cir. 1984).

It is within this context that we analyze the similarities of the two marks at issue. Opposer argues that "king" and "queen" are complementary words, both identifying royal heads of state, whereas applicant argues that "queen," as used in applicant's mark, conveys the connotation of a beer for women.

The dictionary definitions of "king" and "queen" demonstrate that the two terms are highly similar in connotation and meaning.⁶ "King" is defined, in pertinent part, as a "male sovereign;" or "one that is supreme or preeminent in a particular group, category, or sphere"; "queen" is defined, in pertinent part, as "the wife or widow of a king," "a female sovereign," or "something having

⁶ It is well established that the Board may *sua sponte* take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*,

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eminence or supremacy in a given domain and personified as a woman." *The American Heritage Dictionary of the English Language* 992 and 1482 (3rd ed. 1996). Because opposer's and applicant's slogans share the same syntax, merely replacing KING with QUEEN would be likely to be viewed by prospective consumers as an extension of opposer's beer product line marketed specifically toward women. Given the fame of opposer's KING OF BEERS mark and the fact that applicant's and opposer's goods are identical, if applicant's mark were used on beer, we believe that prospective purchasers would be likely to assume that applicant's beer originates from the same source as opposer's beer.

In sum, and in view of the discussion above, we find that no genuine issues of material fact remain for trial, and that based on the undisputed facts of record in connection with this motion, opposer is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett, supra.* Accordingly, opposer's motion for summary judgment is granted, and applicant's cross-motion for summary judgment is denied. *See Fed. R. Civ. P. 56(c).*

213 USPQ 594, 596 (TTAB 1982); *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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The opposition is sustained and registration to applicant is refused.

R. F. Cissel

B. A. Chapman

H. R. Wendel

Administrative Trademark
Judges, Trademark Trial
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