

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 16. 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

V.I.P. Limousine, Inc.

v.

V.I.P. Car Rental, LLC

Opposition No. 107,898 to application Serial No. 75/174,637,
filed on October 1, 1996

Patricia Hatry and Jeffrey C. Katz of Davis & Gilbert LLP for
V.I.P. Limousine, Inc.

Michael L. Finley, Managing Member, for V.I.P. Car Rental, LLC

Before Hohein, Walters and Holtzman, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

V.I.P. Car Rental, LLC has filed an application to
register the mark "V.I.P. CAR RENTAL," in the format shown below,

for "car rental" services.¹

V.I.P. Limousine, Inc. has opposed registration on the ground that it "uses and has for over twenty years used V.I.P. LIMOUSINE as its trade name and service mark to identify its chauffeur driven limousine services"; that it owns a federal registration for such mark for those services;² and that applicant's mark, when used in connection with car rental services, so resembles opposer's previously used trade name and its service mark for its chauffeur driven limousine services as to be likely to cause confusion.

Applicant, in its answer, has admitted that opposer has priority of use of the mark and trade name "V.I.P. LIMOUSINE" and that opposer is the owner of the pleaded registration for such mark. Applicant has denied, however, that contemporaneous use of the parties' marks and opposer's trade name in connection with their respective services would be likely to cause confusion.

The record consists of the pleadings; the file of the involved application; and, by a notice of reliance filed by opposer as its case-in-chief, a certified copy of its pleaded registration, showing that the registration is subsisting and owned by opposer, and a copy of applicant's unverified answers to certain of opposer's interrogatories.³ Neither party took

¹ Ser. No. 75/174,637, filed on October 1, 1996, which alleges dates of first use of July 1995. The words "CAR RENTAL" are disclaimed.

² Reg. No. 1,958,046, issued on February 20, 1996, which sets forth a date of first use anywhere of July 31, 1973 and a date of first use in commerce of July 31, 1978. The word "LIMOUSINE" is disclaimed.

³ It is pointed out, however, that even if verification of the answers had been made of record so that we could consider the information

testimony or properly introduced any other evidence.⁴ In addition, neither party filed a brief⁵ or requested an oral hearing.

Opposer's priority of use of the "V.I.P. LIMOUSINE" mark and trade name is not in issue since, as noted previously, the certified copy of the pleaded registration demonstrates that the registration is subsisting and owned by opposer and, in any event, applicant has admitted that opposer is the prior user of both the mark and the trade name. See King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). The only issue to be determined, therefore, is whether applicant's "V.I.P. CAR RENTAL" mark, when used in connection with car rental services, so resembles opposer's "V.I.P. LIMOUSINE" mark and trade name for chauffeur driven limousine services as to be likely to cause confusion as to source or sponsorship.

Upon consideration of the pertinent factors set forth in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ

disclosed as establishing the facts recited, such evidence would make no difference in the outcome of this proceeding.

⁴ Although applicant, by a notice of reliance filed prior to the scheduled opening of its testimony period, submitted a plain copy of the pleaded registration made of record by opposer, it is pointed out that once evidence, such as that timely furnished by opposer, has been properly made of record, any party may rely thereon for any proper purpose.

⁵ Inasmuch as opposer, in reply to a show cause order issued by the Board in view of its failure to file a main brief, stated that it had "a definite and continuing interest in the case" and requested "a decision by the Board" in view of its belief that "the evidence submitted fully supports its position in the opposition and that a brief would not add anything," the show cause order was considered to have been discharged. Trademark Rule 2.128(a)(3).

563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, we find that, on this record, opposer has failed to satisfy its burden of demonstrating that confusion as to source or sponsorship is likely to occur. In particular, there is no proof that opposer is currently using its asserted trade name in connection with a limousine business. Moreover, the marks "V.I.P. CAR RENTAL" and "V.I.P. LIMOUSINE" appear to be entitled at best to only a limited degree of protection due to the high degree of suggestiveness inherent therein.⁶ Finally, and of even greater significance, there is simply no evidence which shows that applicant's car rental services and registrant's chauffeur driven limousine services, which on their face are distinctly different in nature, are nevertheless so closely related in the mind of the general purchasing public that consumers would be likely to attribute such services to a common provider.

As our principal reviewing court has cautioned in this regard:

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

⁶ We judicially notice, in this regard, that "VIP" is defined in Webster's New World College Dictionary (3rd. ed. 1997) at 1490 as "[v(ery) i(mportant) p(erson)] a high-ranking official or important guest, esp. one accorded special treatment" and is set forth in The Random House Dictionary of the English Language (2d ed. 1987) at 2214 as meaning "very important person. Also V.I.P." It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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Electronic Design & Sales Inc. v. Electronic Data Systems Corp.,
954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), quoting from
Witco Chemical Co. v. Whitfield Chemical Co., 418 F.2d 1403,
1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g*, 153 USPQ 412 (TTAB
1967). Accordingly, the opposition must fail.

Decision: The opposition is dismissed.

G. D. Hohein

C. E. Walters

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