

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 10, 00
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **HD Golf Development, Inc.**

Serial No. 75/204,640

Scott A. McCollister of Fay, Sharpe, Beall, Fagan, Minnich & McKee, LLP for **HD Golf Development, Inc.**

Janice L. McMorrow, Trademark Examining Attorney, Law Office 104
(**Sidney I. Moskowitz**, Managing Attorney).

Before **Cissel, Hanak** and **Hohein**, Administrative Trademark Judges.
Opinion by **Hohein**, Administrative Trademark Judge:

An application has been filed by **HD Golf Development, Inc.** to register the mark "HD GOLF" and design, as shown below,

for "golf clubs and golf shafts".¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that

¹ Ser. No. 75/204,640, filed on November 26, 1996, based upon an allegation of a bona fide intention to use such mark in commerce. The word "GOLF" is disclaimed.

applicant's mark, when applied to its services, so resembles the mark "HD-01," which is registered for "portable golf club head-speedometers,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed,³ but an oral hearing was not requested. We affirm the refusal to register.

Turning first to consideration of the respective goods, applicant asserts that portable golf club head-speedometers are not closely related to golf clubs and golf shafts because "an electronic measuring device manufacturer (Registrant) is not

² Reg. No. 1,688,778, issued on May 26, 1992, which sets forth dates of first use of August 22, 1989; combined affidavit §§8 and 15.

³ Applicant, with its initial brief, has submitted printouts listing information, retrieved from the "TRADEMARKSCAN" commercial database, concerning third-party registrations of marks which consist of or include the letters "HD". The Examining Attorney, in her brief, has properly objected to consideration of such evidence as untimely under Trademark Rule 2.142(d) and as not being credible evidence, in any event, of the third-party registrations sought to be relied upon by applicant. We note, with respect to the latter, that a mere listing from a commercial database of information concerning third-party registrations is insufficient to make such registrations of record. See, e.g., *In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB 1974). The proper procedure, instead, is to submit, in a timely manner, either copies of the actual registrations or the electronic equivalents thereof, i.e., printouts of the registrations which have been taken from the Patent and Trademark Office's own computerized database. See, e.g., *In re Consolidated Cigar Corp.*, 35 USPQ2d 1290, 1292 (TTAB 1995) at n. 3; *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) at n. 3 and *In re Melville Corp.*, 18 USPQ2d 1386, 1388-89 (TTAB 1991) at n. 2. Moreover, even if we were to consider the evidence provided by applicant as forming part of the record, we agree with the Examining Attorney that it would not be persuasive or otherwise make a difference in the disposition of this appeal since, as pointed out in her brief:

None of the printouts refer[s] to goods even peripherally related to the goods at issue: none refer[s] to sporting goods, and certainly none refer[s] to golf [equipment]. Thus, the applicant has failed to show any evidence that the letters HD are diluted in the relevant marketplace.

remotely likely to expand [its goods] to golf equipment." The Examining Attorney correctly observes, however, that it is well settled that goods need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the goods are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. See, e.g., Monsanto Co. v. Enviro-Chem Corp., 199 USPQ 590, 595-96 (TTAB 1978); and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978). In the present case, it is plain that registrant's portable golf club head-speedometers are closely related to applicant's golf clubs and golf shafts inasmuch as the respective goods are all items of golf equipment which would be sold to the same classes of purchasers, including ordinary consumers, through identical channels of trade, such as sporting goods stores and golf pro shops. Clearly, if applicant's and registrant's goods were to be marketed under the same or similar marks, confusion as to the source or sponsorship of those goods would be likely to occur.

Turning, therefore, to consideration of the marks at issue in this case, applicant contends that, while sharing the letters "HD," "the overall impression of the marks on the average consumer is quite different" in light of applicant's "use of a

highly unique and distinctive design" in its mark and the presence therein of the word "GOLF". Applicant maintains that registrant's mark, by contrast, is distinguishable "due to its simplistic 4-unit nature."

Although applicant is correct that the marks at issue must be considered in their entireties in determining whether there is a likelihood of confusion, it is nevertheless well established that, in articulating reasons for reaching a conclusion with respect thereto, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 753 F.3d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark" 224 USPQ at 751.

Here, as confirmed by applicant's disclaimer thereof, the word "GOLF" in its "HD GOLF" and design mark is a generic term for golf clubs and golf shafts. It is thus the letters "HD" which, since they appear within a hexagonal design which chiefly serves as a vehicle for their display, constitute the dominant and source distinguishing portion of applicant's mark when considered as a whole. See, e.g., In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) [dominant portion of mark "THE DELTA CAFE" and design ("CAFE" disclaimed) for restaurant services is the word "DELTA," *citing* In re

National Data Corp., 224 USPQ at 751]. Similarly, as argued by the Examining Attorney, it is the letters "HD" in registrant's "HD-01" mark which function as the primary source distinguishing element thereof, particularly since, as demonstrated by the third-party registrations made of record by the Examining Attorney, it is not uncommon for a company in the golf equipment industry to adopt and register, for the same goods, a mark and that same mark with what arguably could be regarded as a model or grade designation⁴ (e.g., "AIRSOFT," "AIR SOFT I," and "AIR SOFT II" for golf gloves; "GINTY" and "GINTY II" for golf clubs; "BLACK CAT" and "BLACK CAT II" for golf clubs; "GRIP RITE" and "GRIP RITE II" for golf club grips; "ULTRADYNE" and "ULTRADYNE II" for golf clubs; and "DDH," "DDH II," "DDH III" and "DDH IV" for golf balls).⁵

In view thereof, and inasmuch as there is no showing that the letters "HD" have any significance other than serving as an arbitrary indication of origin for the respective goods, we agree with the Examining Attorney that, when considered in their entirety, applicant's "HD GOLF" and design mark and registrant's "HD-01" mark project substantially similar

⁴ Although applicant, in reply, urges that "the prior registrations of other parties [for marks] including roman numerals to designate model numbers does [sic] not evidence [that] '-01' is a model number in the Registrant's mark" and that "not one of the Examiner's examples included a model number '1'," we concur with the Examining Attorney that the evidence is sufficiently probative since, "[w]hile admittedly not conclusive proof that the '01' [portion] in the registration is used as a model designation, the evidence does show an industry trend which the applicant has not contradicted."

⁵ The record also shows that the same entity owns a registration for the mark "DDH-II" for golf clubs.

commercial impressions. Accordingly, we conclude that consumers who are acquainted with registrant's "HD-01" mark for its portable golf club head-speedometers would be likely to believe, upon encountering applicant's substantially similar "HD GOLF" and design mark for golf clubs and golf shafts, that such closely related golf equipment emanates from or is otherwise sponsored by or affiliated with the same source. Consumers, for example, could readily believe that applicant's goods constitute a new or separate line designed, like registrant's portable golf club head-speedometers, to help them to play a better game of golf.

Decision: The refusal under Section 2(d) is affirmed.

R. F. Cissel

E. W. Hanak

G. D. Hohein
Administrative Trademark Judges,
Trademark Trial and Appeal Board