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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CraneVeyor Corp.

Serial No. 75/217,815

Thomas A. Runk of Fulwider Patton Lee & Utecht for CraneVeyor Corp.

Julie A. Watson, Trademark Examining Attorney, Law Office 104
(Sidney I. Moskowitz, Managing Attorney).

Before Hanak, Quinn and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by CraneVeyor Corp. to register the mark CV TRANSLIFTER for the following goods:¹

Overhead crane systems, comprising overhead cranes, supporting frames, runway beams, end trucks, bridge girders, drive motors, reducer wheels, hoists, electrical conductors, electrical controls, cabinets, pendant stations and remote control operators for controlling crane operations, and air supply units, all sold as a unit.

¹ Application Serial No. 75/217,815, filed December 23, 1996, based on an assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act.

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act² on the basis of the previously registered mark TRANSLIFT for the following goods:³

Hoisting and transport devices-namely, manually, electrically and pneumatically driven cranes; electrically and pneumatically driven friction wheel traveling trolleys, manually, electrically and pneumatically driven overhead trolleys; associated traveling trolleys; lifts; tracks, switches, crossings, turntables, sliding switches, all sold as a complete unit.

Applicant has appealed. Briefs have been filed but an oral hearing was not requested.

We affirm the refusal to register.

In any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services. See *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999) and *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998).

² The Examining Attorney had initially referenced a second registration (Registration No. 967,007) as a cite against the application. However, the refusal as to that registration was subsequently withdrawn by the Examining Attorney in the final refusal issued March 5, 1998.

³ Registration No. 1,099,266; issued August 15, 1978; renewed.

The goods identified in the application and registration are virtually identical, both comprising industrial cranes and their supporting systems and devices. At a minimum, registrant's cranes are specifically encompassed within the broadly described crane system identified in the application. In view of the relatedness of the respective products, the goods must be deemed to travel in the same channels of trade and purchased by the same customers. See *In re L.C. Licensing Inc.*, supra. In fact, applicant does not dispute that the goods are essentially identical but instead argues that because of the dissimilarity of the marks and the sophistication of the purchasers, confusion is not likely to occur.

Thus, we turn to a consideration of the marks, keeping in mind that when marks would appear on virtually identical goods or services, the degree of similarity between the marks necessary to support a conclusion of likely confusion declines. *Century 21 Real Estate v. Century Life*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

It is applicant's position that the marks neither look the same, sound the same, nor have the same meaning. Applicant maintains that the Examining Attorney "improperly dissected" the marks by comparing only a small portion of the marks and ignoring the "CV" and "ER" portions of applicant's mark. Applicant claims that in view of its long use and registration, CV is a "well

known" house mark, making that the dominant feature of its mark. Applicant further argues that TRANSLIFT is suggestive of something that moves an object vertically as well as horizontally - the term TRANS suggesting movement across or horizontally and LIFT suggesting vertical movement - and that registrant's mark is therefore weak and entitled only to a narrow scope of protection.

Applicant has submitted copies of its two registrations for the term CV. Applicant has also submitted a listing of six third-party registrations to show the coexistence of "others in this area of commerce" and "in the same class of goods" who have registered marks incorporating "the elements 'trans' and 'lift'." Based on these registrations, applicant claims that "the remaining portions of the respective marks are sufficient to distinguish them from the others," and that the terms TRANS and LIFT are "suggestive" and that registrant's mark should therefore only be accorded a narrow scope of protection.

When compared in their entireties, we find that the marks in this case are quite similar in commercial impression. Registrant's entire mark is the word TRANSLIFT. Applicant has taken this mark, in its entirety, and has merely added the initials CV to the beginning of the mark and a suffix ER to the end. However, the root word, TRANSLIFT, remains the same in both marks and the simple addition of ER does little to change the overall commercial impression the term conveys.

Moreover, this similarity is not overcome by the addition of applicant's house mark CV, despite any asserted claim that CV may be "well known" or even the subject of prior registrations. Although TRANSLIFT may be suggestive of the goods, it is generally held that the addition of a house mark or other such matter to one of two otherwise similar marks will not serve to avoid a likelihood of confusion, even if the term shared by the two marks is suggestive. See *Henry Siegel Co. v. M & R International Mfg. Co.*, 4 USPQ2d 1154 (TTAB 1987); *In re The United States Shoe Corporation*, 229 USPQ 707 (TTAB 1985); *Jayvee Brand, Inc. v. Doe Spun, Inc.*, 177 USPQ 713 (TTAB 1973); *In re Knight's Home Products Inc.*, 175 USPQ 447 (TTAB 1972); and *In re Knight's Home Products, Inc.*, 173 USPQ 566 (TTAB 1972). This is particularly true where, as here, the marks are applied to identical goods. See, for example, *Jayvee Brand, Inc. v. Doe Spun, Inc.*, *supra*.

An exception to the general rule may be found when the matter shared by the two marks is highly suggestive, merely descriptive or commonly used or registered. See *In re S.D. Fabrics, Inc.*, 223 USPQ 54 (TTAB 1984); *Envirotech Corp. v. National Service Industries, Inc.*, 197 USPQ 292 (TTAB 1977); and *In re Hunke & Jochheim*, 185 USPQ 188 (TTAB 1975).

While TRANSLIFT may be suggestive of cranes and crane systems, there is no evidence that TRANSLIFT is highly suggestive

or merely descriptive of such goods, or that TRANSLIFT is commonly used or registered for such goods. The list of third-party registrations submitted by applicant does not establish otherwise.

With respect to the third-party registrations, we would point out that a mere listing of registrations, without copies thereof, is generally insufficient to make the registrations of record. See *In re Carolina Apparel*, 48 USPQ2d 1542 (TTAB 1998). However, inasmuch as the Examining Attorney, in the Office action dated March 5, 1998, treated the registrations as if properly of record, we have given the list consideration.⁴

In doing so, we note that applicant has provided only limited information concerning the registrations on which it seeks to rely. The two cited registrations are included on the list. However, the list otherwise identifies only the asserted marks and their registration numbers, and the dates of registration. Neither the goods/services, display of the registered mark, disclaimers, if any, nor other potentially relevant information for the registrations is provided. Absent this information, it is impossible to draw any meaningful

⁴ We note that the application was reassigned to another Examining Attorney to write the appeal brief and that an objection to the form of the evidence was raised for the first time therein. However, since the previous Examining Attorney did not raise the issue during the prosecution of the application, applicant was effectively deprived of the opportunity to cure any such deficiency before the time of appeal. Thus, the objection to the evidence must be deemed to be waived.

inferences or conclusions from these registrations about the alleged weakness of registrant's mark.

Moreover, even assuming that the third-party registrations are all for goods identical or related to those herein, the evidence is of limited probative value in deciding the issue of likelihood of confusion. The registrations do not establish that the marks shown therein are actually in use, much less that the marks coexist without confusion in the marketplace or that purchasers are so familiar with them that they are able to distinguish among such marks by focusing on components other than the ones shared by the marks. See *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268 (CCPA 1973) and *Charrette Corp. v. Bowater Communication Papers Inc.*, 13 USPQ2d 2040 (TTAB 1989).

Finally, applicant argues that the fact that its goods are expensive devices purchased by highly sophisticated consumers "should be considered dispositive of the issue of likelihood of confusion." We note applicant's reliance on, *inter alia*, *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 715, 21 USPQ2d 1388 (Fed. Cir. 1992) in support of this position. Although no evidence on this point has been submitted, it is reasonable to assume that the relevant customers for applicant's and registrant's cranes and crane systems would be relatively sophisticated, knowledgeable purchasers of

expensive, industrial goods. However, this fact alone does not mandate an automatic finding that confusion is not likely to occur. See, for example, *Weiss Associates Inc. v. HRL Associates Inc.* 902 F.2d 1547, 14 USPQ2d 1840 (Fed. Cir. 1990).

This case is distinguishable from Electronic Design & Sales where the parties respective purchasers were deemed to be "substantially different" (see supra p. 1393) and where the parties' respective goods and services on which the marks were used were deemed to be "different" (see supra p. 1393). There is no indication in the present case that we have anything but identical purchasers buying directly competitive products. Under these circumstances, and where as here the marks are similar, it has generally been held that purchaser sophistication would not serve to preclude the likelihood of confusion. See *Weiss Associates Inc. v. HRL Associates Inc.*, supra; *Towers v. Advent Software Inc.*, 17 USPQ2d 1471 (TTAB 1989) aff'd, 913 F.2d 942, 16 USPQ2d 1039 (Fed. Cir. 1990); *Formica Corporation v. Saturn Plastics & Engineering Co.*, 185 USPQ 251 (TTAB 1975); *General Electric Company v. Raychem Corporation*, 184 USPQ 766 (TTAB 1974); and *In re Elco Corporation*, 180 USPQ 155 (TTAB 1973). Even sophisticated, careful purchasers are not immune from source confusion, particularly where the marks are similar and the goods are competitive. The mere fact that one is knowledgeable in a particular field does not mean that the individual is also

skilled in distinguishing between two similar trademarks in the field. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

In view of the above, we find that purchasers familiar with registrant's cranes provided under its TRANSLIFT mark, would be likely to believe, upon encountering applicant's mark CV TRANSLIFTER for virtually identical goods, that the goods originated with or are somehow associated with or sponsored by the same entity.⁵ To the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must be resolved in favor of the prior registrant. In re *Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

Decision: The refusal to register is affirmed.

T. J. Quinn

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

⁵ We do not believe that the cases cited by the dissent support a contrary result. For example, *Electronic Design & Sales, supra*, is distinguishable on its facts as indicated above. Further, it must be remembered that, unlike the marks in *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976), we are dealing in this case with a registered mark that has been appropriated in its entirety by the applicant.

Hanak, Administrative Trademark Judge, dissenting:

I respectfully dissent. Applicant has established that as described in its application and the cited registration, the goods of applicant and registrant are very expensive and are purchased only by sophisticated, professional buyers. Indeed, early on in this proceeding the Examining Attorney conceded the foregoing. (Office Action No. 2, page 3). In this regard, it should be noted that neither applicant's goods nor the cited registrant's goods are individual crane components. Rather, they are entire crane systems all sold as a unit (applicant's identification of goods) or all sold as a complete unit (cited registrant's identification of goods).

The majority dismisses the fact that the goods are very expensive and that the purchasers of the goods are sophisticated professionals by stating that "where as here the marks are similar, it has generally been held that purchaser sophistication would not serve to preclude the likelihood of confusion." (Majority page 8). This runs contrary to the teachings of our primary reviewing Court which has made it clear that purchaser "sophistication is important and often dispositive because sophisticated consumers may be expected to exercise greater care." Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992). In Electronic

Design, the Court found that despite the fact that "the two parties conduct business not only in the same fields but also with some of the same companies" (21 USPQ2d at 1391), there was no confusion resulting from the contemporaneous use of applicant's mark E.D.S. and opposer's mark EDS. In my judgment, the marks E.D.S. and EDS are clearly more similar than are the two marks involved in this proceeding, namely, CV TRANSLIFTER and TRANSLIFT.

In addition, in Electronic Design, the marks (E.D.S. and EDS) were arbitrary. In stark contrast, applicant's mark and the cited registrant's mark are, in the eyes of the relevant purchasing public, very highly suggestive of crane systems sold as complete units. The majority has conceded at page 5 that "TRANSLIFT may be suggestive of cranes and crane systems." I concur with the majority that to ordinary consumers, the terms TRANSLIFT and TRANSLIFTER are not very highly suggestive, but instead are only somewhat suggestive. However, from the perspective of highly sophisticated professional purchasers of expensive crane systems, I am of the firm belief that both of these terms would immediately convey information that the crane systems involved move both vertically (LIFT/LIFTER) and horizontally (TRANS). In this regard, it is interesting to note that initially, the Examining Attorney cited an earlier registration of the mark TRANSI-LIFT for cranes as an additional

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bar to registration. Registration No. 967,007. This earlier registration issued in 1973, five years prior to the registration for TRANSLIFT, which registration is now the sole basis for the Examining Attorney's refusal to register. The Examining Attorney never explained why he withdrew his cite to the registered mark TRANSI-LIFT as a bar to registration. This is particularly curious because this mark TRANSI-LIFT is extremely similar to the mark TRANSLIFT which the Examining Attorney maintained as a bar to registration.

The important point to remember, however, is the fact that while neither the registration for TRANSI-LIFT nor the registration for TRANSLIFT show the extent of the use of said marks, said registrations clearly demonstrate that the term TRANSLIFT is, from the perspective of sophisticated purchasers of entire crane systems, highly suggestive in that it indicates a crane which has both vertical and horizontal movement capabilities. In this regard, it has been repeatedly held that "the mere presence of a common, highly suggestive portion [in two marks] is usually insufficient to support a finding of likelihood of confusion." Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693, 694 (CCPA 1976) and cases cited therein.

E. W. Hanak,
Administrative Trademark Judge,
Trademark Trial and Appeal Board

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