

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hartford Life Insurance Company

Serial No. 75/250,941

John R. Garber of Cooper & Dunham LLP for Hartford Life Insurance Company.

Sarah A. Otte, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

Before Hanak, Bottorff and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Hartford Life Insurance Company to register the mark STAG VARIABLE LIFE ARTISAN for "life insurance underwriting services."¹

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act on the basis

¹ Application Serial No. 75/250,941, filed March 3, 1997, alleging dates of first use and first use in commerce on December 10, 1996. The term VARIABLE LIFE has been disclaimed. In addition, applicant has claimed ownership of Registration Nos. 1,682,219 and 2,081,676.

of the previously registered mark ARTISAN for "investment advisory services, securities brokerage services and mutual fund brokerage, distribution and investment services."²

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

We affirm the refusal to register.

Here, as 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, the strength of the marks and the relatedness of the goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); and *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999).

Turning first to the services, the Examining Attorney argues that insurance and financial services are closely related, that the services are in the same channels of trade and directed to the same classes of purchasers. In support of her position, the Examining Attorney has submitted copies of six third-party registrations³ and excerpts from a number of articles from the

² Registration No. 2,003,659; issued September 24, 1996.

³ One registration, initially included as a pending application, has now issued into a registration.

NEXIS database which, according to the Examining Attorney, show that life insurance underwriting services are offered by the same companies that offer investment advisory services, and that in fact it is becoming more common to find these services offered by a single company.⁴ In addition, the Examining Attorney claims that applicant's own specimens refer to life insurance as an investment option.

Applicant, on the other hand, argues that the services are "dissimilar" and "distinctly different." Applicant maintains that it is not relevant that some registrations cover both services because the owner of the cited registration "is not an insurance company" and "is not licensed to offer insurance services of any kind." Applicant states that, in fact, "it would be a crime" for the registrant to offer the services provided by applicant.

It is true that there are specific differences in the life insurance underwriting services offered by applicant and the investment services provided by registrant. However, the question is not whether purchasers can differentiate the services

⁴ The Examining Attorney also made of record one application based upon an intent to use the mark in commerce, two abandoned applications (owned by the same entity), and one registration which does not contain any reference to life insurance underwriting services. In addition, one of the Nexis references is from a foreign publication. None of this evidence has been considered by the Board.

themselves but rather whether purchasers are likely to confuse the source of the services. See, e.g., *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Thus, it is not necessary that the services of the applicant and registrant be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the respective services are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

We find that applicant's and registrant's services are related, both involving the sale of investment products and services as part of an overall financial planning program. The complementary and overlapping nature of these services is confirmed by applicant's own sales brochures, submitted as specimens, which refer to the different investment options available under the ARTISAN policy as follows:

...Artisan is the perfect complement to your current sales activities....With Artisan, you can help prospective clients combine life insurance with participation in the equity markets. And you can approach your current clients with an exciting new way to accomplish financial objectives.

Moreover, the third-party registrations submitted by the Examining Attorney show that the same mark has been registered for life insurance underwriting services and for one or more of registrant's services. Although the third-party registrations are not evidence of use of the marks in commerce, the registrations have probative value to the extent that they suggest that the respective services are of a type which may emanate from the same source.⁵ See, e.g., *In re Albert Trostel & Sons Co.*, supra at 1785-1786; and *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988). The Nexis articles, two examples of which follow, show that insurance companies are expanding their operations into the area of investment services, further demonstrating that the life insurance underwriting services and investment services would be perceived as originating with the same companies.

Welcome to the brave new world of insurance finance. Its players are the newest kids on the capital markets block: about 20 reinsurers, insurance brokers, and, to a lesser degree, primary insurers that all have launched new capital markets groups to sell many of the products and services offered by major investment banks.... 'The investment banks need a vehicle through which they can engage in the business of insurance, through which they can write insurance policies....' *Investment Dealers Digest* (August 3, 1998).

As barriers between banks, investment banks and insurers break down, banks see size as a key to winning that fight. Lots of customers mean lots of chances to cross-sell

⁵ We note that none of these registrations involve house marks for broad or diverse categories of goods.

insurance and investments to bank-account holders. *St. Louis Post-Dispatch* (April 14, 1998).

Furthermore, although applicant's specimens appear to indicate that applicant's services are sold through insurance agents or brokers, there is no restriction in applicant's recitation (nor in registrant's) so both applicant's and registrant's services could be sold in same channels of trade to the general public. Purchasers of these services may be careful about how they invest their money and the investment services and products, including a life insurance policy, that they select. However, there is no evidence or even argument in this case that the purchasers of investment products and services are sophisticated or experienced in these matters, and indeed they may not be.⁶ Moreover, even if purchasers were established to be sophisticated with respect to the services, we would have no basis upon which to conclude that such sophistication would extend to the marks used in connection with them.

Applicant's claim that it would "be a crime" for registrant to offer the services provided by applicant, even if true, does not overcome the perception of the respective services as

⁶ The case of *Amalgamated Bank v. Amalgamated Trust*, 842 F.2d 1270, 6 USPQ2d 1305, 1308 (Fed. Cir. 1988), relied on by the dissent, is distinguishable. The Court's finding of no likelihood of confusion in that case was based on the parties' evidence (a consent agreement) that their respective banking customers would not be confused. We have no such evidence, by agreement or otherwise, in the present case.

originating with a common source. Purchasers would not necessarily be aware of such limitations, or even if they were so aware, there is no apparent similar prohibition against applicant providing types of investment products and services other than insurance. See *In re United California Brokers, Inc.*, 222 USPQ 361 (TTAB 1984). Therefore, purchasers would still be likely to assume that there is some relationship or connection between the applicant and registrant if their services are offered under similar marks.

Turning then to the marks, the Examining Attorney argues that applicant has merely added a house mark STAG and highly descriptive terms VARIABLE LIFE to registrant's mark. The Examining Attorney points to applicant's use of the ARTISAN portion of the mark in applicant's specimens to demonstrate that applicant itself perceives that term as the most significant feature of its mark and that is the image which would be projected to the purchaser of applicant's services.

Applicant, on the other hand, submits that the term STAG is the dominant portion of its mark. In support of this position applicant claims that it is the owner of a "family" of thirteen STAG formative marks for life insurance underwriting services, including two registration for marks which contain the elements

STAG and VARIABLE LIFE.⁷ In addition, applicant maintains that the Examining Attorney analyzed the marks as three component parts instead of considering the marks in their entirety thus, according to applicant, effectively ignoring the descriptive wording in the mark in finding the marks to be similar.

In comparing the marks STAG VARIABLE LIFE ARTISAN and ARTISAN in their entirety as we must, we find that the marks are similar in appearance and meaning. As our primary reviewing court has stated, there is nothing improper in "examining each component of the mark" and giving appropriate weight to that component in reaching a conclusion based on consideration of the marks in their entirety. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1845 (Fed. Cir. 2000); *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987); and *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

One of the strongest impressions of applicant's mark is conveyed by the term ARTISAN. That same word is registrant's entire mark. We have no evidence of third-party use or registration of the word ARTISAN in connection with similar

⁷ Applicant has identified those registrations as follows: STAG VARIABLE LIFE; STAG VARIABLE LIFE LAST SURVIVOR; STAG VL LS; STAG SIMPLE TERM; STAG SIMPLE TERM+; STAG FOUR; STAG FIVE; STAG LS THREE; STAG SIX; STAG LS TWO; STAG THREE; STAG SERIES; and STAG TWO.

services, or any other evidence in the record to suggest that ARTISAN is weak, or entitled to anything less than a broad scope of protection. Thus, we find ARTISAN to be a unique expression in the insurance and financial fields and thus more likely to create confusion when used in both marks. See, e.g., Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Further evidence of the significance of ARTISAN to applicant and the overall meaning of applicant's mark is demonstrated by the applicant's product brochure. Throughout this brochure, applicant refers to its mark solely by the word ARTISAN. A few examples of such usage are as follows (emphasis added):

Artisan adds a new dimension to life by offering greater flexibility, at lower cost, than many other policies.

Once you establish your clients' need for life insurance, you'll be able to tell an impressive and convincing story about **Artisan's** powerful benefits...

It doesn't matter whether you're accustomed to handling securities or insurance products, you can easily apply your skills to the sale of **Artisan**. In fact, **Artisan** is the perfect complement to your current sales activities.

This brochure appears to be distributed to or used by applicant's own insurance agents. Nevertheless, it indicates the importance of the ARTISAN portion of the mark at least to applicant and to its agents who will ultimately be selling these insurance products to the general public. It also suggests that

the single word ARTISAN may be used by applicant, and in turn by applicant's agents in their dealings with consumers, as a convenient shorthand way to distinguish this particular insurance product from the products offered under applicant's many other "STAG" marks.⁸

Given the uniqueness of ARTISAN in the identified fields, the additional wording in applicant's mark is insufficient to distinguish the marks. The term VARIABLE LIFE is admittedly descriptive, if not generic, and therefore is less significant in the mark's commercial impression. See *In re National Data Corp.*, supra. Moreover, it is well-settled 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 particularly in cases where, as here, the term shared by the two marks is unique and arbitrary. See, e.g., *In re Pierce Foods Corporation*, 230 USPQ 307 (TTAB 1986); *In re Dennison Manufacturing Company*, 220 USPQ 1015 (TTAB 1983). Indeed, when used in connection with related services as we have here, the differences in the marks

⁸ We recognize, as the dissent points out, that these brochures are not distributed to the public. Nevertheless, it is not improper for us to consider, in our likelihood of confusion analysis, the manner of use of applicant's mark in these materials as evidence of, for example, the meaning or commercial impression the mark projects. See, e.g., *Specialty Brands v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984) and *In re Nationwide Industries, Inc.* 6 USPQ2d 1882 (TTAB 1988). We must emphasize, however, that while we have considered this evidence, our decision in this case is based on the mark as it appears in the drawing.

may be perceived as merely identifying another in the line of services rather than a different source for the services.

Applicant's claim that STAG may be the name of an alleged "family" of marks or even the subject of prior registrations is of no persuasive effect in this case. First, applicant has not established a family of STAG marks. The mere existence of a number of registrations containing a particular term does not automatically make it a "family."⁹ Even assuming the existence of a family of STAG marks would not overcome the similarity between the marks in this case because the "family" name would do nothing to prevent consumers from mistakenly assuming that registrant is somehow associated with applicant or that there is at least some relationship between them.

Finally, 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).

⁹ In order to establish ownership of a family of marks, it must be shown that the marks containing the family feature have been used and promoted together in such a manner as to create public recognition and that the family feature is distinctive, i.e., not descriptive, highly suggestive, or commonly used in the trade. See Marion Laboratories Inc. v. Biochemical/Diagnostics Inc., 6 USPQ2d 1215 (TTAB 1988).

Decision: The refusal to register is affirmed.

C. M. Bottorff

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

Hanak, Administrative Trademark Judge, dissenting:

I am of the view that applicant's mark STAG VARIABLE LIFE ARTISAN and registrant's mark ARTISAN are so totally dissimilar in terms of visual appearance, pronunciation and connotation such that their use on even identical services may not result in a likelihood of confusion. See Kellogg Co. v. Pack'em Enterprises Inc., 951 F.2d 330, 21 USPQ2d 1142, 1144 (Fed. Cir. 1991). To state the obvious, applicant's four word mark and registrant's one word mark are vastly different in terms of visual appearance and pronunciation. The two marks are also vastly different in terms of connotation. The first word of applicant's mark is a well known word which, as applied to either applicant's services or registrant's services, is totally arbitrary. The word "stag" is defined as meaning "a full-grown male deer." Webster's New World Dictionary (2d ed. 1970). Thus, the presence of the

arbitrary word STAG, along with the descriptive wording VARIABLE LIFE, causes applicant's mark in its entirety to be distinctly different from registrant's mark ARTISAN in terms of connotation or meaning.

Moreover, the Examining Attorney has never disputed the contention of applicant Hartford Life Insurance Company that it has for many years extensively used the representation of a stag in connection with the sale of its various insurance products, including specifically its life insurance products. This extensive use of a representation of a stag serves as yet another basis to enable consumers to differentiate between the marks STAG VARIABLE LIFE ARTISAN for life insurance underwriting services and ARTISAN for investment advisory services and mutual fund services.

In an effort to bridge the gap between the vast differences in the two marks, the majority argues that in an internal brochure, "applicant refers to its mark solely by the word ARTISAN." (Majority opinion page 9). The majority's argument is deficient for two reasons. First, the brochure which the majority refers to is not a sales brochure. Rather, this brochure is directed solely to applicant's own insurance agents for their own internal use. Indeed, this brochure contains the following disclaimer in bold, solid capital letters: FOR PRODUCER INFORMATION ONLY. NOT FOR USE WITH THE PUBLIC.

Obviously, applicant's own insurance agents know that they are dealing with the Hartford Life Insurance Company. There is simply no need for applicant in its own internal literature directed solely to its own insurance agents to repeatedly refer to applicant's insurance products by their full names, such as HARTFORD VARIABLE LIFE; HARTFORD WHOLE LIFE or STAG VARIABLE LIFE ARTISAN. The repeated use in internal documents of the words HARTFORD and STAG is utterly unnecessary. Moreover, even in this internal brochure directed solely to its own agents, applicant on numerous occasions refers to its insurance product by its full name (STAG VARIABLE LIFE ARTISAN).

There is nothing in the record to demonstrate that when applicant or its agents present STAG VARIABLE LIFE ARTISAN insurance products to potential buyers of insurance, that they do not use the full name STAG VARIABLE LIFE ARTISAN. Indeed, given the plethora of different HARTFORD insurance products, it is obvious that Hartford agents must distinguish between these various insurance products and that they would do so by using the full names of the various insurance products. Moreover, given the substantial investment applicant has made over many years in promoting its "stag" symbol, it is doubtful that Hartford agents would drop the word STAG and, before the purchasing public, refer to this insurance product as simply ARTISAN, as the majority

speculates without any evidentiary support. (Majority opinion page 10).

Second, our concern in this PTO proceeding is with the "registrability of the mark as shown and described in the application itself." Smith v. Tobacco By-Products, 243 F.2d 188, 113 USPQ 339, 341 (CCPA 1957). See also 3 J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 20:15 at page 20-28 (4th ed. 2000). Even assuming for the pure sake of argument that applicant uses ARTISAN per se for an insurance product and such use occurs before the purchasing public, said use has no bearing on applicant's right to register STAG VARIABLE LIFE ARTISAN unless such use shows bad faith, a contention never raised in this proceeding.

As noted at the outset, I would find that the two marks are so dissimilar that their use on even identical services may not result in a likelihood of confusion. Of course, the services in question are by no means identical. I believe that the vast majority of consumers would distinguish between, on the one hand, life insurance services and, on the other hand, investment advisory services and mutual fund services.

More importantly, both types of services are purchased with a great deal of care. There is no dispute that in applying for a life insurance policy or seeking to invest in a mutual fund, the potential buyer must read numerous papers explaining the

insurance policy or mutual fund; must sign various papers indicating that they understand the nature of the insurance product or mutual fund product; and, in the case of life insurance products, they must, at a minimum, fill out a very extensive health questionnaire and, in most cases, must take a physical examination. Our primary reviewing Court has taken judicial notice and held that when consumers select banking services, they exercise a very high level of care such that "it would be strange for customers of banks to be confused about whom they were dealing with." Amalgamated Bank v. Amalgamated Trust, 842 F.2d 1270, 6 USPQ2d 1305, 1308 (Fed. Cir. 1988). I believe that the same analysis applies with equal, if not greater force, to insurance services, investment advisory services and mutual fund services.

Moreover, in the process of dealing with the large amount of paper work just described, it is my belief that consumers would acquire a certain degree of sophistication. As our primary reviewing Court has made clear, 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 short, given the vast dissimilarities in the two marks; the fact that the two marks are used for distinctly different

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services; and the fact that in purchasing such services, consumers must read and sign numerous papers, there exists no chance for a likelihood of confusion. It has been said that "the purchasing public must be credited with at least a modicum of intelligence." Carnation Company v. California Growers, 97 F.2d 80, 37 USPQ 735, 736 (CCPA 1938).

It is my view that in finding that the public would be likely to confuse a STAG VARIABLE LIFE ARTISAN life insurance policy with an ARTISAN mutual fund, the majority has simply failed to credit the public with a modicum of intelligence.

E. W. Hanak
Administrative Trademark
Judge, Trademark Trial