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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Saint Paul Civic Center Authority

Serial No. 75/330,058

Kurt J. Niederluecke of Briggs and Morgan, P.A. for Saint Paul Civic Center Authority.

Mary J. Rossman, Trademark Examining Attorney, Law Office 109 (Ronald R. Sussman, Managing Attorney).

Before Seeherman, Bucher and Rogers, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Saint Paul Civic Center Authority, a statutory agency of the City of Saint Paul, Minnesota, has appealed from the refusal of the Trademark Examining Attorney to register the mark "RIVERCENTRE" as a service mark for "providing general purpose facilities for entertainment in the nature of sporting events and live musical performances, conferences, exhibitions, trade and consumer shows, and festivals featuring a variety of athletic, educational, cultural activities and the like" in International Class 41, as a service mark for "providing general purpose facilities for conventions, and concession stands featuring food and

souvenirs" in International Class 42, as a trademark for "clothing, namely, shorts, sweat pants, sweat shirts, T-shirts, blazers and scarves; and headgear, namely, hats, caps, bandannas, neck, head and sweat bands, and sun visors," in International Class 25, and as a trademark for "ornamental novelty buttons and pins, and embroidered emblems" in International Class 26.¹

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles two registered marks, owned by the same entity, that applicant's use of its mark on its identified goods and services is likely to cause confusion, to cause mistake, or to deceive. The cited marks, as shown below, are registered for services identified as "leasing and management of shopping centers, office buildings and other commercial real estate," in Int. Class 36:

RIVERCENTER

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and

¹ Serial No. 75/330,058 filed on July 24, 1997, based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

² Registration Number 1,481,052 issued on March 15, 1988, with "Keystone" listed as the last owner of record; §8 affidavit accepted and §15 affidavit received.



RIVERCENTER

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Both applicant and the Examining Attorney filed briefs; an oral hearing was not requested.

Our determination under Section 2(d) of the Act is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services.

Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the marks, applicant does not contest the conclusion of the Trademark Examining Attorney that the marks are substantially identical. We agree: even the most careful of consumers may well overlook the very minor difference in the reversal of the final two letters of the

³ Registration Number 1,481,053 issued on March 15, 1988, again having "Keystone" listed as the last owner of record; §8 affidavit accepted and §15 affidavit received.

mark -- "...center" versus "...centre." Furthermore, there is no evidence of third parties having adopted and used either spelling of this matter for any related goods or services. Accordingly, on this record, we must assume "RIVERCENTER" (or "RIVERCENTRE") is a relatively strong service mark.

We turn next to the relationship between the identified services of registrant and applicant. Registrant's registrations are for the activities of leasing and managing commercial real estate. Applicant's identified services involve providing general-purpose facilities for entertainment and for conventions. The Trademark Examining Attorney has introduced use-based, third-party registrations demonstrating that some enterprises which provide leasing and management services for commercial space also provide general-purpose facilities for entertainment and for conventions.⁴ Although these registrations are not evidence that the different marks shown therein are in use or that the public is familiar with them, they nevertheless have probative value to the extent that they serve to suggest that the services listed therein (which are the same types of services involved herein) are of a kind which may emanate from a

single source. Accord In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993); and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 (TTAB 1988).

These third-party registrations are sufficient to demonstrate a relationship between the services, as a result of which the marketing of the applicant's and registrant's identified services under substantially identical marks is likely to cause consumers to believe that the services emanate from a common enterprise.

Applicant attempts to distinguish its services from that of the registrant, arguing that we must limit registrant to commercial leases for *long term* occupancy of retail spaces, while applicant will be contracting with associations for the use of a large, multi-purpose complex having facilities for special entertainment events and *short term* services, often for merely a day or so at a time.

Notwithstanding these arguments, there is sufficient evidence in the file that the dividing line between these respective services is not as clear as applicant would have us believe. For example, as to the size of the venues, applicant's own brochure touts its facilities for "intimate

⁴ We refer especially to registrations for "PIER 39," "WELCOME TO THE WORLDD," "OLD WAIKIKI," "THE APOLLO OF TEMPLE,"

gatherings for business and private celebrations.”⁵ With regard to the asserted “short term” leases, applicant’s literature shows that the “Minnesota Wild,” a new NHL franchise, will begin to play hockey in the new sports arena this season. The literature also states that additional food concession outlets will be located through the new sports arena. These arrangements, in particular, would involve long-term leases.

Moreover, it is well established that it is not necessary that the services of the parties be competitive to support a holding of likelihood of confusion. It is sufficient that the respective services of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same service provider. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978). Herein, not only are registrant and

and “SEAPORT BOSTON.”

⁵ This application is an intent to use application on which an allegation of use has not yet been filed. Applicant’s promotional literature shows there was an official grand opening in May 1998 for the Convention Center and the Roy Wilkins Auditorium, while the new sports arena should be completed soon.

applicant both involved in providing space for commercial enterprises, but the third-party registrations show that the services identified in applicant's application and the cited registration can emanate from the same source under the same mark.

While we have concluded that these services are related, we have given no weight to the LEXIS/NEXIS® evidence introduced by the Trademark Examining Attorney in which the word "Rivercenter" is used to refer to a myriad of events along the Riverwalk in San Antonio, Texas. In reviewing these stories, we agree with applicant that these entries often reflect third-party usage in a geographically descriptive manner rather than as a source indicator for registrant's commercial real estate services. To the extent that these stories reflect the activities of a variety of tenants in a certain location, they are irrelevant to a determination of relatedness of the services involved herein.

Finally, when deciding the conditions under which, and buyers to whom, sales are made, both services are directed toward careful, sophisticated purchasers. This is a factor favoring applicant. Nonetheless, given that these two marks are substantially identical, and given the relatedness of the services, as discussed above, even

sophisticated purchasers might be confused under these circumstances. Accordingly, we find that applicant's use of its applied-for mark on the services listed in International Classes 41 and 42 is likely to cause confusion with registrant's mark for its identified services.

We are also faced with the issue of likelihood of confusion between applicant's goods -- clothing, namely, shorts, sweat pants, sweat shirts, T-shirts, blazers and scarves; and headgear, namely, hats, caps, bandannas, neck, head and sweat bands, and sun visors, as well as for ornamental novelty buttons and pins, and embroidered emblems -- and registrant's leasing and management services. By definition, the apparel and novelty items listed above are sold to ordinary members of the general public. As contrasted with the professionals involved in making commercial leasing decisions in connection with applicant's services, we find no overlap in the customers or in the channels of trade between applicant's goods and the registrant's services. As to the Trademark Examining Attorney's argument that these goods should be considered ancillary goods to registrant's services, we reject this contention as well. The Trademark Examining Attorney has not submitted any evidence herein that companies which

lease and manage shopping centers, office buildings and other commercial real estate have become a "secondary source" for clothing and accessories bearing their service marks.

Decision: The refusal to register is affirmed as to the services in International Classes 41 and 42, but reversed as to the goods in International Classes 25 and 26.

E. J. Seeherman

D. E. Bucher

G. F. Rogers

Administrative Trademark
Judges, Trademark Trial and
Appeal Board