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Paper No. 10
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re KidsPark, Inc.

Serial No. 75/576,809

Harold C. Hohbach of Flehr Hohbach Test Albritton & Herbert LLP for KidsPark, Inc.

Gina M. Fink, Trademark Examining Attorney, Law Office 103 (Michael Szoke, Managing Attorney).

Before Cissel, Hohein and Walters, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On October 23, 1998, applicant filed the above-referenced application to register the mark "KIDSPARK" on the Principal Register for "child care services," in Class 42. The application was based on applicant's claim of use of the mark in connection with these services since October 28, 1988, and use in interstate commerce in connection with the services since at least as early as November 25, 1988.

The Examining Attorney refused registration under Section 2(d) of the Lanham Act on the ground that applicant's mark so resembles the mark "CHILDREN'S PARK," which is registered¹ for "professional child care services," in Class 42, that confusion is likely.

Applicant responded to the refusal of registration with arguments that confusion is not likely because of differences in the appearances of the marks, differences in their pronunciations and differences in their connotations. Among other things, applicant contended that the word "kid" is defined as "a young goat," and only as a colloquial expression is it used in reference to a child or young person. Based on this reasoning, applicant concluded that the words "children's" and "kids" are not necessarily synonymous, and that this fact along with an differences in the appearances of the marks, their spellings and their pronunciations make confusion unlikely. Further, applicant argued that because the word "children's" is disclaimed in cited registration, it is weak in source-identifying significance.

¹ Reg. No. 1,305,492 was issued on the Principal Register to Children's Park, Inc. on November 13, 1984 with a disclaimer of the descriptive word "CHILDREN'S." A combined affidavit under Sections 8 and 15 of the Lanham Act was subsequently accepted and acknowledged.

The Examining Attorney was not persuaded by applicant's arguments, and in the second Office Action, the refusal to register under Section 2(d) of the Lanham Act was repeated and made final. The Examining Attorney responded to applicant's arguments with respect to the similarity of the marks, and made of record additional evidence in support of the refusal to register. A copy of an entry from a dictionary explains that the designation "colloquial" is used to indicate that a term is in widespread use and is generally characteristic of conversation or informal writing. The same dictionary lists the meaning of "kid" as "a child or young person," and designates this meaning as the colloquial one. Also attached to the final refusal to register were copies of a number of excerpts retrieved from the Nexis® database of articles published in periodicals. These articles provide many examples of the interchangeable use of the words "kids" and "children" as synonyms.

Applicant timely filed a Notice of Appeal. Both applicant and the Examining Attorney filed briefs, but applicant did not request an oral hearing before the Board.

The sole issue before us in this appeal is whether confusion is likely to arise from applicant's use of the mark "KIDSPARK" in connection with child care services in

view of the registered mark "CHILDREN'S PARK" for the identical services. The record before us in this appeal supports the conclusion that confusion is likely.

The predecessor to our primary reviewing court set forth the factors to be considered in resolving the issue of likelihood confusion in *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Chief among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression and the similarity of the services with which the marks are used.

Although applicant argues in its brief that there are distinctions to be drawn between the child care services it renders and those provided by the owner of the cited registration, we cannot adopt that conclusion. There is no evidence of record in support of it, and it is not reflected in the language used to describe the services in either the application or the cited registration. In resolving the question of whether confusion is likely, we must consider the services to be as they are recited in the application and the cited registration, without limitations or restrictions that are not reflected therein. *Toys "R" Us, Inc. v. Lamps R Us* 219 USPQ 340 (TTAB 1983), and cases cited therein. As noted above, the services set forth in

the application are the same as the services specified in the cited registration.

In situations where the services are the same or very closely related, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be the case if the services were not so closely related. ECI Division of E Systems, Inc. v. Environmental Communications Inc., 207 USPQ 443 (TTAB 1980).

In the instant case, not only are the services designated in the application and the cited registration identical, the marks are very similar as well. As noted above, the evidence amply demonstrates that the words "KIDS" and "CHILDREN'S" are synonymous in ordinary parlance. To contend that the "young goat" meaning would be attributed to "KIDS" in the context of child care services is illogical. Each of these two marks combines one or the other of these two synonyms with the word "PARK," which is at most suggestive in connection with the services rendered by applicant and the owner of the cited registration, in that it names a place where children can play. Applicant can and does point out all the technical distinctions between the marks in the number of letters and syllables, and the resulting differences in appearance and

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pronunciation of these two marks, but the fact remains that the commercial impressions these two marks create are very similar because their connotations are the same.

Notwithstanding applicant's arguments to the contrary, the fact that the marks have the same meaning because they combine synonyms with the same suggestive term is a sufficient basis upon which to predicate a finding that confusion is likely in circumstances such as these, where the services are identical.

In summary, because applicant's mark, "KIDSPARK," and the registered mark, "CHILDREN'S PARK," create similar commercial impressions when both are used in connection with child care services, confusion is likely.

Decision: The refusal to register under Section 2(d) of the Lanham Act is affirmed.

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