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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kadence (UK) Ltd.

Serial No. 75/525,798

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for Kadence (UK) Ltd.

Robert C. Clark, Jr., Trademark Examining Attorney, Law
Office 108 (David Shallant, Managing Attorney).

Before Wendel, Holtzman and Drost, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Kadence (UK) Ltd. has filed an application to register
the mark KADENCE for "market research and market analysis."¹

Registration has been finally refused under Section
2(d) of the Trademark Act on the ground of likelihood of
confusion with the mark CADENCE GROUP, which is registered,

inter alia, for "business management and consultation, business research, temporary employment and job placement, and general information clearinghouse services."²

The refusal has been appealed and applicant and the Examining Attorney have filed briefs. Applicant waived its right to an oral hearing.

We make our determination of likelihood of confusion on the basis of those of the *du Pont*³ factors that are relevant in view of the evidence of record. Two key considerations in any *du Pont* analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the services with which the marks are being used. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999).

Looking first to the marks, the Examining Attorney takes the position that the term CADENCE is the dominant portion of the registered mark CADENCE GROUP and as such is aurally equivalent, the same in connotation, and similar in visual appearance to applicant's mark KADENCE. The marks

¹ Serial No. 75/525,798, filed July 24, 1998, claiming a first use date of 1991 and a first use in commerce date of December 1995.

² Registration No. 2,354,530, issued June 6, 2000. A disclaimer has been made of the word GROUP.

³ *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

as a whole, argues the Examining Attorney, create the same overall commercial impression.

Applicant contends that the phonetic similarity alone of the marks is insufficient to establish a likelihood of confusion. Applicant argues that its services are usually purchased through face-to-face negotiations, making the visual appearance of its mark the most important factor. The visual appearance of its mark KADENCE, applicant insists, is distinct from the appearance of registrant's mark CADENCE GROUP.

While the marks must be considered in their entireties, there is nothing improper, under appropriate circumstances, in giving more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Although descriptive or disclaimed matter cannot be ignored in comparing the marks, it is also a fact that purchasers are more likely to rely on the non-descriptive portion of a mark as an indication of source. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

We agree with the Examining Attorney that the dominant portion of registrant's mark is the term CADENCE. The additional term GROUP, which has been acknowledged by

disclaimer thereof as being descriptive, would have little source-indicating significance. The terms CADENCE and KADENCE are not only phonetically equivalent, but also highly similar in appearance. The interchange of a "C" and a "K" is only a slight difference, if noticed at all by purchasers, and would not reasonably have any effect on the connotation projected by the term. Thus, even if the marks are most likely to be encountered on a visual basis, the overall commercial impressions created by the marks are highly similar. We would add that the proper comparison of the marks is not made on a side-by-side basis, but rather on the general impressions created by the marks in the minds of purchasers as they come upon the marks at different points in time. See *Mother's Restaurants Inc. v. Mother's Other Kitchen, Inc.*, 218 USPQ 1046 (TTAB 1983). We are convinced that the small differences between the marks KADENCE and CADENCE GROUP would have minimal effect on the overall impressions created by the marks in the minds of potential purchasers of the involved services.

Turning to the services, we note that as a general principle, the issue of likelihood of confusion must be determined on the basis of the services as recited in the application vis-à-vis the services recited in the cited registration, rather than what any evidence may show the

services to actually be. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); CBS, Inc v. Morrow, 708 F. 2d 1579, 218 USPQ 198 (Fed. Cir. 1983). Moreover, it is not necessary that the services of applicant and registrant be similar or even competitive to support a holding 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, or are associated with, the same source. See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993) and the cases cited therein.

Applicant's services are identified as "market research and market analysis." While applicant has gone into many of the specifics of the nature of its services, the means by which the services are carried out and the typical customers, we are constrained to consider the services as identified. The same holds true for registrant's services, the most pertinent of which are "business research" and "business management and consultation." Any qualifications or limitations on these

services which applicant may attempt to introduce as a result of its research of registrant's actual services are irrelevant. Furthermore, although registrant allegedly only provides its services at the present time in the Pacific Northwestern states, the registration is unlimited as to geographic extent and accordingly no particular area of use can be imposed. Registrant is free to use its mark in the entire United States and likelihood of confusion must be determined on this basis.

We find the evidence of record fully convincing that applicant's market research and analysis would either be encompassed by the business research and consultation services of registrant or closely related thereto. In the first place, as shown by the dictionary definition of "market research" introduced by the Examining Attorney,⁴ this research is an analysis directed to the products and/or services offered by a business, and thus would fall within the scope of a "business" research project.

Second, even if market research is construed as a type of research separate from "business" research, the Examining Attorney has made of record copies of several

⁴ The definition for "market research" reads:
The gathering and evaluation of data regarding consumers' preferences for products and services.
The American Heritage Dictionary of the English Language
(3rd ed. 1992).

third-party registrations showing registration of the same mark by a single entity for both types of research. While these registrations are admittedly not evidence of use of the marks in commerce, they are sufficient to suggest that these services are ones which might be provided by a single entity and offered to the public under the same mark. See *In re Albert Trostel & Sons Co.*, *supra*, *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988). Accordingly, if similar marks, such as those involved here, are used for both types of research services, it may reasonably be presumed that purchasers will mistakenly believe that the services emanate from the same source.

Finally, in its brief, applicant acknowledges that applicant itself offers both business research and market analysis and research services. (Brief p. 2). This is also evident from the specimen of record consisting of the cover of applicant's brochure bearing the KADENCE mark and listing as available services, "business research," "industrial research," and "market analysis." Thus, we come to the inevitable conclusion that the services of applicant and those of registrant are closely related for purposes of our analysis of likelihood of confusion.

As for the channels of trade, we find no limitations in either the application or the cited registration as to

spheres of operation or types of clientele. There being no such limitations, it must be presumed that the services are offered in all the normal channels of trade to all the usual customers for services of this type. See *Canadian Imperial Bank v. Wells Fargo Bank, supra*. Once again we cannot take into account any of the present-day practices of applicant or those alleged to be true for registrant. We are bound to determine likelihood of confusion on the breadth of the services as recited in the application and registration.

As a final factor for consideration, applicant raises the sophistication of the purchasers of these services and the expenses involved. Assuming that both applicant's and registrant's services are relatively expensive and purchased after due consideration, although we have no specific evidence in the record to this effect, even careful purchasers are not immune to source confusion. This is especially true when the marks involved are highly similar in commercial impression, as is the case here, and the services in connection with which the marks are being used are closely related and ones which may well emanate from the same source. See *In re Total Quality Group Inc.*, 51 USPQ2d 1474 (TTAB 1999).

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Accordingly, in view of the highly similar commercial impressions created by the respective marks, the close relationship between the services of applicant and registrant, and the similarity of the channels of trade, we find confusion likely.

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