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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Iris Bus France, S.A.

Serial No. 75/930,613

Richard P. Gilly of R.P. Gilly Intellectual Property Law
Offices for Iris Bus France, S.A.

Jill C. Alt, Trademark Examining Attorney, Law Office 114
(Margaret Le, Managing Attorney).

Before Cissel, Walters and Drost, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Iris Bus France, S.A. has filed a trademark
application to register the mark CRISTALIS for "motor
coaches, motor buses."¹

¹ Serial No. 75/930,613, in International Class 12, filed February 28,
2000, with a priority filing date of September 2, 1999, under Section
44(d) of the Trademark Act. The application is based on French
Registration No. 99.810.363, under Section 44(e) of the Trademark Act.

The Trademark Examining Attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark KRYSTAL KOACH INC., previously registered for "automobiles, limousines, funeral cars and buses,"² and KRYSTAL, in slightly stylized type, previously registered for "automobiles,"³ that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, and an oral hearing was held. We reverse the refusal to register.

Regarding the goods, the Examining Attorney contends that applicant's goods include buses, as do registrant's goods in its KRYSTAL KOACH INC. registration; that applicant's goods are related to registrant's automobiles in its KRYSTAL registration, as shown by third-party registrations of marks for goods encompassing buses and automobiles; and that the trade channels for automobiles,

² Registration No. 2,248,811 issued June 1, 1999, to Krystal Coach, Inc., in International Class 12. The registration includes a disclaimer of "COACH INC." (not KOACH INC.) apart from the mark as a whole.

³ Registration No. 2,358,969 issued June 20, 2000, in International Class 12, to Krystal Coach, Inc.

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particularly fleet vehicles, is the same as for motor coaches and buses.

Applicant contends, on the other hand, that its goods are unrelated to automobiles; that registrant's limousines, funeral cars and buses are a limited niche market, whereas, applicant's motor coaches and motor buses are directed to "broader, public transportation, tourism, high-volume light commercial, or urban and inter-urban applications"; and that applicant "is not an original manufacturer or seller of buses, but retrofits large vans of others to serve as 'shuttles.'"

Regarding the marks, the Examining Attorney contends that applicant's and registrant's marks contain the phonetic equivalent of "crystal" and, thus, sound similar; that KRYSTAL is the dominant portion of registrant's KRYSTAL KOACH INC. mark; and that the "IS" suffix of applicant's mark is insufficient to distinguish it from registrant's marks.

Applicant argues that KRYSTAL and CRISTALIS have different commercial impressions; that the initial "CRIS" and "KRY" of the two marks are very different; that CRISTALIS is three syllables whereas KRYSTAL is only two syllables; that the "CRISTAL" portion of applicant's mark "suggests the breakable crystal"; that the entire term

CRYSTALIS suggests the term "chrysalis," which is defined as "a pupa, especially of a moth or butterfly, enclosed in a firm case or cocoon"⁴; that the "KOACH INC." portion of one of registrant's marks further distinguishes it from applicant's mark; and that "the co-existence of various marks using the formative 'KRYS' or its phonetic equivalent demonstrate that confusion is not likely..."

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

We consider, first, the goods involved in this case. We note that the question of likelihood of confusion must

⁴ *The American Heritage Dictionary of the English Language*, 3rd ed., 1992.

be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

There is no question that applicant's motor coaches and motor buses are identical to the buses listed in Registration No. 2,248,811. If there is a difference between motor coaches and motor buses, it has not been identified in this record.⁵ Applicant's argument regarding the specific nature of its goods and the purported nature of registrant's goods is unavailing because both the application and registrations include broadly identified goods that are not limited as to their nature or channels of trade.

Further, the automobiles identified in both of the cited registrations are related to buses. The evidence submitted by the Examining Attorney of third-party registrations identifying both buses and automobiles under a single mark support this conclusion.⁶

We turn, next, to a determination of whether applicant's mark and the registered marks, when viewed in their entirety, are similar in terms of appearance,

⁵ *The American Heritage Dictionary*, 2nd ed., 1985, defines "coach" in part as "motor bus."

⁶ Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

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sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

It is true that both applicant's mark and registrant's marks include portions that are phonetically equivalent to the term "crystal;" however, we find that the differences between applicant's and registrant's marks outweigh this similarity. We agree with applicant that the ending syllable, "IS," in its mark is significant. The mark CRISTALIS appears less like the word "crystal" and more like the word "chrysalis," giving it an entirely different connotation from the term "KRYSTAL" in registrant's marks. "KRYSTAL" is likely to be perceived as synonymous with "crystal." Regarding registrant's mark, KRYSTAL KOACH INC., we cannot ignore

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the KOACH INC. portion, which is particularly tied to the KRYSTAL portion with the repeated initial "K."

Therefore, we conclude that, even though the goods involved in this case are identical, in part, and closely related, the cumulative differences in the marks obviate any likelihood of confusion as to the source or sponsorship of such goods.

Decision: The refusal under Section 2(d) of the Act is reversed.