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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Rexhall Industries, Inc.

Serial No. 76238377

Mark B. Garred of Stetina Brunda Garred & Bruckner for
Rexhall Industries, Inc.

Won T. Oh, Trademark Examining Attorney, Law Office 114
(Margaret Le, Managing Attorney).

Before Simms, Hohein and Chapman, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Rexhall Industries, Inc. (applicant), a California
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark AMERICAN
CLIPPER ("AMERICAN" disclaimed) for "recreational vehicles,
namely, motor homes."¹ The Examining Attorney has refused
registration under Section 2(d) of the Act, 15 USC

¹ Application Serial No. 76238377, filed April 10, 2001, asserting use
since September 12, 1997.

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§1052(d), on the basis of Registration No. 1,578,899, issued January 23, 1990, renewed, owned by Coachmen Industries, Inc., of the mark CLIPPER for recreational vehicles, namely, camping trailers and travel trailers. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

The Examining Attorney argues that applicant's mark merely adds a geographically descriptive word ("AMERICAN") to the registered mark ("CLIPPER"). The Examining Attorney contends that applicant's mark does not sufficiently alter the commercial impression created by the registered mark so as to avoid a likelihood of confusion. With respect to the goods, the Examining Attorney maintains that camping trailers and travel trailers as well as motor homes are types of recreational vehicles likely to be sold in the same channels of trade to the same class of potential purchasers. As evidence that consumers may be accustomed to seeing that manufacturers of camping trailers and travel trailers also make and sell motor homes, the Examining Attorney has submitted numerous use-based third-party registrations showing a single mark registered for travel trailers and campers or camping trailers on the one hand and motor homes on the other. While admitting that all

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these goods are expensive, it is the Examining Attorney's position that purchasers may buy applicant's goods because of a favorable experience with registrant's trailers. The Examining Attorney also asks us to resolve any doubt in favor of the registrant.

Applicant, on the other hand, argues that the marks are different in sound, appearance, connotation and commercial impression. It is applicant's position that applicant's mark creates "the impression of patriotism" ("AMERICAN") and the "general nuance associated with adventure of exploration" ("CLIPPER"). Applicant's brief, 6. Applicant also argues that such third-party registered marks as CLIPPER for canoes and kayaks (Registration No. 1,793,579), CLIPPER for collapsible wheel carts (Registration No. 1,707,997) and CLIPPER CRAFT for boats (Registration No. 741,533) show that the cited mark should not be given a broad scope of protection.

Concerning the goods, applicant maintains that they are sufficiently different, registrant's trailers being towed behind another vehicle whereas applicant's motor homes are large self-propelled vehicles. Applicant also contends that while trailers may cost tens of thousands of dollars, they are a "fraction of the cost" of motor homes, which often cost over \$70,000. Applicant further argues

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that the respective goods are typically purchased by discriminating purchasers who have given careful thought to the purchasing decision, having likely paid particular attention to the features of the respective goods. Also, according to applicant, the respective goods are not complementary goods, and travel trailers are typically not used or well suited for the type of travel enjoyed by owners of motor homes. Finally, applicant's counsel states that applicant is not aware of any instances of actual confusion despite over four and one-half years of use by applicant.

In response, the Examining Attorney states that applicant has not presented any evidence to suggest that purchasers of recreational vehicles will have a sufficient level of sophistication to avoid a likelihood of confusion between the mark CLIPPER for camping trailers and travel trailers on the one hand and AMERICAN CLIPPER for motor homes on the other. Also, the Examining Attorney maintains that the third-party registrations which applicant has referred to issued for goods which are not remotely related to the goods involved in this case. Finally, the Examining Attorney contends that the respective marks have not coexisted for a significant amount of time in order to

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adequately assess whether the opportunity for actual confusion has occurred.

Our determination under Section 2(d) of the Act 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 Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Two key considerations are the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The 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.").

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that confusion is likely.

Turning first to the marks, it is well settled that marks must be considered in their entireties as to the similarities and dissimilarities thereof. However, our primary reviewing Court has held that, in articulating reasons for reaching a conclusion on the question of likelihood of confusion, there is nothing improper in

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stating that, for rational reasons, more or less weight has been given to a particular feature or portion of a mark. That is, one feature of a mark may have more significance than another. 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, 1798 (Fed. Cir. 1987); and *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985).

When the respective marks are compared in their entireties, the word "CLIPPER" is the dominant or more significant part of applicant's mark, the less significant feature being the geographically descriptive and disclaimed word "AMERICAN." The marks AMERICAN CLIPPER and CLIPPER have obvious similarities in sound, appearance and commercial impression. Moreover, we agree with the Examining Attorney that the third-party registrations covering unrelated goods which applicant referred to do not show that the registered mark is "weak" for recreational vehicles.

With respect to the goods, it is settled that they need not be identical or even competitive to support a finding of likelihood of confusion, it being sufficient instead that the goods are related in some manner or that the circumstances surrounding their marketing are such that

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they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. *See In re Peebles Inc.*, 23 USPQ2d 1795 (TTAB 1992); and *In re International Telephone and Telegraph Corporation*, 197 USPQ 910 (TTAB 1978). *See also Hewlett-Packard Company v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)("[E]ven if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services"); and *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000)("[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis.").

The Examining Attorney has adequately demonstrated, by copies of numerous third-party registrations, the close relationship between registrant's and applicant's recreational vehicles. In this regard, while use-based third-party registrations are not evidence that the different marks shown therein are in use or that the public

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is familiar with them, such registrations may nevertheless have some probative value to the extent that they serve to suggest that the goods listed therein are of the kinds which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993) and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 at n. 6 (TTAB 1988). The third-party registrations of record tend to show that the same manufacturer may make camping trailers, travel trailers and motor homes.

In addition, we agree with the Examining Attorney that applicant's motor homes and registrant's trailers may well be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that all of these goods come from the same source. Indeed, it is entirely conceivable that a purchaser, aware of registrant's CLIPPER camping trailers and travel trailers, who then encounters applicant's AMERICAN CLIPPER motor homes, may well believe that these motor homes are a new line of registrant's recreational vehicles.

Although applicant's counsel has stated that there have been no instances of actual confusion, uncorroborated statements of no known instances of actual confusion are of little evidentiary value, particularly in an ex parte context. *In re Majestic Distilling Co.*, supra, 65 USPQ2d

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at 1205 (the Court indicated that the lack of evidence of actual confusion carries little weight). Moreover, we have no information about the nature and extent of applicant's and registrant's use of their respective marks to assess whether or not there has been an adequate opportunity for confusion to have occurred. Without such information, we cannot accord much weight to the alleged lack of actual confusion.

Finally, as the Examining Attorney notes, if we had any doubt as to the presence of likelihood of confusion, we would be obligated to resolve that doubt against the newcomer (applicant) and in favor of the prior user and registrant. *See In re Pneumatiques, Caoutchouc Manufacture*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973) ("If there be doubt on the issue of likelihood of confusion, the familiar rule in trademark cases, which this court has consistently applied since its creation in 1929, is that it must be resolved against the newcomer or in favor of the prior user or registrant.") *See also In re Hyper Shoppes*, 837 F.2d 840, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290-1291 (Fed. Cir. 1984).

Decision: The refusal of registration is affirmed.