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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Belcaro Group, Inc.

Serial No. 75926911

David A. Weinstein, Esq. for Belcaro Group, Inc.

Martha L. Fromm, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Hairston, Walters and Chapman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Belcaro Group, Inc. has filed a trademark application
to register the mark SHOPATHOME.COM for, as amended,
"marketing services, namely, providing qualified sales
leads to businesses that sell via direct marketing in print
and electronic form; [and] promoting the goods and services
of others through the provision of a web site featuring

links to the on-line catalogs and web sites of a wide variety of direct marketing retailers.”¹

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of the mark shown below,



previously registered for “computerized on-line and interactive television retail services featuring the goods and services of others in the field of consumer retail products, including but not limited to health and beauty products, exercise items, collectible items, autographed memorabilia, jewelry, sports cards and other memorabilia; and entertainment services in the nature of ongoing

¹ Serial No. 75926911, filed February 22, 2000 under Section 2(f) of the Trademark Act, and asserting first use and first use in commerce at least as early as 1994.

television programs in a home-shopping television format and information programming in the nature of product information and collectible news which promotes the goods and services of others for retail sale."²

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

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. 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).

² Registration No. 2,679,341 issued January 28, 2003, with a Section 2(f) claim as to the words "SHOP AT HOME". In addition, the word "NETWORK" is disclaimed apart from the mark as shown. The Examining Attorney also initially refused registration in view of a second registration, No. 2,480,194 issued August 21, 2001 for the mark MUSEUMSHOP@HOME for promotion and information services concerning museums via a global computer network, owned by a different entity. The Examining Attorney withdrew this refusal in the final office action.

The Examining Attorney contends that applicant's mark and the cited mark are similar because each "begin[s] with the identical three words, 'SHOP AT HOME.'" The last word in each mark is simply a term which refers to online services. Therefore, the proposed and cited marks create a highly similar commercial impression." (Brief, p. 6).

Further, the Examining Attorney maintains that applicant's services of "promoting the goods and services of others through the provision of a web site featuring links to the on-line catalogs and web sites of a wide variety of direct marketing retailers" and registrant's "computerized on-line and interactive television retail services featuring the goods and services of others in the field of consumer retail products" are closely related. In support of her position with respect to the relatedness of the services, the Examining Attorney submitted copies of 20 third-party registrations that cover on-line retail services, on the one hand, and the services of promoting the goods and services of others on-line by providing links to the web sites of others, on the other hand.

Applicant, in urging reversal of the refusal to register, contends that the Examining Attorney has improperly dissected the marks and has failed to consider that applicant's mark consists of the combined term

SHOPATHOME.COM. Further, applicant argues that its services of providing links to third-party on-line catalogs differ from the on-line retail services in the cited registration. Also, applicant contends that its mark is entitled to registration inasmuch as the PTO allowed the mark MUSEUMSHOP@HOME to register over the cited mark.

We first consider the services rendered under the marks. At the outset, it should be noted that it is not necessary that the services be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under circumstances that would give rise, because of the marks used in connection therewith, to the mistaken belief that the services originate from or are in some way associated with the same source. In re International Telephone and Telegraph Corp., 197 USPQ 910 (TTAB 1978).

In the present case, we find that the record supports the Examining Attorney's position that applicant's services of promoting the goods and services of others through the provision of a web site featuring links to the on-line catalogs and web sites of a variety of direct marketing retailers are closely related to registrant's computerized

on-line and interactive television retail services featuring the goods and services of others in the field of consumer retail products. The Examining Attorney has introduced copies of 20 use-based third-party registrations to demonstrate the relationship between these services, by showing in each instance that a single entity has adopted one mark for both on-line retail store services and the services of promoting the goods and services of others on-line by providing links to web sites of others.

Although these registrations are not evidence that the marks shown therein are in commercial use, or that the public is familiar with them, they nevertheless are probative evidence to the extent that they suggest that the services identified therein are of a type which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470, n. 6 (TTAB 1988).

We consider next the marks. In determining whether marks are dissimilar or similar, 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 impression that confusion as to the source of the goods

and/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 Corp.*, 190 USPQ 106 (TTAB 1975).

Furthermore, although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). For example, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark" *Id.* At 751.

Applying these principles to the present case, we find that applicant's mark SHOPATHOME.COM and registrant's mark SHOP AT HOME NETWORK and design, when compared in their entireties are highly similar in sound, appearance, connotation and overall commercial impression. The disclaimed word NETWORK in registrant's mark is highly descriptive/generic for the type of services rendered by registrant. Also, NETWORK appears below SHOP AT HOME in

much smaller lettering. Thus, the word NETWORK, as it appears in registrant's mark, plays a subordinate role in our likelihood of confusion analysis. With respect to applicant's mark, the top-level domain indicator therein ".COM" has no source-identifying significance. Thus, it is the SHOPATHOME portion of applicant's mark that is dominant. Although applicant has eliminated the spaces between the words, the individual words remain evident, and are reinforced by the way the mark would be read by consumers. That is, SHOPATHOME would be understood as SHOP AT HOME. Thus, the dominant portions of the marks are virtually identical. Further, both marks have similar connotations, namely, to "shop at home", either on-line or via a television network. When the marks are considered in their entireties, and giving appropriate weight to the dominant portion of each mark, we find that they are highly similar in terms of sound, appearance, connotation and overall commercial impression.

Purchasers familiar with registrant's computerized on-line and interactive television retail services featuring the goods and services of others in the field of consumer retail products rendered under the mark SHOP AT HOME NETWORK and design, upon encountering applicant's mark SHOPATHOME.COM in connection with its services of promoting

the goods and services of others through the provision of a web site featuring links to the on-line catalogs and web sites of a wide variety of direct marketing retailers, would be likely to believe that applicant's services originate from the same source as registrant's services or are somehow affiliated with or sponsored by registrant.

Finally, registration of the mark MUSEUMSHOP@HOME over the cited mark does not compel us to reach a different result here. As often noted by the Board, each case must be decided on its own merits and there is nothing in this record to indicate the reasons for the allowance of the registration of the mark MUSEUMSHOP@HOME. See *In re Nett Designs, Inc.*, 57 USPQ2d 1564 (Fed. Cir. 2001). ["Even if some prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the Board"].

Furthermore, we note that the services in the MUSEUMSHOP@HOME registration are different from the services in applicant's application and the cited registration.

Decision: The refusal to register is affirmed.