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Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Professional Wrestling Hall of Fame

Serial No. 76118536

Brett M. Hutton of Heslin Rothenberg Farley & Mesiti P.C.
for Professional Wrestling Hall of Fame.

Dezmona J. Mizelle, Trademark Examining Attorney, Law
Office 110 (Chris Pedersen, Managing Attorney).

Before Quinn, Walters and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

On August 29, 2000, applicant filed the above-
captioned intent-to-use application seeking registration on
the Principal Register of the mark depicted below, for
goods identified in the application (as amended) as
"printed matter, namely magazines, books and pamphlets
about professional wrestling, memorabilia, namely souvenir
programs relating to professional wrestling, printed

tickets and announcement cards relating to professional wrestling, mounted or unmounted photographs, and posters," in Class 16,¹ and "clothing, namely shirts, hats, jackets, jerseys, T-shirts, shorts, pants, underwear, novelty gloves and visors," in Class 25.



Pursuant to the Trademark Examining Attorney's requirement, applicant has disclaimed the exclusive right to use PROFESSIONAL WRESTLING HALL OF FAME apart from the mark as shown.

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that applicant's mark, as applied to applicant's goods, so resembles the mark depicted below,

¹ This version of the Class 16 identification of goods was suggested by the Trademark Examining Attorney in the final Office action, and was adopted by applicant in its Request for Reconsideration. However, it does not appear that the amendment was ever entered into the record or into the Office's automated database. The Board has now entered the amendment.



previously registered for "retail store services featuring professional wrestling memorabilia, clothing and souvenirs" in Class 35, as to be likely to cause confusion, to cause mistake, or to deceive.² See Trademark Act Section 2(d), 15 U.S.C. §1052(d). The cited registration, like applicant's application, includes a disclaimer of the exclusive right to use PROFESSIONAL WRESTLING HALL OF FAME apart from the mark as shown.

Neither the Trademark Examining Attorney nor the applicant made any evidence of record during prosecution of

² Registration No. 2499406, issued October 23, 2001. The recitation of services in the registration also includes the following Class 41 services: "museum and entertainment services, namely, providing a hall of fame museum featuring professional wrestling memorabilia and providing arena facilities for wrestling events." However, the Trademark Examining Attorney has never cited these Class 41 services as a basis for the Section 2(d) refusal; the refusal is based solely on the Class 35 services recited in the registration.

the application.³ Applicant and the Trademark Examining Attorney filed main appeal briefs, but applicant did not file a reply brief. No oral hearing was requested. We reverse the refusal to register.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *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 §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).

We find that applicant's Class 16 and Class 25 goods, as identified in the application, are encompassed within and legally identical to the "professional wrestling memorabilia, clothing and souvenirs" which, according to the registrant's Class 35 recitation of services, are

³ The Trademark Examining Attorney's contentions in her brief regarding the existence, ownership and import of third-party registrations for various "hall of fame" marks are not supported by the evidentiary record.

featured items in registrant's retail stores. We therefore find that applicant's goods are related to registrant's Class 35 services. See, e.g., *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988). Applicant has not contended otherwise.

Neither applicant's identification of goods nor registrant's recitation of services include any restrictions or limitations as to trade channels or classes of purchasers. Accordingly, we must presume that the respective goods and services will be marketed in all normal trade channels and to all normal classes of purchasers for such goods and services. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). We find that retail stores such as registrant's are among the normal trade channels in which applicant's types of goods would be marketed. We also find that applicant's types of goods and registrant's type of retail store services would be offered to the same classes of purchasers, i.e., to fans of professional wrestling. Again, applicant has not contended otherwise.

We next must determine whether applicant's mark and the cited registered mark, when compared in their entireties in terms of appearance, sound and connotation, are similar or dissimilar in their overall commercial impressions. 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 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). Furthermore, although the marks at issue must be considered in their entirety, 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).

Applying these legal principles in the present case, we find that applicant's mark and the cited registered mark are dissimilar rather than similar. The only point of similarity between the marks is the presence in both marks of the highly descriptive, if not generic, wording PROFESSIONAL WRESTLING HALL OF FAME. Applicant's and registrant's respective identifications of goods and services use the words "professional wrestling" generically to refer to the subject matter of the goods and services.

We take judicial notice that the dictionary definition of "Hall of Fame" includes, in pertinent part, "a group of individuals in a particular category (as a sport) who have been selected as particularly illustrious." (Webster's Ninth New Collegiate Dictionary (1990) at 548.)⁴ Both applicant and registrant have disclaimed the exclusive right to use PROFESSIONAL WRESTLING HALL OF FAME apart from their respective marks as shown.

Although we cannot ignore the presence of the wording PROFESSIONAL WRESTLING HALL OF FAME in each of the marks, neither can we agree with the Trademark Examining Attorney's contention that it is the dominant feature in each of the marks, or her implicit contention that its presence in each of the marks is dispositive. Rather, we find that this wording is merely one feature of each of the marks, to be considered along with the other features of the respective marks in our determination of whether the

⁴ The Board may take judicial notice of dictionary definitions. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); see also TBMP §704.12(a). This dictionary also defines "Hall of Fame" as "a structure housing memorials to famous or illustrious individuals usu. chosen by a group of electors." This definition is apropos of the Class 41 services recited in the registrant's registration as "providing a hall of fame museum featuring professional wrestling memorabilia." See *supra* at footnote 2.

marks, when viewed in their entirety, are similar or dissimilar.

In terms of appearance, we find that the marks are similar to the extent that they both include the wording PROFESSIONAL WRESTLING HALL OF FAME, but that they otherwise are quite dissimilar. Indeed, even as to this wording, these special form marks are dissimilar in the manner in which the wording is displayed. Applicant's mark also looks different from registrant's mark in that applicant's mark prominently and centrally features the letters PWHF in large, bold letters. The design features of the respective marks likewise do not look the same in any respect. Viewed in their entirety in terms of appearance, we find that the marks are dissimilar rather than similar.

In terms of sound, we find that the marks are similar to the extent that the words PROFESSIONAL WRESTLING HALL OF FAME would be pronounced in each mark. However, they are dissimilar to the extent that the letters PWHF would be pronounced in applicant's mark, but not in registrant's mark. Viewed in their entirety in terms of sound, we find that the marks are more similar than dissimilar.

In terms of connotation, we find that the marks are similar, both connoting a professional wrestling hall of

fame. The letters PWHF, as they appear in applicant's mark, would readily be understood as an acronym for "professional wrestling hall of fame," and they therefore do not distinguish applicant's mark in terms of connotation. Likewise, the design element of the registered mark depicting a wrestler holding a belt merely reinforces the wording in the mark, and does not distinguish the marks in terms of connotation. Viewed in their entireties in terms of connotation, we find that the marks are more similar than dissimilar.

However, as noted above, the sole point of similarity between the marks in terms of appearance, sound and connotation is the presence in both marks of the highly descriptive wording PROFESSIONAL WRESTLING HALL OF FAME. That the marks share this wording is not a sufficient basis for finding that the marks, when viewed in their entireties, are similar rather than dissimilar. Rather, we find that the overall visual dissimilarity between the marks, arising from the presence of the letters PWHF in applicant's mark and the distinctly different design elements of the respective marks, makes the marks more dissimilar than similar in terms of their overall commercial impression. It is settled that where the only commonality between the marks is highly descriptive or

generic wording, confusion can be avoided if the other elements of the marks are sufficiently dissimilar. See, e.g., *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986). We find that this is such a case.⁵ The marks, when viewed in their entireties, are sufficiently dissimilar that confusion is not likely to result from their use on or in connection with these goods and services. To find otherwise would require an impermissible dissection of the marks, and would accord inordinate significance to the disclaimed wording in each mark.

In summary, notwithstanding the relatedness of the respective goods and services and the overlapping trade channels and classes of purchasers for those goods and services, we find, for the reasons discussed above, that when the marks are viewed in their entireties, applicant's mark is not sufficiently similar to the cited registered mark to support a finding of likelihood of confusion. Cf.

⁵ The Trademark Examining Attorney's attempt to distinguish *In re Bed & Breakfast Registry* from the present case by arguing that both of the marks in *In re Bed & Breakfast Registry* had additional wording, whereas in this case only applicant's mark has additional wording (i.e., the letters PWHC), is not persuasive. The argument accords too little weight to the visual prominence of the stylized letters PWHF in applicant's mark, and fails to take into account the significant differences in the design features of the respective marks and the differences in the stylization of the wording itself in each mark.

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Kellogg Co. v. Pack'Em Enterprises Inc., 14 USPQ2d 1545
(TTAB 1990), *aff'd*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir.
1991).

Decision: The refusal to register is reversed.