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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re BBK, Ltd.

Serial No. 76315836

Kathleen G. Mellon of Young & Basile, P.C. for BBK, Ltd.

Karanendra S. Chhina, Trademark Examining Attorney, Law
Office 114 (Margaret Le, Managing Attorney).

Before Hanak, Chapman and Rogers, Administrative Trademark
Judges.

Opinion by Chapman, Administrative Trademark Judge:

BBK, Ltd. (a Michigan corporation) has filed an
application to register on the Principal Register the mark
BUSINESS BUILDING KNOWLEDGE for services amended to read
"turnaround management consulting services, namely,
corporate renewal, operations improvement, interim
management, organizational and financial restructuring,
litigation support services, and product and supplier
analysis, all for troubled companies" in International

Class 35. Applicant disclaimed the word "business." The application was filed on September 21, 2001, based on applicant's claimed dates of first use and first use in commerce of November 3, 2000 and December 22, 2000, respectively.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with its services, so resembles the mark BUILDING KNOWLEDGE, registered for "business management and consultation; business management supervision" in International Class 35, and "construction supervision, construction planning, and construction management" in International Class 37,¹ as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested.

We reverse the refusal to register. In reaching this conclusion, we have followed the guidance of the Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling*

¹ Registration No. 2450959 issued May 15, 2001 to William A. Berry & Son, Inc. The word "building" is disclaimed. The Examining Attorney explained that the refusal was issued because of registrant's Class 35 services.

Company, Inc., 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The Examining Attorney contends that applicant has merely added a word to the registered mark, which does not obviate the likelihood of confusion; that the dominant feature of applicant's mark is the phrase BUILDING KNOWLEDGE because the word "business" is descriptive of applicant's services; that the marks are similar in sound, appearance, meaning and overall commercial impression;² that applicant's and registrant's Class 35 services are "virtually identical, namely business management services"; that applicant's more specific Class 35 services are encompassed within registrant's broader Class 35 services; that even if the purchasers of applicant's services are sophisticated, they are not immune from trademark

² The Examining Attorney correctly points out that the marks need only be "similar," they do not have to be the "same" in sound, appearance, connotation and/or commercial impression.

confusion; that there is no evidence the purchasers of registrant's services are sophisticated; and that doubt is resolved in the registrant's favor.

Applicant argues that the marks, when considered in their entireties, are not similar in sound, appearance, connotation and/or overall commercial impression; that the mark BUILDING KNOWLEDGE in the context of registrant's construction business connotes knowledge about construction or "building," whereas applicant's mark connotes knowledge about creating (re-creating) or "building" up a business; that the addition of the word "business" differentiates the marks sufficiently to avoid a likelihood of confusion; that the services are not similar or related as applicant offers consultation and management assistance to companies in serious financial and/or operational trouble, whereas registrant offers business consultation and management in the construction industry; that applicant's identified services are inherently different from and are commercially unrelated to the services described in the cited registration; that applicant's services are offered to major businesses while registrant's provision of construction and business consultation services are offered through different channels to different purchasers; and that the purchasers of these services are knowledgeable and

sophisticated, and they would discover the actual identity of the source of the services prior to purchasing.

Turning first to the involved services, it has been repeatedly held that, when evaluating the issue of likelihood of confusion in Board proceedings regarding the registrability of marks, the Board must compare the services (or goods) as identified in the application with the services (or goods) as identified in the registration. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and *Canadian Imperial Bank of Commerce, N. A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

In this case, the cited mark is registered for "business management and consultation; business management supervision" and "construction supervision, construction planning, and construction management," while applicant offers "turnaround management consulting services, namely, corporate renewal, operations improvement, interim management, organizational and financial restructuring, litigation support services, and product and supplier analysis, all for troubled companies."

As identified, the cited registrant's business management and consultation services are broad and encompass all types of business management and consultation

services, including the more specific business turnaround management consulting services offered by applicant to troubled companies. Thus, we find that applicant's services and registrant's services are related.

Turning to a consideration of the trade channels and purchasers, it is clear from the identifications of services as well as other information in the record that applicant's services are offered to businesses in crisis, and applicant goes in and takes over the operation of a troubled company until it regains its ability to operate profitably. That is, applicant "provides total relief and assistance to businesses in crisis." (Brief, p. 8.) Applicant is often hired by banks to assist the bank's failing business customers, or by bankruptcy courts to assist the party in bankruptcy.

Registrant's business services, on the other hand, specifically relate to the construction industry, and providing construction (building) supervision and management. The cited registration is of record and therefore, although the International Class 37 construction services have not been relied on by the Examining Attorney as a basis for refusal under Section 2(d) of the Trademark Act, those services nonetheless remain part of the record

before the Board, and provide context within which to consider registrant's mark and its likely connotation.

Even noting the limitations in applicant's identification of goods (turnaround management for troubled companies) and the clear association of registrant with the construction industry, nonetheless, the channels of trade and the classes of purchasers could be at least overlapping.

However, and importantly, these types of business consultation services (both registrant's and applicant's) would certainly not be impulse purchase decisions, but rather, would be made by sophisticated purchasers after a process of negotiation and decision making. Although the record does not indicate the cost of the respective services, the Board finds it is common knowledge that these types of business consultation services would not be inexpensive, but instead, would be at least somewhat expensive.

Turning to a consideration of the marks, it is well settled that marks must be considered and compared in their entirety, not dissected or split into component parts so that parts are compared with other parts. This is because it is the entire mark which is perceived by the purchasing public, and therefore, it is the entire mark that must be

compared to any other mark. It is the impression created by each of the involved marks, each considered as a whole, that is important. See *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992); and *Franklin Mint Corp. v. Master Manufacturing Co.*, 667 F.2d 1005, 212 USPQ 233 (CCPA 1981). See also, 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §23:41 (4th ed. 2001).

Marks are compared in terms of their appearance, sound, connotation and commercial impression. In terms of appearance and sound, applicant's three-word mark and the cited registrant's two-word mark are somewhat similar. While the marks share the terms "BUILDING KNOWLEDGE," applicant's mark begins with a different word, and the first word is often the memorable portion. See *Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895 (TTAB 1981).

Importantly, in terms of connotation, applicant's mark BUSINESS BUILDING KNOWLEDGE connotes the concept that applicant has knowledge or expertise in the field of how to build (or rebuild) a business, whereas, registrant's mark BUILDING KNOWLEDGE connotes that registrant has knowledge or expertise in the building or construction business. The marks are dissimilar in connotation.

We find that applicant's mark, considered in its entirety, creates a different commercial impression from that of the cited registered mark.

In view of the differences in the marks, sophisticated purchasers, and the conditions of sale, i.e., negotiation for, generally expensive business services, we find that there is not a likelihood of confusion. See *In re Hearst Corp.*, 982 F.2d 493, 25 USPQ2d 1238 (Fed. Cir. 1992) (VARGA GIRL and VARGAS, both for calendars, held not confusingly similar); *Food Specialty Co., Inc. v. Kal Kan Foods, Inc.*, 487 F.2d 1389, 180 USPQ 136 (CCPA 1973) (KITTY for cat food and KAL KAN KITTY STEW and design for canned cat food held not confusingly similar); *Lever Bros. Co. v. Barcolene Co.*, 463 F.2d 1107, 174 USPQ 392 (CCPA 1972) (ALL for household cleansing products and ALL CLEAR! in stylized lettering for a household cleaner held not confusingly similar, by majority opinion); *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 167 USPQ 529 (CCPA 1970) (PEAK for dentifrice and PEAK PERIOD for personal deodorants held not confusingly similar, by majority opinion); *Local Trademarks Inc. v. The Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990) (LITTLE PLUMBER and design for advertising services in the plumbing field and LITTLE PLUMBER for liquid drain opener held not confusingly similar); and *Electronic Realty*

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Associates, Inc. v. Kayser-Roth Corp., 216 USPQ 61 (TTAB 1982) (ERA for a variety of clothing items and GOLDEN ERA for sportshirts held not confusingly similar).

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