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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Station Casinos, Inc.

Serial No. 76368583

Carrie E. Peterman of Quirk & Tratos for Station Casinos, Inc.

D. Beryl Gardner, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

Before Hohein, Chapman and Bottorff, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Station Casinos, Inc. (a Nevada corporation) filed an application on February 8, 2002, to register on the Principal Register the mark LOCALS FAVORITE for "casino services" in International Class 41. The application is based on applicant's claimed date of first use and first use in commerce of January 1, 1996.

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 applied to its identified goods, so resembles the registered mark shown below

LOCAL FAVORITES

for "business directories for resort communities" in International Class 16, and "advertising services, namely, placing and preparing business advertisements for others" in International Class 35,¹ as to be likely to cause confusion, mistake or deception.

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

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 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

¹ Registration No. 1954590, issued February 6, 1996; Section 8 affidavit accepted. The registration includes the following statement: "The mark is lined for the color red."

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 the similarities in the marks, when considered in their entireties, are greater than the minor differences in meanings; that the respective goods and services "are not different"; that registrant provides a directory "tailored for businesses in a resort community"; that some of the favorite places listed in registrant's business directory "may include casinos, which are often recreational places in resort communities"; that applicant's specimen of record shows use of its mark LOCALS FAVORITE to promote not only its casinos but also its resort hotels; and that the respective channels of trade are related. (Final Office action, unnumbered page 2.)

The Examining Attorney submitted (i) printouts of several third-party registrations "to show that casino services and hotel services are often provided by a single owner" (first Office action, unnumbered page 2); and (iii) some excerpted stories retrieved from the Nexis database "in which casinos, resorts and directories appeared [therein]."

Applicant argues, *inter alia*, that the marks carry different connotations, with applicant's mark LOCALS FAVORITE connoting a casino that is popular with local people, whereas registrant's mark LOCAL FAVORITES connotes favorite resort communities within a specific locale; that when considered in their entirety, the marks are not similar; that applicant's casino services are completely different from and unrelated to either registrant's business directories for resort communities and/or registrant's advertising services of placing and preparing business ads for others; that the trade channels and purchasers are completely different in that applicant directs its services to individuals (e.g., convention attendees, vacationers), while registrant's goods and services would be directed to businesses; and that there is not even a probability of confusion, much less a likelihood of confusion.

Turning first to the involved goods and services, there is no doubt that a casino can include or be related to a resort or hotel. However, the cited registration includes neither hotel services nor resort services. Rather, registrant's goods and services, as identified, are a business directory for resort communities and the service of preparing and placing business advertisements for

others. While the Examining Attorney has submitted evidence regarding a relationship between casino services and hotel or resort services such that consumers might expect the same source of origin thereof, there is no evidence of any such understanding by consumers as between casinos, on the one hand, and business directories and/or advertising services, on the other. In the stories retrieved from the Nexis database, all of which include the three words, "casino(s)," resort(s)" and "directory(ies)," it is clear that the use of the term directory(ies)" is not necessarily in the context of either a business directory for resort communities or the preparation and placement of business advertisements for others.

Simply put, we cannot conclude from the evidentiary record furnished by the Examining Attorney that "casino services" vis-a-vis "business directories for resort communities" and "advertising services, namely, placing and preparing business advertisements for others" emanate from a single source, such that the consumers of these goods and services would assume a common source.

As a result, even though the respective marks, applicant's LOCALS FAVORITE and registrant's LOCAL FAVORITES (in stylized lettering), are very similar in sound, appearance and commercial impression, the record

does not support a finding that the contemporaneous use of the mark LOCALS FAVORITE by applicant for casino services and registrant's LOCAL FAVORITES (in stylized lettering) mark for business directories for resort communities and placing and preparing business advertisements for others is likely to cause confusion. See *In re Digirad Corp.*, 45 USPQ2d 1841 (TTAB 1998); and *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). Cf. *In re Code Consultants*, 60 USPQ2d 1699 (TTAB 2001); and *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990).

Applicant's arguments regarding (i) that the goods and services are classified in different International Classes by the USPTO, and (ii) that applicant is not aware of any instances of actual confusion are unpersuasive and did not affect our decision herein. See *National Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, footnote 5 (TTAB 1990) regarding the administrative classification of goods and services by the USPTO; and see *In re Majestic Distilling Company, Inc.*, supra, 65 USPQ2d at 1205 regarding the du Pont factor of no actual confusion in ex parte appeals.

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