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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Airlines, Inc.

Serial No. 76409236

Linda J. Nowlin of Dineff Trademark Law, Ltd. for
applicant.

Christopher Wells, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Quinn, Bucher and Holtzman, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by American Airlines, Inc. to
register the mark shown below

AMERICAN AIRLINES
nexos  **S**

for "in flight magazines."¹

¹ Application Serial No. 76409236, filed May 17, 2002, alleging a date of first use anywhere and first use in commerce of March 1999. The registration includes the following statement: "The word 'nexos' translates to 'connections' in English."

The examining attorney refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the previously registered mark shown below



for "printed matter, namely magazines in the field of arts, literature, science, politic analysis, and cultural issues"² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

Applicant contends that the marks, when considered in their entirety, are different in sound, appearance, connotation and overall commercial impression. In connection with this argument, applicant distinguishes the marks in a detailed side-by-side comparison, with significant reliance on what it perceives to be the

² Registration No. 2403968, issued November 14, 2000.

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dominant portion of its mark, namely the words "AMERICAN AIRLINES." Applicant points to these words and other design features in its mark, and states that the most significant addition to NEXOS in its mark is the "AMERICAN AIRLINES" feature which, according to applicant, "give[s] the mark a whole new commercial impression and connotation because those words are not simply random letters, but have come to represent one of the most famous marks in the country." (Brief, unnumbered p. 6). Applicant claims that the fame of the "AMERICAN AIRLINES" mark and consumer recognition of the mark as indicating source in applicant ensures against the likelihood of confusion with the cited mark. With respect to the goods, applicant argues that its "inflight magazines" are completely different from regular magazines like those of registrant, and that applicant's goods "are narrowly tailored so that they are only provided to defined customers, that is, those who travel via airplane on American Airlines." (Brief, unnumbered p. 10). According to applicant, its magazines are provided to travelers on flights and are not sold or marketed to the general public. More specifically, applicant's customers are "well-educated, affluent Latin Americans who travel by air on flights to and from Central and South America." (Response, July 7, 2003). Applicant further points to the

coexistence of the marks for over five years without any known instances of actual confusion.

The examining attorney maintains that the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks create the same overall commercial impression. The examining attorney views the term "NEXOS" as the dominant portion of each mark, and contends that the addition of applicant's "house mark" does not distinguish the marks. According to the examining attorney, "[i]t is likely not only that the two products sold under these marks would be attributed to the same source but also that purchasers would mistakenly assume that both were products of applicant by virtue of its use of American Airlines with the shared term NEXOS." (Brief, unnumbered p. 4). As to the goods, the examining attorney asserts that registrant's magazines include subjects (e.g., arts, literature and culture) that might appear in an inflight magazine, and that air travelers are accustomed to being offered general circulation magazines while flying. Under such circumstances, the examining attorney concludes that consumers aware of registrant's magazine would believe, upon encountering applicant's mark for its magazine, that applicant's magazine is an edition of

registrant's NEXOS magazine made available on airplanes. The examining attorney discounts applicant's mere statement of no actual confusion, and further states that any doubt must be resolved in registrant's favor.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth 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 1098, 192 USPQ 24 (CCPA 1976). See also: *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We first turn to the du Pont factor regarding the similarity or dissimilarity of the parties' respective goods. In comparing the goods, it is not necessary that they 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

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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 goods originate from or are in some way associated with the same source.

In re International Telephone and Telegraph Corp.,

197 USPQ 910 (TTAB 1978). The issue of likelihood of confusion must be determined on the basis of the goods as set forth in the application and the cited registration.

In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1690 n. 4 (Fed. Cir. 1993); and Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815-16 (Fed. Cir. 1987).

Applicant's goods are identified as "inflight magazine," while registrant lists its goods as "magazines in the field of arts, literature, science, politic analysis, and cultural issues." When the cited registration describes goods broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration encompasses all goods of the type described, that they move in all normal channels of trade, and that they are available to all classes of purchasers. See, e.g., In re Linkvest S.A., 24 USPQ2d 1716 (TTAB 1992); and In re Diet Center Inc., 4 USPQ2d 1975 (TTAB 1987). Thus, in the

present case, we must presume that registrant's magazines would be sold in airports or would be made available to passengers for reading on a commercial airliner. In this connection, it is common knowledge that general circulation magazines are routinely offered by airlines to their passengers while traveling. Although applicant may be correct in stating that its magazines are "narrowly tailored to defined consumers," namely passengers on American Airlines, these same passengers may be exposed to registrant's magazines, either while in the air or on the ground. Further, applicant's inflight magazines do not include any limitation as to subject matter, and it is reasonable to presume that these magazines would include, at one time or the other, articles on art, literature, science, politics or culture.

Accordingly, we find that applicant's and registrant's magazines are related for purposes of our likelihood of confusion analysis. The magazines travel in the same channels of trade to the same classes of purchasers.

We next turn to consider the marks. The marks are substantially similar in sound, appearance and meaning. Although we have compared the marks in their entireties, there is nothing improper in giving more weight to a particular feature of a mark. In re National Data Corp.,

753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). In the present case, the identical NEXOS portion dominates each mark. The NEXOS portion in applicant's mark is much larger in size than the AMERICAN AIRLINES portion, and NEXOS would be the portion used in calling for the magazine. As for registrant's mark, NEXOS is the only literal feature of the mark. The stylization of the letters comprising the NEXOS portions of the respective marks is similar in that lower case letters are used. Moreover, the design features of the marks are clearly insufficient to distinguish them in appearance. Insofar as meaning is concerned, NEXOS would convey the same meaning in each mark, that is, "connections." This term appears to be arbitrary when used for magazines or is, at worst, only slightly suggestive. In this regard, we note that the record is devoid of any evidence of third-party uses or registrations of the same or similar mark in the printed publication field.

In sum, the marks, when considered in their entirety, are similar in sound, appearance and meaning, and convey similar overall commercial impressions.

One of applicant's main arguments is that the marks are distinguishable due to the presence in applicant's mark of its famous house mark AMERICAN AIRLINES. In response, we note the general rule that the addition of a house mark

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to one of two otherwise confusingly similar marks will not serve to avoid a likelihood of confusion. See, e.g.: In re Apparel Ventures, Inc., 229 USPQ 225 (TTAB 1986).

Exceptions are made to this general rule, however, if (1) there are some recognizable differences in the conflicting product marks, i.e., the marks being used for the specific goods, or if (2) the product marks are merely descriptive or highly suggestive or play upon commonly used or registered terms, so that the addition of the house mark may be sufficient to render the marks as a whole distinguishable. See: In re Christian Dior, S.A., 225 USPQ 533 (TTAB 1985) and the cases cited therein.

In the present case, the addition of the purportedly famous AMERICAN AIRLINES mark does not sufficiently distinguish the marks. The AMERICAN AIRLINES portion, as noted above, is dwarfed by the much larger font of the term NEXOS. In addition, neither of the exceptions is applicable herein. Firstly, the NEXOS portions are identical in sound and meaning, and the stylization of the NEXOS portions is similar. Further, the differing design features in the respective marks are hardly a basis upon which to distinguish the marks. Secondly, NEXOS is not merely descriptive or highly suggestive when applied to magazines.

In finding that the marks are confusingly similar, we have kept in mind that consumers for magazines include ordinary consumers who, due to the normal fallibility of human memory over time, retain a general rather than a specific impression of trademarks encountered in the marketplace. Thus, applicant's side-by-side, detailed comparison of the marks, which is not how consumers will encounter and analyze the marks, is not persuasive.

Although applicant's attorney has represented that there have been no instances of actual confusion over five years of contemporaneous use, such unsubstantiated statement is entitled to little weight. In re Majestic Drilling Co., supra at 1205 ["With regard to the seventh DuPont factor, we agree with the Board that Majestic's uncorroborated statements of no known instances of actual confusion are of little evidentiary value."]. In any event, we have no information of record concerning the nature and extent of applicant's and registrant's use so as to accurately gauge whether there has been a meaningful opportunity for actual confusion to have occurred. See *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768 (TTAB 1992).

We conclude that consumers familiar with registrant's magazines in the field of arts, literature, science,

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politic analysis and cultural issues sold under its mark NEXOS and design would be likely to believe, upon encountering applicant's AMERICAN AIRLINES NEXOS and design mark for an inflight magazine, that the magazines originated with or are somehow associated with or sponsored by the same entity.

Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., supra; and In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.