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Grendel

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Warrior Lacrosse, Inc.

Serial No. 78201297

Vincent C. Ilagan of Artz & Artz, P.C. for Warrior
Lacrosse, Inc.

Elizabeth A. Hughitt, Trademark Examining Attorney, Law
Office 111 (Craig D. Taylor, Managing Attorney).

Before Walters, Grendel and Drost, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark TITAN PRO (in typed form; PRO disclaimed) for
goods identified in the application as "lacrosse sticks and
lacrosse handles," in Class 28.¹

¹ Serial No. 78201297, filed January 8, 2003. The application is
based on applicant's asserted bona fide intent to use the mark in
commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

Applicant has appealed the Trademark Examining Attorney's final refusal to register applicant's mark. The Trademark Examining Attorney has refused registration on the ground that applicant's mark, as applied to applicant's goods, so resembles two registered marks (owned by the same entity) as to be likely to cause confusion, to cause mistake or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d). Specifically, the Trademark Examining Attorney has cited, as Section 2(d) bars to registration of applicant's mark, Registration No. 0991120, which is of the mark TITAN (in typed form) for "ice hockey sticks,"² and Registration No. 1797833, which is of the mark TITAN (in typed form) for, inter alia, "ice hockey sticks."³

Applicant and the Trademark Examining Attorney filed main appeal briefs. Applicant did not file a reply brief, and did not request an oral hearing. We affirm the refusal to register.

Initially, we note that Registration No. 1797833, the second registration cited by the Trademark Examining Attorney, issued on October 12, 1993 and is valid for ten years from that date. As of the date of this opinion,

² Issued August 20, 1974. Section 8 and Section 15 affidavits accepted and acknowledged; second renewal.

³ Issued October 12, 1993. Partial Section 8 affidavit accepted.

there is no indication in the registration record that the registrant has applied for renewal of the registration. Because the continuing viability of this registration is questionable, and because it is cumulative in any event given the clear validity of the registrant's Registration No. 0991120 and the fact that the Trademark Examining Attorney's refusal as to both registrations is based solely on the goods identified in each registration as "ice hockey sticks," we have not considered Registration No. 1797833 as a basis for refusal of applicant's mark in this appeal. We shall consider only whether Registration No. 0991120, which is of the mark TITAN for "ice hockey sticks," bars registration of applicant's mark TITAN PRO for "lacrosse sticks and lacrosse handles."

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 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 mark TITAN PRO is substantially similar to the cited registered mark TITAN. Indeed, applicant does not contend otherwise. The dominant feature of applicant's mark is the distinctive word TITAN. The word PRO is descriptive and disclaimed; its presence in applicant's mark contributes little to the mark's commercial impression, and it does not suffice to distinguish applicant's mark from opposer's TITAN mark. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). We find that the two marks are substantially similar in terms of their source-indicating function, such that their contemporaneous use on related goods would be likely to cause confusion. The first *du Pont* factor (similarity or dissimilarity of the marks) weighs substantially in favor of a finding of likelihood of confusion.

We turn now to the second and third *du Pont* factors, i.e., the similarity or dissimilarity of the goods, and the similarity or dissimilarity of the trade channels in which, and the classes of purchasers to whom, the goods are marketed. It is well-settled that it is not necessary that the respective goods be identical or even competitive in

order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

We find that applicant's goods are sufficiently related to registrant's goods that confusion is likely to result from contemporaneous use thereon of the substantially similar marks TITAN and TITAN PRO. The relatedness of the goods at issue is established by the evidence made of record by the Trademark Examining Attorney. There is a printout from the website of Harrow Sports, Inc., upon which are advertised in close proximity to each other both lacrosse sticks and ice hockey sticks. Also, the Trademark Examining Attorney has made of record

numerous third-party trademark registrations which include in their identifications of goods both lacrosse sticks and hockey sticks. Third-party registrations are not evidence that the marks shown therein are in commercial use, or that the public is familiar with them, but they are probative evidence to the extent that they serve to suggest that the listed goods 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 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

The Trademark Examining Attorney has made of record excerpts of articles obtained from the NEXIS database which show that ice hockey and lacrosse often are played, by the same athletes, as complementary, different-season sports. That is, athletes who play ice hockey in the winter often play lacrosse in the spring and summer. These athletes would be potential purchasers both of applicant's lacrosse sticks and registrant's ice hockey sticks, and this overlap supports a finding that confusion is likely.

We also find that applicant's lacrosse sticks and registrant's ice hockey sticks would be marketed in the same trade channels to the same classes of purchasers. As identified in the application and registration, respectively, applicant's and registrant's goods both are

sporting goods items which would be sold in sporting goods stores, or in the sporting goods section of department stores. That they might be displayed in different sections of the stores is not dispositive; the issue is not whether the goods would be confused with each other, but whether purchasers would be confused as to the source of the goods due to the similarity of the marks appearing thereon. See, e.g., *Trak Inc. v. Traq Inc.*, 212 USPQ 846 (TTAB 1981). A purchaser who encounters TITAN ice hockey sticks in the hockey section of a store, and then encounters TITAN PRO lacrosse sticks in the lacrosse section, is likely to be confused as to the source of these goods.

In summary, and for the reasons discussed above, we find that applicant's goods are sufficiently related to registrant's goods that contemporaneous use of the substantially similar marks TITAN and TITAN PRO thereon is likely to cause confusion. We have considered applicant's arguments to the contrary, but are unpersuaded.

Decision: The refusal to register is affirmed.