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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sonsub Inc.

Serial No.76048147

Jeffrey J. Phillips of Howrey LLP for Sonsub Inc.

Martha L. Fromm, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Seeherman, Hohein and Holtzman, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Sonsub Inc. has appealed from the final refusal of
the Trademark Examining Attorney to register INNOVATOR as a
mark for the following services:

Underwater construction services
including pipelines, umbilicals,
cables, structures and mooring using
remotely operated vehicles; underwater
support services for drilling vessels
and production platforms using remotely
operated vehicles, namely repair and
maintenance services (Class 37);

Underwater search and salvage services using remotely operated subsea vehicles (Class 39); and

Subsea remotely operated vehicle services, namely, underwater oil and gas exploration services using remotely operated vehicles; underwater bathymetric, environmental, structural, and inspection survey services using remotely operated vehicles; and engineering services associated with underwater services using remotely operated vehicles (Class 42).¹

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the previously registered mark INNOVATORS OF UNDERGROUND TECHNOLOGY for "care, maintenance and repair of gas pipeline"² that, if used in connection with applicant's services, it is likely to cause confusion or mistake or to deceive. The refusal of registration pertains to all three classes of the application.

The appeal has been fully briefed. Applicant did not request an oral hearing.

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

¹ Application Serial No. 76048147, filed May 12, 2000, based on Section 1(b) of the Trademark Act (intent-to-use).

² Registration No. 2775944, issued October 21, 2003.

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, however, 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).

Turning first to the factor of the similarity of the services, the Examining Attorney has put in evidence consisting of website pages which show that companies offer such services as pipeline maintenance and repair, salvage of vessels and equipment, underwater survey, and use of remote operated vehicles (Blackwater Marine); diving services to perform pipeline maintenance and repair, pipeline inspection and pipeline salvage (CDI); and pipeline construction and repair, and inspection (Triton Diving Services, Inc.). The web pages indicate that services such as those identified in applicant's application and the cited registration can emanate from a single source, and be advertised together.

The Examining Attorney has also made of record several use-based third-party registrations which show that entities have registered a single mark for, inter alia, construction, maintenance and repair of pipelines; and for pipeline repair, maintenance and inspection services. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Applicant has attempted to differentiate its services from those of the registrant by asserting, because of the words UNDERGROUND TECHNOLOGY in the registrant's mark, that the registrant's services are limited to pipelines which are in (i.e., under) the ground, while applicant's services involve pipelines that are underwater. However, as the Examining Attorney points out, the identification in the registration is not restricted, and therefore we must deem the registrant's services to include "care, maintenance and repair of gas pipelines" wherever they might be located, even underwater.

Accordingly, we find that the du Pont factor of the similarity of the services favors a finding of likelihood of confusion.

Despite this, however, we find that confusion is not likely to occur because of the differences in the marks, and the sophistication and care of the purchasers. The only common element in the marks is a form of the word "innovator." Applicant's entire mark is INNOVATOR, while the cited mark contains the word INNOVATORS as part of the phrase INNOVATORS OF UNDERGROUND TECHNOLOGY. As the dictionary definitions of "innovate" and the various forms of this word which are of record show,³ "innovator" is a highly suggestive term as used in connection with services such as the registrant's and the applicant's. In fact, the example of "innovation," which is defined as "(the use of) a new idea or method," is "the latest innovations in computer technology." Given the highly suggestive nature of this word, the use of it in applicant's mark does not necessarily result in a likelihood of confusion with INNOVATORS OF UNDERGROUND TECHNOLOGY. That is, consumers for the relevant services will not necessarily assume that the services emanate from the same source simply because of the presence of this word (or more accurately, variations of this word) in both marks. Marks must, of course, be compared in their entireties, and doing so we find that

³ Cambridge Advanced Learner's Dictionary, © 2004, <http://dictionary.cambridge.org>.

applicant's mark and the registered mark convey different connotations and commercial impressions. The cited mark appears to be a slogan, and the use of the plural form INNOVATORS results in the mark suggesting something about the people or company providing the services, that they are the innovators. Applicant's mark, INNOVATOR, on the other hand, used in connection with the identified services, suggests that the services themselves are innovative, not that the source of the services is an innovator.

While this may be a somewhat subtle distinction, it is a distinction that the relevant consumers of the services will recognize. Both applicant and the registrant offer very specialized, highly technical services involving pipelines. The purchasers of these services are sophisticated and knowledgeable. Further, in view of the nature of the services, they will be purchased with great care and deliberation. The consumers of these services, therefore, will not ascribe a common source to the services merely because both marks contain forms of the word INNOVATOR.

Accordingly, the du Pont factors of the similarity/dissimilarity of the marks, and the conditions under which and the buyers to whom sales are made, favor a finding that confusion is not likely. In this case, we

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find that these factors outweigh the factor of the similarity of the services. See Kellogg Co. v. Pack'em Enterprises Inc., 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

Decision: The refusal of registration is reversed.