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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CDG Holding Company, d/b/a CDG & Associates

Serial No. 76490897

Theodore F. Shiells of Carr LLP for CDG Holding Company,
d/b/a CDG & Associates.

Leigh Caroline Case, Trademark Examining Attorney, Law
Office 105 (Thomas G. Howell, Managing Attorney).

Before Quinn, Drost and Zervas, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On February 19, 2003, CDG Holding Company, d/b/a CDG &
Associates (applicant) filed an application (Serial No.
76490897) to register the mark CEOS WALK THE WALK (in typed
or standard character form) on the Principal Register for
services ultimately identified as "Charitable fundraising
through organizing and conducting group activities, namely
participation in a group walk" in Class 36. The
application contains an allegation of a date of first use
anywhere and in commerce of March 3, 2002.

The examining attorney refused to register applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of a registration for the mark shown below for "Charitable fundraising; financial sponsorship of charitable fundraising marathons, walks and power walking events and activities; charitable collections; organization of charitable fundraising collections; organization of fundraising activities and events; organization of fundraising walks and marathons" in Class 36.¹



After the examining attorney made the refusal final, this appeal followed.

When we address the question of likelihood of confusion, we consider the facts as they relate to the relevant factors set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). See also In re E. I. du Pont de Nemours & Co., 476 F.2d 1357,

¹ Registration No. 2,850,096 issued June 8, 2004. The owner of the registration is identified as Walk the Walk Worldwide Limited, a Scottish corporation. The registration also includes goods and services in Classes 9, 14, 16, 25, and 41. The examining attorney has not relied on these other classes in refusing registration.

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177 USPQ 563, 567 (CCPA 1973); and Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In considering the evidence of record on these factors, we must 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 [or services] and differences in the marks." Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

"The first DuPont factor requires examination of 'the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.'" Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting du Pont, 177 USPQ at 567). Here, the marks are CEOS WALK THE WALK and WALK THE WALK and foot design. Applicant's mark includes all the wording in registrant's mark to which it has added the term "CEOs." Applicant's specimens clearly show that applicant's services are directed to CEOs (chief executive officers).

HELLO FELLOW CEOs

We invite you to join our team of fellow small and mid-size business owners, walking the walk, networking with fellow CEOs, marketing to your target market,

receiving recognition and publicity - and helping the March of Dimes...

This year we're targeting a goal of 250 CEOs around the nation and \$250,000.

While the term "CEOs" is missing from the registrant's mark it does not significantly change the appearance, sound, connotation and commercial impression. Indeed, in some ways, it reinforces the similarities of the words, particularly their meanings. Many potential participants in applicant's services are likely to assume that registrant's "WALK THE WALK" charitable services have a more specific charitable service that is directed toward the participation of CEOs.

In addition, because applicant's mark is shown in a typed or standard character drawing, we must assume that there is no difference in the stylization of the words in the marks. See Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1847-1848 (Fed. Cir. 2000); and Phillips Petroleum Co. v. C.J. Webb, Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). The only other difference between the marks is the presence of a foot design in the registered mark, which applicant argues is "the dominant feature of the cited mark." Brief at 5. We cannot agree. The absence of this feature in applicant's mark is unlikely to result in the absence of confusion. First, the foot

design reinforces the walking part of the mark and it does not add a new dimension to the meaning of the mark.

Second, "if one of the marks comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services." In re Appetito Provisions Co., 3 USPQ2d 1553, 1554 (TTAB 1987). This design, which is suggestive of walking, is unlikely to take precedence over the words in the mark.

Applicant also argues (Reply Brief at 3):

The Examining Attorney assumes that both the Applicant's mark and the cited mark are variants of the phrase "don't talk the talk if you can't walk the walk." Although Applicant acknowledges that its mark is somewhat reminiscent of that phrase, Applicant respectfully disputes that the connotation of the cited mark is reminiscent of that phrase at all. Rather the connotation of the cited mark is more akin to urging a person to "walk" in a certain way (i.e., behave in a certain way, follow a particular path or procedure, or simply to "walk") rather than urging them to take some undefined action. In any event, the cited mark clearly does not share the same connotation as the Applicant's mark.

At a minimum, even if some prospective participants or contributors would make the connection that applicant suggests and understand the connotation of registrant's mark is different from the connotation of applicant's mark, we cannot hold that this would be the most common interpretation of the registered mark. It is far more

likely that most participants or contributors would view the identical words "Walk the Walk" in both marks identically, with an understanding that registrant now is directing its services specifically towards CEOs. Therefore, the marks are likely to have the same connotation, i.e., people actually doing something for charity (in this case, raising money by participating in walking events) and not simply talking about doing something.

When we view the marks in their entireties, we conclude that they are very similar in sound, appearance, meaning, and commercial impression. The presence of the term "CEOS" in applicant's mark and the foot design in the registered mark are relatively minor differences. In re Denisi, 225 USPQ 624, 624 (TTAB 1985) (If "the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences"). See also Wella Corp. v. California Concept Corp., 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT and surfer design likely to be confused with CONCEPT for hair care products).

Next, we consider whether the services of applicant and registrant are related. We must consider these services as they are identified in the application and

registrations. Paula Payne Products v. Johnson Publishing Co., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods").

Applicant's services are charitable fundraising through organizing and conducting group activities, namely participation in a group walk. Registrant's services include a "charitable fundraising" and the "organization of fundraising activities and events." These activities would include activities such as applicant's charitable fund raising through participating in a group walk. More specifically, registrant's identification of services includes the "organization of fundraising walks and marathons," which is virtually the same as charitable fundraising through organizing a group walk. Therefore, applicant's services overlap with registrant's services.

Because these services are essentially the same, we must assume that the services travel in the same channels of trade to the same users. Genesco Inc. v. Martz, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items

could be offered and sold to the same classes of purchasers through the same channels of trade"); In re Smith and Mehaffey, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers").

Inasmuch as the services of applicant and registrant are virtually the same and the marks CEOS WALK THE WALK and WALK THE WALK and design are very similar, we cannot agree with applicant that "potential confusion is de minimis." Reply Brief at 3. "When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992)). Under the circumstances of this case, confusion is likely.

Decision: The refusal to register applicant's mark under Section 2(d) is affirmed.