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May 15, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re BBC Ice Cream, LLC

Serial No. 76557044

Brad D. Rose and Teresa A. Lee of Pryor Cashman Sherman & Flynn LLP for BBC Ice Cream, LLC.

Chrisie Brightmire King, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Seeherman, Grendel and Cataldo, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark depicted below



for goods identified in the application as

all-purpose sports and athletic bags, fanny packs, backpacks, knapsacks, sports packs, waist packs, gym bags, duffel bags, tote bags, book bags, hand bags, purses, clutch purses, change purses, shoulder bags, carry-on bags, travel bags, garment bags for travel, leather shopping bags, beach bags, satchels, luggage, luggage tags, trunks, suitcases, cosmetic cases sold empty, toiletry cases sold empty, vanity cases sold empty, cosmetic bags sold empty, tool bags sold empty, attache cases, briefcases, briefcase-type portfolios, men's clutches, business cases, business card cases, credit card cases, calling card cases, passport cases, key cases, leather key chains, coin pouches, wallets, billfolds, umbrellas and parasols

in International Class 18.¹

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that, as applied to applicant's goods, the mark so resembles the mark **BBC**, previously registered (in standard character form) for goods identified in the registration as "luggage, bags, namely, book bags and duffle bags, knapsacks,"² as to be likely to cause

¹ Serial No. 76557044, filed with Certificate of Express Mail dated September 25, 2003. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

² Registration No. 2021832, issued December 10, 1996. Affidavits under Trademark Act Sections 8 and 15 accepted and acknowledged.

confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant and the Trademark Examining Attorney have filed main appeal briefs, and applicant has filed a reply brief. No oral hearing was requested. We affirm the refusal to register.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We find that certain of the goods identified in applicant's application, i.e., "luggage," "book bags," "duffel bags" and "knapsacks," are identical to the goods identified in the cited registration.³ We also find that

³ We find that the "duffle bags" identified in the cited registration are legally identical to the "duffel bags" identified in applicant's application. We take judicial notice that "duffle" is a variant of "duffel." See Webster's II New Riverside University Dictionary (1988) at 409. The Board may

many if not all of the other goods identified in applicant's application are similar and related to the goods identified in the cited registration. Thus, we find that the second *du Pont* factor weighs in favor of a finding of likelihood of confusion.

We find that registrant's goods and applicant's identical and otherwise similar or related goods would be marketed in the same trade channels and to the same classes of purchasers. The third *du Pont* factor accordingly weighs in favor of a finding of likelihood of confusion.

We also find that the goods involved herein are ordinary, relatively inexpensive consumer items which would be purchased without a great deal of care or sophistication. The fourth *du Pont* factor accordingly weighs in favor of a finding of likelihood of confusion.

We turn finally to the first *du Pont* factor, i.e., whether applicant's mark and the cited registered mark are similar or dissimilar when compared in their entirety in terms of appearance, sound, connotation and commercial impression. See *Palm Bay Imports, Inc.*, *supra*. We make

take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

this determination in accordance with the following principles.

The test, under the first *du Pont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Finally, in cases such as this, where the applicant's goods are identical (in part) to the goods identified in the cited registration, the degree of similarity between the marks which is required to support a finding of likelihood of confusion is less than it would be if the goods were not identical. *Century 21 Real Estate*

Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

We find, initially, that the dominant feature in the commercial impression created by applicant's mark is the acronym BBC. Contrary to applicant's contention, there is nothing "abstract," "conceptual," "indefinable" or "unpronounceable" about this acronym; the letters BBC would be readily perceived and pronounced by purchasers viewing and recollecting the mark. These letters appear in very large type which physically dwarfs the other wording in the mark, BILLIONAIRE BOYS CLUB. The visual prominence of the acronym BBC in the mark, vis-à-vis the remaining wording, is a tacit invitation to purchasers to use the acronym as a shorthand way of referring to the mark. The acronym BBC also is more dominant than the design element in the mark because it, unlike the design element, is subject to ready pronunciation. For these reasons, we find that it is the letters BBC which dominate the commercial impression of applicant's mark. We do not ignore the other elements of applicant's mark, but we give more weight to the acronym BBC in our comparison of applicant's mark and the cited registered mark. See *In re National Data Corp.*, *supra*.

In terms of appearance, we find that applicant's mark is identical to the cited registered mark to the extent

that they both include the acronym BBC, but that the marks are dissimilar to the extent that applicant's mark, but not the cited registered mark, includes the design element and the wording BILLIONAIRE BOYS CLUB. The stylization of the lettering in applicant's mark is not dispositive, given the fact that the cited registered mark is registered in standard character form and thus could be displayed in lettering similar to applicant's. See, e.g., *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); *Sunnen Products Co. v. Sunex International Inc.*, 1 USPQ2d 1744, 1751 (TTAB 1987); *In re Hester Industries, Inc.*, 231 USPQ 881, 883, n.6 (TTAB 1986).

In terms of sound, we find that the marks are identical to the extent that BBC would be pronounced as the first or only element in both. The marks sound dissimilar to the extent that applicant's mark also includes the words BILLIONAIRE BOYS CLUB.

In terms of connotation, we find that applicant's mark connotes "billionaire boys club" as per the wording in the mark; the cited registered mark has no such definite connotation, being merely the acronym BBC. We do not find that the design element in applicant's mark adds anything specific or definite to the connotation of applicant's

mark, or that it aids in distinguishing the meaning of applicant's mark from the meaning of the cited registered mark. Applicant's argument to the contrary (regarding the "exclusive" astronaut club) simply is not persuasive.

In terms of overall commercial impression, we find that the marks are similar rather than dissimilar because they both prominently include the acronym BBC. The wording BILLIONAIRE BOYS CLUB in applicant's mark would be viewed as merely the written-out version of the acronym BBC shared by both marks, and it therefore does not serve to distinguish the marks as source identifiers. Purchasers familiar with registrant's mark BBC, upon encountering identical or similar goods marketed under applicant's mark, which so prominently features the acronym BBC, are likely to assume that there is a source or other connection between the respective goods. The presence in applicant's mark of the written-out wording BILLIONAIRE BOYS CLUB and of the design element would not relieve them of that misconception. That is, purchasers are more likely to assume, based on the presence in both marks of the arbitrary designation BBC, that a source connection exists, than they are likely to assume, based on the presence in applicant's mark of the additional wording and the design element, that no such source connection exists.

On balance, and considering the marks in their entirety, we find them to be similar rather than dissimilar, and that the first *du Pont* factor weighs in favor of a finding of likelihood of confusion. As noted above, where the applicant's and registrant's goods are identical, the degree of similarity between the marks which is required to support a finding of likelihood of confusion is decreased. *Century 21 Real Estate Corp. v. Century Life of America, supra*. We find in this case that applicant's mark is sufficiently similar to the cited registered mark that confusion is likely to result from use of the marks on identical goods, which are marketed in identical trade channels to identical classes of ordinary purchasers.

Weighing all of the evidence of record as it pertains to the relevant *du Pont* factors, we find that a likelihood of confusion exists. To the extent that any doubts might exist as to the correctness of this conclusion, we resolve such doubts against applicant. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); 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.