

THIS DECISION IS NOT
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OF THE TTAB

Mailed:
January 13, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re LLC Concepts, L.P.

Serial No. 78288524

Lisa H. Meyerhoff of Baker & McKenzie for LLC Concepts,
L.P.

Susan Leslie DuBois, Trademark Examining Attorney, Law
Office 111 (Craig D. Taylor, Managing Attorney).

Before Hohein, Rogers and Walsh, Administrative Trademark
Judges.

Opinion by Walsh, Administrative Trademark Judge:

On August 18, 2003, LLC Concepts, L.P. (applicant),
applied to register LEGACY LEARNING CENTER, in standard-
character form, on the Principal Register for "child care
and pre-school centers; day care services" in International
Class 43. Applicant asserted both first use anywhere and
first use of the mark in commerce on May 1, 2002.

Applicant has disclaimed "LEARNING CENTER."

The examining attorney refused registration under
Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d),

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based on a likelihood of confusion with the marks in two prior active registrations, both owned by Legacy Academy, Inc., a Georgia corporation:

- (1) Reg. No. 2277846, issued September 14, 1999, on the Principal Register, for the mark LEGACY ACADEMY FOR CHILDREN, in standard-character form, for "child care services" claiming both first use anywhere and first use in commerce in May of 1997 with a disclaimer of "ACADEMY FOR CHILDREN"; the registrant has filed affidavits under Sections 8 and 15 of the Trademark Act and the USPTO has accepted and acknowledged those filings respectively; and
- (2) Reg. No. 2686283, issued February 11, 2003, on the Principal Register, for the mark LEGACY ACADEMY FOR CHILDREN, as shown below, for "child care services" claiming both first use anywhere and first use in commerce in March of 2000 with a disclaimer of "ACADEMY FOR CHILDREN."



Applicant responded to the refusal; the examining attorney made the refusal final; and applicant filed this appeal. For the reasons indicated below, we affirm. Applicant did not request a hearing.

Section 2(d) of the Act precludes registration of an applicant's mark "which so resembles a mark registered in the Patent and Trademark Office . . . as to be likely,

when used on or in connection with the goods of the applicant, to cause confusion . . ." Id. The opinion in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1977) sets forth the factors we must consider in determining likelihood of confusion when evidence relevant to a factor is of record. Here, as is often the case, the crucial factors are the similarity of the marks and the similarity of the services of the applicant and registrant. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks."). Below we will discuss all factors as to which applicant or the examining attorney argued or presented evidence.

Comparison of the Services

Applicant has not argued that its services differ from those of the registrant. We must consider the services as identified in the application and registration. CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991). Both the application and the cited registrations include "child care" services without any restrictions as

to trade channels. Accordingly, we conclude that the services of the applicant and registrant and that the trade channels for those services are, at least in part, identical.

Furthermore, we note that, "the degree of similarity [between the marks] necessary to support the conclusion of likely confusion declines" when the goods or services are identical. Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert. denied, 506 U.S. 1034 (1992).

The Marks

Applicant argues generally that the marks differ when viewed in their entireties. More specifically applicant argues that its mark, LEGACY LEARNING CENTER, employs alliteration which results in the first two words in the mark, both beginning with "L," becoming dominant. The examining attorney argues principally that "LEGACY" is the only distinctive word element and the dominant element in applicant's mark and the cited marks, and therefore, that the marks are confusingly similar.

To determine whether the marks are confusingly similar, we must consider the appearance, sound, connotation and commercial impression of each mark. Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee

En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

We conclude that LEGACY is the only distinctive word element in both applicant's mark and the cited registered marks. Applicant has disclaimed the remainder of the wording in its mark, that is, "LEARNING CENTER," and registrant has disclaimed the remainder of the wording in its marks, that is, "ACADEMY FOR CHILDREN." Most importantly, in each instance the disclaimed wording appears to be highly descriptive, if not generic. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant has argued that "LEGACY LEARNING" is the dominant element in its mark due to the alleged alliteration in this combination. Applicant has offered no evidence in support of its contention that the letter pattern would dictate perception of its mark in such a way. Cf. Safe-T Pacific Co. v. Nabisco, Co., 204 USPQ 307, 315-317 (TTAB 1979) ("KRAZY GLAZY" for toaster pastries held not likely to be confused with "CRAZY" for ice cream cups and cones). In viewing the entire mark we conclude that any alliteration which may be present is insufficient to alter the conclusion that "LEGACY," the only distinctive word

element, is the dominant element in applicant's mark.

"LEGACY" is also the dominant element in both cited marks.

For completeness we note that one of the cited marks includes an apple design. This design element does nothing to diminish the dominance of "LEGACY" in the cited mark.

In re Dixie Restaurants, Inc., 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). Likewise, applicant's arguments that there are differences in the number of syllables and differences in the appearance and sound of the marks are unpersuasive. These differences are superficial and insufficient to distinguish applicant's mark from the cited marks, again because "LEGACY" is the dominant element in the marks of both applicant and registrant.

Applicant most strenuously criticizes the examining attorney for allegedly failing "to consider the composite marks as a whole."¹ As the Court of Appeals for the Federal Circuit observed in National Data, ". . . in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a

¹ Applicant has also correctly criticized the examining attorney for speculating as to how parents may use abbreviated versions of the cited marks to refer to registrant. We have not engaged in any such speculation in our consideration of this case.

particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable." In re National Data Corp., 224 USPQ at 751. Accordingly, we have considered the marks in their entireties and conclude that "LEGACY" is the dominant word element in each mark. In re Sunmarks Inc., 32 USPQ2d 1470, 1472 (TTAB 1994). We conclude further that the marks are highly similar in appearance, sound, connotation and commercial impression because they share the same dominant word element.

Strength of the Cited Marks

Applicant also presents a closely related argument, namely, that "LEGACY," the common element among the marks, is suggestive, and as such, entitled to a narrow scope of protection. In support of its contention, applicant provides a dictionary definition of "LEGACY" and records of third-party registrations for marks which include "LEGACY." Applicant's dictionary definition of "legacy" is from the online version of The American Heritage Dictionary of the English Language (Fourth Ed. 2000): "something handed down

from an ancestor or a predecessor or from the past.”²

The examining attorney disputes the characterization of “LEGACY” as either suggestive or weak. The examining attorney has also provided dictionary definitions from the online version of The American Heritage Dictionary of the English Language (Third Ed. 1992), to support her argument that “LEGACY” is not suggestive, including the exact definition applicant provided as well as the following: “money or property bequeathed to another by will.”³ We agree with applicant on the fundamental point that “LEGACY” is suggestive of child care services, at least to some degree. We find credible applicant’s argument that “LEGACY,” “. . . is used to communicate something passed on from generation to generation through society, family and other sources,” and the implied argument that it would, therefore, suggest something about child care services. On the other hand, we reject applicant’s characterization of “LEGACY” as a term adopted by “businesses and individuals . . . to convey to consumers the nature and quality of the

² We take judicial notice of this dictionary definition pursuant to In re Total Quality Group Inc., 51 USPQ 1474, 1476 (TTAB 1999) because the definition appears to be from an online version of a dictionary which is also available in printed form.

³ Id. The examining attorney appears to have provided a definition from a different edition of the same online/printed dictionary as applicant.

business's goods and services." Here applicant implies that "LEGACY" may be merely descriptive. We emphasize that "LEGACY" is not merely descriptive of child care services which are at issue here. On the basis of the dictionary definitions and other evidence of record we conclude that "LEGACY" is somewhat suggestive, but not highly suggestive of the involved services.

Applicant has provided, and relies on, a number of third-party registrations for marks which include "LEGACY" also in support of its attempt to establish that "LEGACY" is suggestive and weak as applied to registrant's services. Applicant emphasizes one third-party registration, in particular, stating, "For example, THE PERFECT BEGINNING FOR YOUR LEGACY covers services identical to the cited marks, child care services (Ex. 2)." The registration for THE PERFECT BEGINNING FOR YOUR LEGACY, Reg. No. 2777705, covers "child care services." In fact, it is the only third-party registration of record which does cover child care services. The registration is owned by Legacy Academy, Inc., a Georgia corporation. As noted above, the record also indicates that Legacy Academy, Inc., a Georgia corporation, is the owner of both cited registrations. Thus, the record appears to indicate that this alleged "third-party" registration is another registration owned by

the owner of the cited registrations. Accordingly, on this record we decline to recognize it as a third-party registration.

The remainder of the registrations of record cover goods and services other than child care services and are less relevant.⁴ For example, several cover educational services for children:

Reg. No. 2578641 for LEARNING IS OUR LEGACY for "educational services, namely, providing courses of instruction at the primary and secondary levels";

Reg. No. 2519523 for CREATING A LEGACY OF LITERACY for "educational services, namely, providing incentives to children to encourage reading"; and

Reg. No. 2774467 for LEGACY MINISTRIES INTERNATIONAL for "educational services, namely, providing courses at the primary and secondary level."

Others involve products, such as, software and books, or services, such as, tax and estate planning services, or educational services in particular fields, such as, religion, management and leadership, or estate planning.

In sum, the third-party registrations do not indicate that

⁴ Applicant includes App. No. 76596506 for PAUAHI'S LEGACY LIVES A CONTINUING COMMITMENT (and design) for "educational services, namely, educational services, namely, providing courses of instruction at the preschool, kindergarten, primary and secondary levels." We have not given any consideration to this record because the mark is not registered. Glamorene Prods. Corp. v. Earl Grissmer Co., Inc., 203 USPQ 1090, 1092 n. 5 (TTAB 1979).

the cited "LEGACY" marks are weak marks for child care services.

Overall, we conclude that, on this record, the cited "LEGACY" marks are not weak and are entitled to the degree of protection we would accord to any duly registered mark which is no more than suggestive of the goods. In re Melville Corp., 18 USPQ2d at 1389. See also In re Rexel, Inc., 223 USPQ 830, 832 (TTAB 1984). Furthermore, the registration of marks in prior applications does not bind us here. In re Nett Designs, Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

The Purchasers

Under the heading "Sophistication of Applicant's Customers," applicant argues:

It is widely known that child care services are one of the most expensive costs that the average American family incurs. The cost of child care can be thousands of dollars per year, and even thousands of dollars each month, depending on the quality and reputation of the particular facility. Child care is therefore not an impulse purchase made in haste. Rather, the purchase of child care requires much thought and deliberation, as the services affect the most important thing to parents - their children.

Applicant refers to the "average American family" in its discussion of the issue. In the absence of any evidence to the contrary we conclude that the child care services at issue here could be directed to a wide range of families

and individuals in need of child care, including both sophisticated and unsophisticated consumers. Cf. Electronic Design & Sales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992). On the other hand, we agree with applicant that child care services, by their very nature, would generally not be purchased on impulse but with relative care. On balance, we conclude that this factor tends to enhance the likelihood of confusion because the purchasers include unsophisticated individuals.⁵ More importantly, in the overall analysis in this case, this factor is considerably less important than the comparison of the services, which are identical, and the marks, which are highly similar. Furthermore, even sophisticated consumers are not necessarily knowledgeable in the field of trademarks, and as such, are not immune from trademark confusion. In re Pellerin Milnor Corp., 221 USPQ 558, 560 (TTAB 1983).

In conclusion, we have considered all evidence of record in this case with respect to the du Pont factors and determined that there is a likelihood of confusion among consumers when LEGACY LEARNING CENTER and LEGACY ACADEMY

⁵ In addition, even sophisticated purchasers may be compelled by circumstances to choose among child care options based on other factors, for example, convenience of a location to a home or workplace. Accordingly, we cannot assume any particular degree of deliberation by prospective purchasers.

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FOR CHILDREN both are used in connection with child care services, principally due to the fact that the services are identical and the marks are highly similar.

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