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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Liberty Bankers Life Insurance Company

Serial No. 78465043

Timothy J. Zarley of Zarley Law Firm P.L.C. for Liberty Bankers Life Insurance Company.

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Before Hairston, Bucher, and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On August 10, 2004, applicant Liberty Bankers Life Insurance Company filed an application to register the mark LBL and design shown below on the Principal Register:



for services ultimately amended as follows:

Life insurance underwriting services, namely, administering both individual and group annuity insurance products including single premium deferred

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annuities, single premium immediate annuities, flexible premium deferred annuities and multi-year guaranteed annuities, and providing third party administrative services for term life insurance policies in Class 41.¹

The examining attorney has refused to register applicant's mark under Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) because of the prior registration of the following four marks all owned by the same entity (LBL Insurance Services, Inc.).

I.

Reg. No. 2,594,230

Issued: July 16, 2002

Mark: THE LBL GROUP (typed)

for: Financial management; estate planning; financial planning; financial planning in the field of charitable contributions; retirement planning; financial portfolio and investment management; financial research; financial services in the nature of investment security; insurance underwriting in the field of group, individual, and voluntary benefits plans, namely, medical, dental, vision, life, disability, cancer and long term care

Class: 36

Dates of first use: 1973 (both)

Disclaimer: Group

II.

Reg. No. 2,597,727

Issued: July 23, 2002



¹ Serial No. 78465043 The application alleges a date of first use anywhere and a date of first use in commerce of December 31, 1997.

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for: Financial management; estate planning; financial planning; financial planning in the field of charitable contributions; retirement planning; financial portfolio and investment management; financial research; financial services in the nature of investment security; insurance underwriting in the field of group, individual, and voluntary benefits plans, namely, medical, dental, vision, life, disability, cancer and long term care
Class: 36
Dates of first use: 1973 (both)

III.

Reg. No. 2,597,728
Issued: July 23, 2002
Mark: LBL (typed)
for: Financial management; estate planning; financial planning; financial planning in the field of charitable contributions; retirement planning; financial portfolio and investment management; financial research; financial services in the nature of investment security; insurance underwriting in the field of group, individual, and voluntary benefits plans, namely, medical, dental, vision, life, disability, cancer and long term care
Class: 36
Dates of first use: 1973 (both)

IV.

Reg. No. 2,658,502
Issued: December 10, 2002
Mark: THE LBL GROUP (typed)
for: Indicating membership in an association of insurance and financial services providers
Class: 200
Dates of first use: 1973 (both)
Disclaimer: Group

The examining attorney maintains that the "letters LBL create the dominant portion of all the marks" and that the services are related. Brief at 3. The examining attorney explains that:

While Registrant provides several types of services, the particular services in issue in this appeal are Registrant's insurance underwriting in the field of

group, individual, and voluntary benefits plans, namely, medical, dental, vision, life, disability, cancer and long term care" services as well as "indicating membership in an association of insurance and financial services providers[]" versus Applicant's "Life insurance underwriting services, namely, administering both individual and group annuity insurance products including single premium deferred annuities, single premium immediate annuities, flexible premium deferred annuities and multi-year guaranteed annuities, and providing third party administrative services for term life insurance policies." In this case, the generic type of services in issue, namely life insurance underwriting services are identical.

Brief at 4.

Applicant, on the other hand, submits (Brief at 10) that when its "highly stylized 'LBL' is compared to the cited registrations the commercial impression of the marks is dissimilar because of the 'LBL' stylized design." Furthermore, applicant argues that its "mark is to be used in relation to a very specific service that is different than those required by the registrant." Brief at 13.

We now address the question of whether there is a likelihood of confusion when applicant's LBL and design mark is used on the identified services in view of registrant's four cited registrations. We analyze 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, 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).

We begin by comparing the similarities and dissimilarities of the marks. Applicant's mark consists of the letters LBL displayed in a black rectangle with another smaller black rectangle below it. Registrant's marks include the letters LBL alone and two registrations for the words THE LBL GROUP, all in typed form. The fourth registration is for the letters LBL with a lion design. To the extent that the term LBL is the only feature of one of the registrations, it would obviously be the dominant feature of that mark.² Regarding the two THE LBL GROUP

² Because this registration is identical to the letters in applicant's mark, the services associated with the mark do not have to be as closely related before confusion is likely. Even if the designs associated with the words are not identical, the "identity of words, connotation, and commercial impression weighs heavily against the applicant." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688-89 (Fed. Cir. 1993) ("[E]ven when goods or services are not competitive or intrinsically related, the use of identical marks can lead to an assumption that there is a common source").

marks, we also find that LBL would be the dominant feature of the marks. The term "Group" has been disclaimed in both marks and it would be descriptive of insurance providers who would have joined together to provide their services. "Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.'" Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), quoting, In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985). See also In re Code Consultants Inc., 60 USPQ2d 1699, 1702 (TTAB 2001) (Disclaimed matter is often "less significant in creating the mark's commercial impression").

These three cited registrations are also displayed in typed or standard character form. When a mark is displayed in this manner, it is not limited to any particular style. Indeed, we can assume that registrant displays its marks in the same letter style as applicant displays its LBL letters. "[T]he argument concerning a difference in type style is not viable where one party asserts rights in no particular display. By presenting its mark merely in a typed drawing, a *difference* cannot legally be asserted by that party. Tomy asserts rights in SQUIRT SQUAD regardless of type styles, proportions, or other possible variations.

Thus, apart from the background design, the displays must be considered the same." Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). We specifically find that the letters in applicant's mark are displayed in a fairly straightforward style and not in a "highly stylized" manner as applicant argues. Brief at 10. See, e.g., In re Electrolyte Laboratories Inc., 929 F.2d 645, 16 USPQ2d 1239 (Fed. Cir. 1990). We add that unlike the Electrolyte Laboratories case in which the common portion of the marks for potassium supplements was the chemical symbol of potassium, K+, there is no evidence that the letters LBL have any descriptive or highly suggestive meaning for the relevant services in this case. It "has been held that marks comprising arbitrary arrangements of letters are more likely to create confusion than other types of marks." Code Consultants, 60 USPQ2d at 1702.

Regarding the rectangle design, it is unlikely that prospective purchasers would rely on the design to distinguish marks when the marks are otherwise composed of the identical letters. The design is not pronounced when referring to the services and a rectangle is hardly an unusual design. Furthermore, if "the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences." In re Denisi, 225

USPQ 624, 624 (TTAB 1985). Indeed, even the differences between applicant's LBL mark and design with rectangles and registrant's LBL mark with lion design are not very significant. Applicant's LBL mark, to the extent that the differences are noted, is likely to be viewed as a slight variation of registrant's LBL design mark.

Ultimately, we must consider the marks in their entireties to determine if they are similar in sound, appearance, meaning, and commercial impression. Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In this case, we find that the marks would be pronounced the same and have similar meanings, appearance, and commercial impressions. See, e.g., 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); In re Dixie Restaurants, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (Federal Circuit held that, despite the addition of the words "The" and "Cafe" and a diamond-shaped design to registrant's DELTA mark, there was a likelihood of confusion).³

³ Applicant's argument (Reply Brief at 3) that "an abbreviation is likely to create the same commercial impression on buyers as

The next issue we address is the relatedness of applicant's and registrant's services. Applicant's services are:

Life insurance underwriting services, namely, administering both individual and group annuity insurance products including single premium deferred annuities, single premium immediate annuities, flexible premium deferred annuities and multi-year guaranteed annuities, and providing third party administrative services for term life insurance policies.

Registrant's services in the '230, '727, and '728 registrations are:

Financial management; estate planning; financial planning; financial planning in the field of charitable contributions; retirement planning; financial portfolio and investment management; financial research; financial services in the nature of investment security; insurance underwriting in the field of group, individual, and voluntary benefits plans, namely, medical, dental, vision, life, disability, cancer and long term care.

The '502 registration is a collective membership mark for indicating "membership in an association of insurance and financial services providers."

the original the user can trace back his first use to the use of the original for priority purposes" is not supported by the cited Vacuum-Electronics Corp. v. Electronic Engineering Co. case. 150 USPQ 215 (TTAB 1966). That case involved a priority question in which opposer unsuccessfully challenged applicant's priority date because "it is now seeking to register 'EECO' in block lettering rather than in the stylized versions reflected in its registrations." Id. at 215. Applicant is not asserting that it has used the same letter mark with different stylization.

We begin by observing that applicant provides "life insurance underwriting services" and registrant also includes "*insurance underwriting* in the field of group, individual, and voluntary benefits plans, namely, medical, dental, vision, *life*, disability, cancer and long term care" in its three service mark registrations. Therefore, both applicant and registrant provide the same general life insurance underwriting services.

The examining attorney has included copies of numerous registrations to show that a common mark has been registered by the same entity for services involving underwriting life insurance and annuities as well as financial planning. See, e.g., Registration No. 859,830 ("Underwriting of hospital, surgical, medical, nursing, life, life annuities, group, group annuities..."); No. 997,160 ("Underwriting and issuing life, variable life, health, insurance policies and annuities"); No. 1,514,832 ("underwriting and writing of hospital, surgical, medical, nursing home, life (fixed and variable), life annuities (fixed and variable), group, group annuities..."); No. 1,932,039 ("Insurance underwriting and risk management services in the fields of fire, life, marine, medical health, accident and liability... financial planning and management services"); No. 1,938,093 ("Underwriting of

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annuities; underwriting of insurance, namely life accidental death and dismemberment..."); No. 2,304,387 ("Financial and investment planning and consulting... insurance underwriting, and insurance appraisal in the fields of automobile, life, accident, credit, disability, health, medical, property, casualty, long-term care, prescription and variable life insurance; and underwriting and insurance agency services in the fields of annuities, mutual funds and investment insurance..."); and No. 2,107,461 ("Insurance underwriting services in the fields of major medical insurance, Medicare supplement insurance, universal life insurance, whole life insurance, term life insurance and flexible and single payment annuities").

These registrations suggest that applicant's and registrant's services are related to the extent that the same entity has registered a common mark for life insurance services and annuities and financial planning. In re Infinity Broadcasting Corp. of Dallas, 60 USPQ2d 1214, 1217-18 (TTAB 2001) ("The registrations show that entities have registered their marks for both television and radio broadcasting services. Although these registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nevertheless have probative value to the extent that they serve to

suggest that the services listed therein, including television and radio broadcasting, are of a kind which may emanate from a single source. See, e.g., In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993); and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 at n. 6 (TTAB 1988)".

We add that registrant's collective membership mark that indicates membership in an association including insurance providers would include insurance providers who provide life insurance underwriting services such as applicant's. While applicant argues (Brief at 13) that this "registration is not used in relation to insurance services, but rather to indicate membership in an association," it is clear that services do not have to be overlapping for the services to be related. Indeed, "it has often been said that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could 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 producer or

that there is an association between the producers of each [party's] goods or services." In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991). Here, the association membership consists of "insurance and financial services providers," while applicant is a provider of life insurance underwriting services. Potential purchasers familiar with registrant's collective membership mark THE LBL GROUP are likely to assume that there is some association between that group and applicant's services.

We conclude that applicant's mark LBL and design and registrant's marks, LBL, THE LBL GROUP, and LBL and design are very similar. The presence of a rectangle design in applicant's mark does not significantly distinguish the marks. The services are closely related to the extent that they involve life insurance underwriting services or an association that would include life insurance providers. Therefore, confusion is likely in this case.

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