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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re H.K. Global Trading Ltd.

Serial No. 78494931

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Global Trading Ltd.

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(Mary I. Sparrow, Managing Attorney).

Before Seeherman, Quinn and Bucher, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

H.K. Global Trading Ltd. has appealed from the final
refusal of the trademark examining attorney to register GT
PRO BY GOTECH, in standard character form, as a trademark
for the following goods:

Car stereo radio audio cassette
players; car stereo radio compact disc
players; car DVD players; car audio
speakers; compact disc players;
portable compact disc players; audio
cassette recorders; portable audio

cassette recorders; portable compact disc players with radio audio cassette recorder; portable radio audio cassette recorders; radios; portable radios; loud-speakers; radios incorporating clocks; amplifiers; television sets; video cassette recorders (VCRs); DVD players.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 marks GT ELECTRONICS, in typed form, with ELECTRONICS disclaimed,² and GT design, as shown below,³



¹ Application Serial No. 78494931, filed October 5, 2002, based on Section 1(b) of the Trademark Act (intent-to-use). On December 29, 2004, applicant filed an Amendment to Allege Use, asserting first use and first use in commerce as of December 21, 2004. This was accepted by the Examining Attorney on May 10, 2005.

² Registration No. 2727477, issued June 17 2003.

³ Registration No. 2753346, issued August 19, 2003.

previously registered by the same entity for the following goods that, when used on applicant's identified goods, it is likely to cause confusion or mistake or to deceive:

Microphones; amplifiers, preamplifiers, electronic sound compressors, audio signal processors, speakers, electrical power supplies, and electrical cables and electrical connectors; electronic equipment or components for audio signal instrumentation measuring or testing, namely, microphones, amplifiers, preamplifiers, electronic sound compressors, audio signal processors, speakers, electrical power supplies, electrical cables and electrical connectors; excluding telephones and industrial telephone communications systems.

Applicant and the Examining Attorney have filed appeal briefs. An oral hearing was not requested.

Before turning to the substantive ground for refusal, we must address some preliminary matters. In its brief applicant states that the examining attorney "improperly introduced evidence in support of her decision in a final Office action, thereby precluding Applicant from submitting rebuttal evidence and arguments." Brief, p. 3. Applicant is incorrect. Examining attorneys may introduce evidence with any Office action, whether it is an initial Office action, a final Office action, or an action considering a request for reconsideration. See, for example, TMEP §714.04 (The examining attorney should place all evidence

in support of his or her refusal in the record at the time the final action is issued). Applicants, of course, have the opportunity to respond to a final Office action with evidence or argument by filing a request for reconsideration. See Trademark Rule. 2.64(b). The fact that applicant chose not to file a request for reconsideration does not make the examining attorney's evidence improper.

Applicant also asserts, in footnote 5 of its brief, that "instead of refusing registration because there was an overlap of two goods, from descriptions encompassing many goods, the examining attorney should have given Applicant the opportunity to delete those particular goods from the recitation of goods, and thereby obviate the basis for the examining attorney's conclusion that the goods are related." Again, applicant's position has no validity. Applicant was apprised of the basis for the refusal of registration in the first Office action, at which point applicant knew what goods were listed in the cited registrations. Applicant had the opportunity at that point, in responding to the first Office action, or after the final Office action, through a request for reconsideration, to request an amendment to its

identification of goods to delete any goods that it thought supported a finding of a likelihood of confusion.

Finally, with its brief applicant has submitted a number of exhibits. The examining attorney has objected to these exhibits because they were not properly made of record during examination. Trademark Rule 2.142(d) provides that "[t]he record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed." Because the exhibits are manifestly untimely, we have not considered them.

This brings us to the substantive basis for refusal of the application, namely, the issue of likelihood of confusion. Our determination of this issue is based on an analysis of all of the probative facts in evidence that are relevant to the factors set 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 Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, 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 goods, applicant's goods include "loud-speakers" and "amplifiers," while the identifications in the cited registrations include "speakers" and "amplifiers." These goods are legally identical. The applicant's broader identification of "speakers" would also encompass the "car audio speakers" identified in applicant's application. Moreover, as the Examining Attorney has pointed out, many of the remaining goods in applicant's identification are closely related to the registrant's identified goods. For example, speakers can be used in connection with applicant's identified "compact disc players, portable compact disc players, portable compact disc players with radio audio cassette recorder, video cassette recorders, television sets and DVD players."

Applicant argues that its goods and those of the registrant are different because its goods are "consumer products which are used by ordinary purchasers for playing pre-recorded music," while the registrant's goods "are used by professional musicians when giving live performances." Brief, p. 8. Applicant also contends that the terms

"speakers" and "amplifiers" in the cited registrations encompass different types of products used in different fields, and therefore the other items in the identifications must be considered in determining the nature of these goods.

Applicant has not cited any cases in support of its position and, indeed, the well-established case law stands for the very opposite view. "It is well settled that the issue of likelihood of confusion between applied-for and registered marks must be determined on the basis of the goods as they are identified in the involved application and cited registration, rather than on what any evidence may show as to the actual nature of the goods, their channels of trade and/or classes of purchasers." In re Total Quality Group Inc., 51 USPQ 1474, 1476 (TTAB 1999). See also, Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). "Thus, where the goods in a cited registration are broadly described and there are no limitations in the identification of goods as to their nature, type, channels of trade or classes of purchasers, it is presumed that the scope of the registration encompasses all goods of the nature and type described, that the identified goods move in all channels of trade that would be normal for such

goods, and that the goods would be purchased by all potential customers." In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).

Accordingly, we can give no weight to applicant's argument that the registrant's speakers and amplifiers are sold to and used by only professional musicians, and that the goods are therefore different in nature from applicant's loud-speakers and amplifiers. These goods are legally identical, and many of the remaining goods are closely related. This factor, therefore, favors a finding of likelihood of confusion. See Tuxedo Monopoly, Inc. v. General Mills Fun Group, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods in the application).

Because there are no limitations in the channels of trade in either the application or the cited registrations, the goods, as noted above, must be deemed to be sold in all appropriate channels of trade. Applicant's argument that the registrant's goods are professional musical equipment sold only to professional musicians can be given no effect. Rather, because the goods are in part legally identical, these legally identical goods must be deemed to be sold in

the same channels of trade. Moreover, the Examining Attorney has made of record excerpts from the Best Buy website, showing that speakers, televisions, DVD players and recorders, car audio and video products, and portable audio products are advertised on the same page, and in the same "box." This evidence demonstrates that these goods, at the very least, are sold in the same channels of trade. The factor of the similarity of trade channels favors a finding of likelihood of confusion.

As to the relevant class of purchasers of applicant's and the registrant's goods, although applicant argues that the purchasers are different, this argument is based on the mistaken premise, discussed above, that it is permissible to limit the purchasers of the goods identified in the cited registrations to professional musicians. As we have pointed out, legally identical goods must be presumed to be sold to the same classes of purchasers. Moreover, the evidence from the Best Buy website shows that this company directs its advertising for various goods listed in applicant's application and its advertising for speakers (identified in the cited registrations) to the same group of purchasers, which may include ordinary purchasers.

This brings us to a consideration of the marks. When marks would appear on virtually identical goods or

services, as they do here, 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, 1700 (Fed. Cir. 1992). Applicant's mark is GT PRO BY GOTECH; the cited marks are GT ELECTRONICS and GT and design. GT is the dominant element in the registered marks. The word ELECTRONICS, in GT ELECTRONICS, is descriptive of the goods and has been disclaimed. Accordingly, it is the GT portion of the mark to which consumers will look for its source-indicating value. As for GT and design, although the letters GT are stylized, they are clearly recognizable. To the extent that the mark will be articulated, it will be as "G-T." As for applicant's mark, the letters GT also play a dominant role. The word PRO, as the Examining Attorney has pointed out, is a laudatory term indicating that the goods have a professional quality or are more advanced technologically. In fact, to the extent that applicant is correct, and the registrant's goods would be used by professional musicians, the word PRO in applicant's mark would indicate that at least some of its goods are also designed for the same class of consumers. Thus, not only does the word not distinguish applicant's mark from the

registered marks, but it may actually reinforce the idea that there is a connection in source.

Applicant's mark also includes the phrase BY GOTECH. While GOTECH is an arbitrary term that might, in other circumstances, serve as a distinguishing element, it does not do so in this case for two reasons. As applicant's specimens, shown below, clearly demonstrate, BY GOTECH has a very subordinate position in applicant's mark.



It is shown in much smaller letters than GT PRO, and is below and to the side of this term. As a result, GT PRO clearly appears as the dominant portion of the mark. Further, because of the use of "BY," consumers will view GOTECH in the mark as a house mark and, because of this, and the subordinate manner in which BY GOTECH is displayed, they are likely to refer to the product merely as GT PRO. See *Jayvee Brand, Inc. v. Doe Spun, Inc.*, 177 USPQ 713 (TTAB 1973), in which the Board found confusion likely between CUDDLER BY DOE SPUN and KITTEN KUDLERS, both for infants' clothing, with the Board's stating that in part

because CUDDLER was displayed on the applicant's labels separate from and in larger letters than BY DOE SPUN, purchasers might well rely upon CUDDLER alone in asking for and identifying the applicant's goods as to source.

Thus, the marks must be considered as similar in appearance and pronunciation.

The second reason that the element BY GOTECH does not serve to distinguish applicant's mark from the registrant's marks is that the addition of a house mark to one of two otherwise confusingly similar marks ordinarily does not serve to avoid likelihood of confusion.⁴ See *In re Christian Dior, S.A.*, 225 USPQ 533 (TTAB 1985) (LE CACHET DE DIOR for men's dress shirts and CACHET for toilet soap and cologne held likely to cause confusion); *In re Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) (HEAD START COSVETIC and design for hair care products likely to cause confusion with HEAD START for after-shave lotion); *Key West Fragrance & Cosmetic Factory, Inc. v. The Mennen Co.*, 216

⁴ Exceptions to this rule include cases where the product marks are descriptive of the goods or where there are significant differences between them, such that the inclusion of applicant's trade name in the mark might help to differentiate between the marks. However, neither of these situations exists in the present case. On the contrary, there is no evidence of any third-party use or registration of GT marks. Applicant's argument that GT is "weak" is unpersuasive; even if we accept applicant's assertion that GT is an acronym, this does not, in and of itself, make it a weak term that is entitled to only a limited scope of protection.

USPQ 168 (TTAB 1982) (MENNEN SKIN SAVER for hand and body lotion likely to cause confusion with SKIN SAVERS for face and throat lotion). In fact, in situations very similar to the present case, Courts and this Board have found that the addition of BY followed by a trade name exacerbates the likelihood of confusion, rather than obviating it. See, for example, Tefal, S.A., et al. v. Products International Co., et al., 186 USPQ 545, 548 (DNJ 1975), aff'd 529 F.2d 495, 189 USPQ 385 (3d Cir. 1976) (TEPAL-WARE BY PICAM likely to cause confusion with T-FAL; use of "By PICAM" on the label of defendants product following the designation "TEPAL-WARE" may actually enhance the likelihood of confusion); In re Apparel Ventures, Inc., 229 USPQ 225 (TTAB 1986) (SPARKS BY SASSAFRAS likely to cause confusion with SPARKS); In re Dennison Manufacturing Company, 220 USPQ 1015 (TTAB 1983) (inclusion of BY DENNISON in applicant's mark may increase the likelihood of confusion). Thus, the fact that applicant owns a registration for GOTECH does not entitle it to essentially appropriate the registrant's GT marks by simply adding this term to GT PRO, a mark that is confusingly similar to those of the registrant.

We have discussed the separate elements of the marks in detail not because we have dissected them, but to

explain why we consider the GT portion of applicant's mark and the registered marks to be dominant. It is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

We have also considered applicant's argument that the marks convey different connotations, but do not find it persuasive. Applicant claims that in its mark, "the connotation could be with relation to the GOTECH portion of the mark," while it asserts that GT in the registrant's marks is an acronym for its company name, Groove Tubes, LLC. With regard to its own use of GT, even applicant does not state unequivocally that consumers would view GT as an acronym for GOTECH, and we fail to see why consumers would make such a connection simply because these two letters appear in the name GOTECH. Certainly applicant has not submitted any evidence that shows that its company name has been abbreviated in such a manner. As for the cited registrations, simply because the name of the current owner

of those registrations has the initials GT does not mean that consumers will view GT in those marks as referring to registrant's trade name.⁵ Thus, based on this record, we think that consumers will view the letters GT in both applicant's and the registrant's marks as merely the letters "G" and "T," and that, when the marks are considered in their entirety, their connotations are the same.

Applicant's mark and those of the cited registrations are, overall, similar in appearance, pronunciation, connotation and overall commercial impression. The du Pont factor of the similarity of the marks favors a finding of likelihood of confusion.

Both applicant and the Examining Attorney have limited their arguments to the du Pont factors of the similarity of the marks and the similarity of the goods. Because of this, we have generally confined our discussion to these factors. We add only that, with respect to the factor of the conditions of purchase, because both applicant's and the registrant's identified goods include general consumer items, we must assume that the consumers of these products

⁵ It is interesting to note that, although the registrations are currently owned by Groove Tubes LLC, the applications which matured into the registrations were filed by Alesis Studio Electronics, Inc.

do not have any particular expertise or sophistication. Even if we accept that some of the goods are purchased with some degree of care (and we recognize that loudspeakers can fall into a very wide price range, such that they may be bought without great deliberation), even careful consumers are likely to believe, because of the similarity of the marks and the identity and/or related nature of some of the goods, that GT PRO BY GOTECH is a variation of the marks GT ELECTRONICS and GT and design, with all three marks indicating products emanating from a single source. Further, with respect to the factor of the number of similar marks in use on similar goods, we reiterate that there is no evidence of third-party GT marks, and that the registrant's GT marks must be considered strong marks, contrary to applicant's argument that an acronym (or more accurately, an initialism) is an inherently weak mark that is entitled to only a limited scope of protection. To the extent that any other factors are applicable, we must treat them as neutral.

Decision: The refusal of registration is affirmed.