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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Faith Publishing Service

Serial No. 78606842

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Publishing Service.

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Office 112 (Angela Wilson, Managing Attorney).

Before Grendel, Drost and Kuhlke, Administrative Trademark
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Faith Publishing Services has filed an application to
register the mark **faith** for goods identified as "general
interest magazine" in International Class 16.¹

Registration has been refused under Section 2(d) of
the Trademark Act, 15 U.S.C. §1052(d), on the ground that
applicant's mark, when used on its identified goods, so

¹ Application Serial No. 78606842, filed April 12, 2005, alleging
first use on July 15, 1999 and first use in commerce on December
8, 1999 under Section 1(a) of the Trademark Act. 15 U.S.C.
§1051(a).

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resembles the following registered marks owned by Rhema Bible Church as to be likely to cause confusion, mistake or deception:



for "mail order services in the field of books, records, and cassettes of a religious nature" in International Class 41, with the following disclaimer "No claim is made to the exclusive right to use the word 'Faith' and the configuration of a crucifix, apart from the mark as shown" and registered under Section 2(f);²



for "religious magazines" in International Class 16, with the following disclaimer "No claim is made to the exclusive right to use the design of the crucifix apart from the mark as shown";³

² Registration No. 1233970, issued April 5, 1983, renewed.

³ Registration No. 1402094, issued July 22, 1986, Section 9 renewal filed.



for "religious books and magazines, pamphlets, [sic] brochures, newsletters, and catalogs" in International Class 16 with the following disclaimer "No claim is made to the exclusive right to use 'Library Publications' and the crucifix apart from the mark as shown."⁴

When the refusal was made final and the request for reconsideration denied, applicant appealed. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

Our determination of the issue of likelihood of confusion 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*

⁴ Registration No. 1402095, issued July 22, 1986, Section 9 renewal filed.

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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).

We turn first to a consideration of the goods and services identified in the application and the cited registrations. It is well settled that goods or services need not be similar or competitive in nature to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods or services themselves, but rather whether purchasers are likely to confuse the source of the goods or services. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider the cited registrant's goods and services as they are described in the registrations and we cannot read limitations into those goods and services. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the cited registrations describe goods or services broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registrations encompass all goods or services of the type described, that they move in all channels of trade normal

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for these goods or services, and that they are available to all classes of purchasers for the described goods or services. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

Applicant's goods, "general interest magazines," and the goods identified in Registration Nos. 1402094, "religious magazines," and 1402095, "religious books and magazines, pamphlets, [sic] brochures, newsletters, and catalogs" are related to the extent that "general interest magazines" could include any topic, including religion, and "religious magazines" could include topics of general interest. Moreover, magazines for general interest include magazines written from a religious point of view, as shown by applicant's examples of its own "general interest magazine" in which it is described as "The Magazine of the Catholic Diocese of Lansing." As such, there would also be an overlap between applicant's and registrant's channels of trade and purchasers.

In addition, the record demonstrates that applicant's goods are related to the services in Registration No. 1233970, "mail order services in the field of books, records, and cassettes of a religious nature." The examining attorney has submitted third-party registrations to show that the same entities have adopted a common mark

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for magazines and mail order services in the field of books, etc. See, e.g., Registration No. 2943427 (magazines in the field of religion and mail order services featuring literature and books in the field of religion); No. 2776238 (monthly magazines in the field of arts, sciences, psychology, philosophy, metaphysics and mysticism and mail order catalogue services featuring products and materials related to arts, sciences, psychology, philosophy...including books, pamphlets etc.); No. 2593322 (magazines and mail order services featuring literature, books, audio and visual recordings in the field of religion and evangelism); and No. 1850152 (magazines and mail order services in the field of religious publications). These registrations suggest that the same source may provide both magazines and mail order services. See *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) (Although third-party registrations "are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may have some probative value to the extent that they may serve to suggest that such goods or services are the type which may emanate from a single source"). See also *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993).

Therefore, we conclude that applicant's general interest magazines and registrant's mail order services are related.⁵ In addition, the magazines and mail order services would, at a minimum, likely travel in the same channels of trade to the same purchasers who would be interested in magazines and other publications that contain religious content.

In view thereof, the du Pont factors of the similarity of the goods and services, the channels of trade, and class of purchasers favor a finding of likelihood of confusion as to the cited registrations.

We turn now to the first du Pont factor, i.e., whether applicant's mark and registrant's marks are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. The literal element in applicant's mark, FAITH, is identical in sound and meaning to the literal element, FAITH, in the registered marks. Although the appearance of applicant's mark is different from the marks in the registrations due to the design elements in Registration Nos. 1233970, 1402094 and 1402095, and the additional

⁵ It has frequently been found that consumers are likely to be confused by the use of similar marks on or in connection with goods and with services featuring or related to those goods. See *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985); and *In re United Service Distributors, Inc.*, 229 USPQ 237 (TTAB 1986).

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wording "LIBRARY PUBLICATIONS" in Registration No. 1402095, we do not believe that these differences create an overall different commercial impression sufficient to overcome a likelihood of confusion. Greater weight is often given to the word in a composite design and word mark because it is the word that purchasers would use to refer to or request the goods or services. In re Appetito Provisions Co. Inc., 3 USPQ2d 1553, 15544 (TTAB 1987). While we recognize that "[t]here is no general rule as to whether letters or designs will dominate in composite marks; nor is the dominance of letters or design dispositive of the issue," In re Electrolyte Laboratories Inc., 929 F.2d 645, 647, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990), the design in the registrant's marks does not mask the literal element. The word FAITH in the marks in each of the registrations is clearly discernable by potential purchasers and it is this word that potential purchasers would use in calling for registrant's goods or services. Even as to Registration No. 1402095 the word FAITH, which is shown twice, is more memorable and noticeable than the words LIBRARY PUBLICATIONS.

We note applicant's argument that FAITH is disclaimed in one of the registrations and, therefore, the shield design is the dominant element; however, a disclaimer does

not remove the disclaimed portion for purposes of our analysis, in particular, here where it is the only literal element in that mark. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). We further note that FAITH is not disclaimed in the other two registrations.

While we agree that the strength of the word FAITH used in connection with magazines and mail order services in the field of religion is, at a minimum, suggestive, even weak marks are deserving of protection. Moreover, although there are several third-party marks registered⁶ that include the term FAITH, as the examining attorney noted, all of these third-party marks include other literal elements that present a different connotation and overall commercial impression. See, e.g., Registration No. 2204663 (FOCUS ON FAITH); No. 2563996 (FAITH FIRST); No. 2305994 (FAITH HOPE & LOVE); No. 2577253 (FAITH AT WORK); and No. 2711872 (REEL FAITH). In contrast, applicant's mark consists solely of the word FAITH in lower case letters, thus, the connotation is identical to registrant's marks. Applicant's arguments to the contrary, the stylization in applicant's mark is

⁶ Third-party registrations are entitled to little weight on the issue of likelihood of confusion inasmuch as they are not evidence of use in the marketplace. However, third-party registrations may be relevant to show that a mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or

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very minor and does not serve to distinguish the marks. Applicant's argument that the mark includes a cross design in that the T is shaped like a cross, is not persuasive. All T's have a general cross shape and applicant's T does not stand out from the font used in the other lettering such that a consumer could perceive a separate design element. In addition, to the extent it includes a cross design that would create even more of a similarity to the registrant's marks which all include a cross design.

Thus, the factor of the similarity of the marks also favors a finding of likelihood of confusion.

In conclusion, we find that because the marks are similar, the goods and services are legally identical or otherwise related, and the channels of trade and class of purchasers are the same, confusion is likely between applicant's mark and the cited registrations. Finally, to the extent that any of the points argued by applicant may cast doubt on our ultimate conclusion on the issue of likelihood of confusion, we resolve that doubt, as we must, in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

services. See, e.g., AMF Inc. v. American Leisure Products, Inc., 474 F.2d 1403, 1406, 177 USPQ 268, 269-70 (CCPA 1973).

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