

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

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PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Bliss World LLC
v.
Lady Bliss, LLC

Opposition No. 91155876
to application Serial No. 76373680
filed on February 22, 2002

David W. Ehrlich of Fross Zelnick Lehrman & Zissu, P.C. for
Bliss World LLC.

Christopher J. Day for Lady Bliss, LLC.

Before Hohein, Hairston and Walters, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Lady Bliss, LLC has filed an application to register
the mark LADY BLISS and design, as reproduced below, for
"personal lubricants, namely, body oil, massage oil, nipple
creams, body creams, body lotions, body nipple blush and

cosmetic body paints, soaps, bubble bath, perfumes, shampoos, conditioners, body powders and bath powders."¹



Bliss World LLC has opposed registration under Section 2(d) of the Trademark Act. As grounds for opposition, opposer alleges that since prior to the filing date of applicant's application, it has owned and operated a chain of day spas and sold skincare products under the marks BLISS and BLISS SPA; that it is the owner of Registration No. 2,116,892 for the mark BLISS for "health spa services," Registration No. 2,327,749 for the mark BLISS SPA for cosmetics, namely, skin care moisturizer, body scrubs, skin soap, shower gel, and body firming gels and lotions," and Application Serial No. 76373680 for the mark BLISS for "body firming gels and lotions, shower gels and lotions, hair shampoo, body oil and perfume;" that "applicant has no basis to claim an earlier priority than [o]pposer;" and that

¹ Serial No. 76373680, filed February 22, 2002, which alleges a bona fide intention to use the mark in commerce. The application, as originally filed, also covered goods in class 10. However, the application has been divided and the class 10 goods are no longer part of this application.

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applicant's mark, when applied to applicant's goods, so resembles opposer's previously used and registered marks for the goods and services identified in opposer's registrations and application, as to be likely to cause confusion.

Applicant, in its answer, admitted that opposer is the owner of the pleaded registrations, and that it has no basis to claim an earlier priority than opposer. Applicant denied the remaining salient allegations of the likelihood of confusion claim.

Neither party took testimony nor introduced any other evidence. Only opposer filed a brief on the case. An oral hearing was not requested.

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. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, 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).

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With respect to the issue of priority, opposer argues that “[o]pposer’s prior rights, for Section 2(d) purposes, are established by its prior registrations and by Applicant’s admission in its Answer that Opposer has priority.” (Brief at 3). Although opposer pleaded ownership of Registration No. 2,116,892 and 2,327,749 in the notice of opposition, opposer failed to make copies of such registrations of record at trial. Moreover, applicant, in its answer, admitted only that opposer owned such registrations; not that the registrations are valid and subsisting. Thus, opposer may not rely on the pleaded registrations to establish its priority. See *Hewlett-Packard Co. v. Olympus Corp.*, 931 F2d. 1551, 18 USPQ2d 1710 (Fed. Cir. 1991) [admission only of ownership and not validity of registration is not sufficient to establish priority].

However, as noted above, opposer also pleaded in the notice of opposition that “applicant has no basis to claim an earlier priority than opposer.” Applicant admitted this allegation, and we deem this admission as a concession of opposer’s prior use of the pleaded marks BLISS SPA for skin care moisturizer, body scrubs, skin soap, shower gel, and body firming gels and lotions; BLISS for health spa services; and BLISS for body firming gels and lotions, shower gels and lotions, hair shampoo, body oil and perfume.

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Turning then to the parties' respective goods and services, opposer argues that the cosmetics and skincare products identified in applicant's application are identical and otherwise closely related to opposer's cosmetics and skincare products. Further, opposer maintains that "it is axiomatic that skincare products are used when spa services, such as massages, wraps, scrubs, etc. are provided," and thus, applicant's skincare products are highly related to opposer's health spa services. (Brief at 6).

It is well settled that goods and/or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the goods and/or services are related in some manner or that some 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 or intended to be used therewith, 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 and/or services. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

We find that, at a minimum, the body oil and body lotions identified in applicant's application are legally identical to the body oil and body lotions covered by

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opposer's BLISS mark. Moreover, it is common knowledge that these kinds of skincare products are sold in cosmetic stores, drug stores, mass merchandisers, and department stores to the general public. Thus, the channels of trade and purchasers of the parties' goods are the same.

We turn then to the parties' marks. Although the marks must be considered in their entirety, 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). Furthermore, the test 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 commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. Finally, as our principal reviewing court, the Court of Appeals for the Federal Circuit, has pointed out, "[w]hen marks would appear on virtually identical goods or services, 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).

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We turn then to compare opposer's mark BLISS and applicant's mark LADY BLISS and design. With respect to applicant's mark, the words LADY BLISS dominate over the design feature as the words comprise the portion of the mark that consumers will remember and use in calling for the goods. In re Appetito Provisions Co., Inc., 3 USPQ2d 1553 (TTAB 1987). Moreover, the design feature, which consists of the outline of a woman's face, merely reinforces the word LADY in applicant's mark. The words LADY BLISS are very similar to the entirety of opposer's mark BLISS. Due to the shared term BLISS, opposer's mark BLISS and applicant's mark LADY BLISS and design are similar in sound and appearance. Further, the marks are also similar in connotation and commercial impression. We judicially notice that Webster's New World College Dictionary (3d ed. 1997), at 149 defines the word "*bliss*" as "*great joy or happiness.*" Thus, each mark suggests skincare products that evoke a state of joy or happiness.

In finding that the parties' marks are similar, we also have kept in mind the normal fallibility of human memory over time and the fact that the average consumer retains a general rather than a specific impression of trademarks encountered in the marketplace. Thus, while there are differences in the marks, they are not sufficient to obviate the likelihood of confusion.

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We conclude that consumers familiar with opposer's body oil and body lotions sold under opposer's mark BLISS would be likely to believe, upon encountering applicant's mark LADY BLISS and design for the identical goods, that the goods originated with or are somehow associated with or sponsored by the same entity.

Decision: The opposition is sustained, and registration to applicant is refused.