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BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Choice Hotels International, Inc.
v.
Frank Sutelan

Opposition No. 110,688
to application Serial No. 75/172,191
filed on September 26, 1996

Fred W. Hathaway of Burns, Doane, Swecker & Mathis, LLP
for Choice Hotels International, Inc.

Frank Sutelan, pro se.¹

Before Quinn, Chapman and Wendel, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Frank Sutelan (an individual) filed on September 26,
1996, an application to register the mark SLEEPERS on the
Principal Register for services ultimately identified as

¹ Applicant was represented by an attorney during the ex parte prosecution of his application, and that attorney was entered as applicant's counsel of record in the opposition. However, applicant himself signed the papers filed in the opposition starting with the first answer filed on July 20, 1998. The record shows that applicant did not file a revocation of his previous power of attorney until January 31, 2000. (In the

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"hotel and motel services, namely, providing temporary lodging in transportable sleeping compartments." The application is based on applicant's assertion of a bona fide intention to use the mark in commerce.

Choice Hotels International, Inc. (a Delaware corporation) has opposed² registration alleging that since at least as early as 1987 opposer has used several trademarks, each including the word "SLEEP," to identify its hotel and motel services; that opposer owns five registrations (SLEEP, SLEEP INN, SLEEP INN and design, THE SLEEP INN CHOICE, and 1-800-62-SLEEP) and one pending application (WAKE UP!GO TO SLEEP); that opposer offers its services under its various "SLEEP" marks throughout the United States; that applicant's mark, if used in connection with his identified services, would so resemble opposer's previously used and registered marks, as to be likely to cause confusion, mistake, or deception; and that applicant's application was filed without a bona fide intention to use the mark in commerce, and thus, the application should be held void.

revocation paper, applicant stated that he would proceed pro se.)

² Opposer's motion to file an amended notice of opposition was granted, and the amended pleading was accepted, in a Board order dated December 7, 1999.

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Applicant, in his answer³, denied the salient allegations of the notice of opposition. [We note that after discovery had closed applicant filed a motion for leave to amend his answer, along with a second answer with a counterclaim against two of opposer's pleaded registrations. Applicant's motion to amend his answer was denied by Board order dated February 18, 1999; and his request for reconsideration thereof was denied on December 7, 1999.]

The record consists of the amended pleadings (only those accepted by the Board); the file of the opposed application; the testimony deposition, with exhibits, of Christian Burr, Jr., opposer's director of emerging brands; opposer's notice of reliance on (i) status and title copies of eight registrations owned by opposer⁴,

³ Applicant filed several different answers to the original and amended notices of opposition. In an order dated September 18, 2000, the Board accepted applicant's answer dated August 22, 2000. (In response to a written inquiry from opposer, on February 13, 2001, the Board clarified that applicant's August 22, 2000 answer is the controlling answer to opposer's amended notice of opposition.)

⁴ As noted previously, opposer's amended notice of opposition included reference to five registrations and one application. (The pleaded application subsequently issued as Registration No. 2,236,561.) Opposer's notice of reliance filed during its testimony period, includes the six pleaded registrations, as well as two additional registrations (Registration Nos. 2,123,162 and 2,140,795). While opposer did not move to further amend its pleading, we consider the pleading amended to conform to the evidence under Fed. R. Civ. P. 15(b). Therefore, opposer's two additional registrations (Nos. 2,123,162 and 2,140,795) are considered of record herein.

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(ii) applicant's responses to certain of opposer's requests for admission, (iii) applicant's responses to opposer's interrogatories and document requests, (iv) documents from an opposition between opposer and an unrelated third party, and (v) two documents produced by applicant; the testimony deposition, with exhibits, of Frank Sutelan, applicant; the testimony

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deposition, with exhibits, of Edward L. Barry, a friend of applicant who has engineering, construction and general business experience;⁵ and opposer's rebuttal notice of reliance on a search conducted of the electronic "yellow pages."

Both parties filed briefs on the case.⁶ An oral hearing was not requested.

⁵ Certain portions of the testimony depositions taken by applicant were submitted as "confidential" pursuant to a stipulated protective order between the parties (entered in the Board case by order dated February 13, 2001). Therefore, both parties submitted portions of their briefs on the case as "confidential."

⁶ In its brief, opposer renewed its timely objection to (i) the opinion testimony of Mr. Sutelan and of Mr. Barry regarding issues of law (p. 7), and (ii) applicant's trial testimony and exhibits offered in support of his asserted bona fide intention to use the mark in commerce, because the testimony and exhibits were directly responsive to prior discovery requests from opposer, but applicant had answered the discovery that he had no such documents or information (p. 28).

With regard to opposer's objection to the testimony of applicant's two witnesses as opinions on issues of law, suffice it to say that the Board has considered such testimony for whatever probative value, if any, it may have.

Regarding opposer's objections to the testimony and documentary evidence offered by applicant in support of his asserted bona fide intention to use the mark in commerce, it is clear that some of this documentary material was directly responsive to opposer's prior discovery requests, but was not produced to opposer. In fact, applicant answered many discovery requests by simply stating "none." A party who responds to a request for discovery by stating that it does not have the information sought is generally barred from later introducing the information sought in the request as part of its evidence in the case. See *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895 (TTAB 1988); and TBMP §527.05. In this case, it is clear that several of applicant's testimony exhibits relating to his asserted bona fide intention to use the mark were requested by opposer, but were previously denied to opposer. These exhibits have not been considered by the Board in reaching our

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Opposer is a lodging franchise organization founded about 60 years ago, and it is the second largest lodging franchise organization in the world with over 5000 hotels open or under development in 36 countries. The lodging market can be broken out into different categories such as economy, mid-market -- with food and beverage or without, luxury, etc. Opposer offers a variety of levels of services under different marks, including CLARION, QUALITY, COMFORT, SLEEP, ECONO LODGE and ROADWAY INNS; and some of those brands are further segmented such as QUALITY INN, QUALITY SUITES and COMFORT INN, COMFORT SUITES.

Choice Hotels International, Inc. first adopted the mark SLEEP INN in 1987 and efforts to franchise or sell franchises were ongoing, with the first establishment opening in 1989, and opposer has since made continuous use of the SLEEP INN marks. In the United States, opposer currently has 257 SLEEP INNS and SLEEP INN &

decision herein. However, applicant's testimony regarding his business ventures has been considered by the Board, especially in light of applicant's pro se status. (footnote continued)

Finally, the Board notes that opposer included Exhibits 1-3 with its reply brief. Inasmuch as these exhibits were not previously made of record, they are untimely and were not considered by the Board.

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SUITES⁷ open, with an additional 103 under development. While the majority of these franchises are located in the southeast and south central United States, the SLEEP INN hotel/motel franchise is available nationwide and there is a

⁷ Opposer first opened some suite units under the mark SLEEP INN & SUITES in late 1999 or early 2000. (Burr dep., pp. 29-30.)

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distribution of such properties nationwide. These franchise properties are located in a variety of types of locations, including urban, suburban, airports and resorts. In addition, many of these properties are in locations that host special events such as major conventions or major collegiate and professional sporting events. Choice Hotels International, Inc. has a contractual relationship with both the ESPN and Fox networks for advertising purposes.

Customers make arrangements to stay at SLEEP INNS in a variety of ways, including about 30% through central reservations (toll free telephone calls⁸, travel agents or opposer's website); booking directly through the hotel (i.e., booking through the franchisee); and coming directly off the road without advance reservation.

Opposer's annual sales for the year 2000 for its SLEEP INN brand were approximately \$200 million. Opposer's advertising budget for the same year for this brand was approximately \$5,300,000; and it advertises the SLEEP INN hotel and motel services on television, and in magazines such as "Good Housekeeping," "Reader's Digest," "Family Circle," and "Better Homes and Gardens." The

⁸ Opposer uses a few toll free numbers which incorporate the word "SLEEP" (including 1-800-SLEEP INN and 1-800-62-SLEEP) for reservations.

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target audience for opposer's services are primarily men ages 35-54 traveling on business, and secondarily for women ages 35-64 on leisure travel, and to seniors in general. In addition to advertising directed to the consumer, opposer conducts an advertising campaign directed to the lodging industry through industry trade magazines and directed to developers and owners of hotels who may be interested in franchising their properties as one of opposer's brands. (Opposer's registered mark "S.L.E.E.P. Sleep Leadership Educational Enhancement Program" and design for educational services is specifically directed to potential franchisees to indicate to them that opposer assists in educating the franchisees in the operation of SLEEP INNS.)

In March 1997 SLEEP INN was rated the number one hotel for value among customers of mid-priced chain hotels in the D.K. Shifflet & Assoc. Ltd. Lodging/Performance/Index; and in 1998 "Consumer Reports" rated SLEEP INN the number one motel/motel in a specific lodging category. In 1999 Cornell University (which assertedly has the premier hospitality program in the country) presented opposer an award for best business practices (champion in customer service) for its SLEEP

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INN hotels/motels; and in the year 2000, "Franchise Times Magazine" named SLEEP INNS to its top 200 franchises.

Opposer's witness, Mr. Burr, also testified that there are numerous types of temporary transportable lodging facilities, including cruise ships and trains, especially utilized at major events such as the Super Bowl or Mardi Gras; and that there are companies that provide both hotels and cruise ships, for example, Carlson companies (the parent of Radisson hotels and cruise ships), and the Disney company. Finally, he testified that opposer polices its SLEEP and SLEEP INN marks, and there are no third-party uses "in the same ballpark." (Dep. p. 36.)

Applicant is an architect located in Virginia Beach, Virginia. Around September 1995 he began to develop his concept for "the world's cheapest motel chain" (Sutelan dep., p. 5), which started out strictly to be a motel chain, but progressed into a unique hybrid concept of lodging.⁹ During the time he was pursuing his lodging concept, and more specifically around January 1996, applicant became aware of a "revolutionary" (dep., p. 12) structural material to which he turned his attention.

⁹ As explained earlier herein, applicant submitted portions of the record and his brief as "confidential." The specifics of

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This resulted in a "serious redirection" of applicant's efforts to the structural material opportunity. (Dep., p. 33.) Thus, he had two opportunities to pursue very close in time to one another--one being the motel concept and the other being the structural material as a new innovation in housing.

applicant's concepts and actions taken thereon cannot be disclosed and discussed in this decision.

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Applicant "really expected to get back to the Sleepers thing as quickly as possible" and he "expected to spend a minimum amount of time in the development of this application for a structural patent." (Dep., p. 34.)

Opposer submitted status and title copies of the following registrations:

(1) Registration No. 1,788,678, for the mark SLEEP for "hotel and motel services, and hotel and motel reservation services"¹⁰;

(2) Registration No. 1,690,604, for the mark SLEEP INN for "hotel and motel services"¹¹;

(3) Registration No. 1,712,382, for the mark shown below



for "hotel and motel services"¹²;

¹⁰ Reg. No. 1,788,678, issued August 17, 1993, Section 8 affidavit accepted, Section 15 affidavit acknowledged. The claimed date of first use is October 2, 1987.

¹¹ Reg. No. 1,690,604, issued June 2, 1992, Section 8 affidavit accepted, Section 15 affidavit acknowledged. The word "inn" is disclaimed. The claimed date of first use is October 2, 1987.

¹² Reg. No. 1,712,382, issued September 1, 1992, Section 8 affidavit accepted, Section 15 affidavit acknowledged. The word "inn" is disclaimed. The registration includes a statement that the stippling in the drawing is for shading purposes only and

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(4) Registration No. 1,788,675, for the mark 1-800-62-SLEEP

for "hotel and motel services, and hotel and motel reservation services"¹³;

(5) Registration No. 1,787,238, for the mark THE SLEEP INN CHOICE for "hotel and motel services, and hotel and motel reservation services"¹⁴;

(6) Registration No. 2,236,561, for the mark WAKE UP.GO TO SLEEP. for "hotel and motel services"¹⁵;

(7) Registration No. 2,123,162, for the mark FREQUENT SLEEPER for "hotel and motel services featuring a benefit award program for use of hotels and motels"¹⁶; and

(8) Registration No. 2,140,795, for the mark shown below

does not indicate color. The claimed date of first use is October 2, 1987.

¹³ Reg. No. 1,788,675, issued August 17, 1993, Section 8 affidavit accepted, Section 15 affidavit acknowledged. The claimed date of first use is May 1, 1992.

¹⁴ Reg. No. 1,787,238, issued August 10, 1993. The word "inn" is disclaimed. The claimed date of first use is November 1, 1989. The time for filing a Section 8 affidavit for this registration has passed, and there is no indication in the records of the USPTO that such an affidavit was filed. Although the USPTO records do not yet indicate that the registration has been cancelled under Section 8, this registration will not be given further consideration. See TBMP §703.02(a).

¹⁵ Reg. No. 2,236,561, issued April 6, 1999. The claimed date of first use is September 18, 1995.

¹⁶ Reg. No. 2,123,162, issued December 23, 1997. The claimed date of first use is February 15, 1995.

⚡ S · L · E · E · P ⚡

Sleep Leadership Educational Enhancement Program

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for "educational services, namely, conducting seminars and classes in the field of hotel management."¹⁷

In view of opposer's ownership of valid and subsisting registrations for its various marks such as SLEEP INN and SLEEP INN and design, the issue of priority does not arise in this opposition proceeding.¹⁸ See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974); *Massey Junior College, Inc. v. Fashion Institute of Technology*, 492 F.2d 1399, 181 USPQ 272, at footnote 6 (CCPA 1972); and *Carl Karcher Enterprises, Inc. v. Stars Restaurants Corp.*, 35 USPQ2d 1125 (TTAB 1995). Moreover, the record establishes opposer's use of its marks (with the exception of the mark THE SLEEP INN CHOICE) prior to the first date on which applicant can rely, the filing date of his application--September 26, 1996.

We turn now to consideration of the issue of likelihood of confusion. Our determination of likelihood of confusion is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on

¹⁷ Reg. No. 2,140,795, issued March 3, 1998. The words "educational enhancement program" are disclaimed. The claimed date of first use is September 1, 1996.

¹⁸ For the benefit of applicant, who is proceeding without an attorney in this opposition, we point out that the Board is an administrative tribunal that determines only the right to register marks. See TBMP §102.01.

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the issue of likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Based on the record before us in this case, we find that confusion is likely.

Turning first to a consideration of the parties' respective services, it is well settled that goods or services need not be identical or even competitive to support a finding of likelihood of confusion, it being sufficient instead that the goods or services are related in some manner or that the circumstances surrounding their marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. See In re Peebles, Inc., 23 USPQ2d 1795 (TTAB 1992); and In re International Telephone and Telegraph Corporation, 197 USPQ 910 (TTAB 1978).

In addition, in Board proceedings, "the question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-a-vis the goods and/or services recited in opposer's registration, rather than what the evidence shows the goods and/or services to be." Canadian Imperial Bank of Commerce,

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National Association v. Wells Fargo Bank, 811 F.2d 490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). That is, the issue of likelihood of confusion must be determined in light of the goods or services as identified in the opposed application and the pleaded registration(s) and, in the absence of any specific limitations therein, on the basis of all normal and usual channels of trade and methods of distribution for such goods or services. See In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); Octocom Systems Inc. v. Houston Computers Services Inc., 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983).

Applicant's identification of services clearly sets forth a specific type of hotel and motel services, namely "providing temporary lodging in transportable sleeping compartments." However, opposer's services are broadly identified as "hotel and motel services," and thus cover all types of hotel and motel services, including "providing temporary lodging in transportable sleeping compartments." That is, while applicant's identification of services is limited to a particular type of hotel and motel services, there is no such restriction in opposer's identifications of services. Because there is no

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limiting language which restricts opposer's services, we must presume that opposer's services encompass all types of hotel and motel services, including the more specific type set forth in the application. We find that the respective services, as identified, are overlapping because applicant's services are included within opposer's services.

Applicant's identification of services is not restricted as to channels of trade or purchasers. Thus, we must presume that applicant's services would be offered through all the ordinary and normal channels of trade for such services to all the usual purchasers for such services. See *Octocom Systems v. Houston Computer Services*, supra; *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991); and *In re Elbaum*, 211 USPQ 693 (TTAB 1981).

Inasmuch as there are no limitations on trade channels or purchasers in the identifications of services in applicant's application or in opposer's registrations, the parties' respective services must be considered to move in the same channels of trade, and would be offered

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to similar or at least overlapping classes of purchasers.¹⁹

Under the du Pont factor relating to the conditions of sale, the record shows that a room at opposer's SLEEP INN hotels and motels costs around \$55.00 per night, and while applicant's specific information on projected pricing was submitted as "confidential," it would certainly be considered in the budget category. Also, the average purchaser of hotel and motel services could vary from the person(s) driving down the road and deciding on impulse to stop for the day, to the person(s) who planned and made an advance reservation after careful consideration. Obviously, these are not expensive, luxury services requiring consumers to exercise great care and/or expertise in their purchase. In re Sailerbrau Franz Sailer, 23 USPQ2d 1719, 1720 (TTAB 1992). See also, Recot Inc. v. M.C. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000) ("[w]hen products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser

¹⁹ We note that Christian Burr, Jr., opposer's director of emerging brands, testified that opposer investigates market niches where there may be an unaccommodated demand and that opposer may or may not introduce a new brand or concept to meet that demand. (Dep., p. 53.)

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standard of purchasing care"). However, there is at least an ordinary level of care in selecting a hotel/motel and determining where to stay for the night, including safe location, cost, and services available.

We turn next to a consideration of the respective marks at issue. Opposer has relied on seven different marks, all of which include the root word SLEEP. In considering the similarities/dissimilarities between applicant's mark SLEEPERS, and opposer's various marks, we will focus on opposer's marks SLEEP, SLEEP INN, FREQUENT SLEEPER, and the mark shown below



all for services including at least, "hotel and motel services." Although the parties' marks are not identical, when considered in their entireties, the respective marks are similar in sound, appearance and commercial impression. The common significant element in both parties' marks is the same root term, SLEEP.

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Concerning the connotations of the respective marks, applicant's mark SLEEPERS may bring to mind either reference to people sleeping or the sleeping cars on railroad trains. There is no real potential connotation of a train car with respect to any of opposer's marks, including opposer's FREQUENT SLEEPER mark, which connotes a person who often stays at opposer's SLEEP INN hotels and motels. Opposer's major marks, e.g., SLEEP INN and SLEEP INN and design, carry the double entendre of "sleeping in" or sleeping later in the morning. The term SLEEP in opposer's registrations is suggestive of the services. Even though there is a possible different connotation of applicant's mark, the overall commercial impressions of the marks remain highly similar.

Moreover, the slight differences between applicant's mark SLEEPERS and each of opposer's various SLEEP marks may not be recalled by purchasers seeing the marks at separate times. The proper test in determining likelihood of confusion is not on a side-by-side comparison of the marks, but rather must be on the recollection of the average purchaser, who normally retains a general rather than specific impression of the many trademarks encountered; that is, a purchaser's

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fallibility of memory over a period of time must also be kept in mind. See *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); and *Spoons Restaurants Inc. v. Morrision, Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd unpub'd* (Fed. Cir., June 5, 1992). Potential purchasers may mistakenly believe that applicant's mark is another revised version of opposer's marks, with both parties' marks serving to indicate origin in the same source.

Thus, when we compare the parties' marks in their entirety we find that they are substantially similar in sound, appearance and commercial impression. See *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999). Their contemporaneous use, in connection with the same or closely related services, would be likely to cause confusion as to the source or sponsorship of such services. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 1307, 55 USPQ2d 1842 (Fed. Cir. 2000); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Another du Pont factor we consider in this case is the fame of opposer's marks. Opposer has demonstrated that certain of its registered marks are famous, specifically, SLEEP INN and SLEEP INN and design.

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Opposer has over \$200 million in annual sales, and it spends over \$5 million annually on advertising, nationwide in scope, and including ads on television and in well-known general publications such as "Better Homes and Gardens" and "Reader's Digest." The SLEEP INN marks have been used since 1987 (offering franchises) and since 1989 (hotels and motels open to the public). There is evidence of opposer's high ratings by, among others, "Consumer Reports" and Cornell University's hospitality program. In the year 2000 opposer had 3.6 million occupied rooms in its SLEEP INN hotels and motels, clearly indicating significant awareness of the SLEEP INN marks by the purchasing public.

Based on this record, we conclude that opposer's marks SLEEP INN and SLEEP INN and design are famous.²⁰ The fame of two of opposer's marks increases the likelihood that consumers will believe that applicant's services emanate from or are sponsored by the same source. When fame of a mark is established, then this du Pont factor is a key, dominant factor and must be accorded full weight in the overall determination of likelihood of confusion. See *Recot Inc. v. M.C. Becton*,

²⁰ The evidence does not establish that opposer's other involved "SLEEP" marks (e.g., WAKE UP.GO TO SLEEP., FREQUENT SLEEPER) are recognized by the purchasing public as famous marks.

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214 F.3d 1332, 54 USPQ2d 1894 (Fed. Cir. 2000); and Kenner Parker Toys Inc. v. Rose Art Industries Inc., 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992).

With regard to the du Pont factor on the variety of goods (or services) on which a mark is or is not used (house mark, "family" mark, product mark) opposer contends that its variety of uses of SLEEP marks, coupled with the fact that other major lodging companies (e.g., Holiday Inn, Ramada) offer a wide range of lodging services under related marks, have conditioned consumers to this variety, and that consumers will believe applicant's services originate with or are affiliated with opposer. The evidence supports this contention by opposer, and this factor slightly favors opposer.

Another du Pont factor to be considered in this case is the number and nature of similar marks in use for similar services. Applicant did not introduce any evidence of third-party uses, and in fact, applicant's witness, Mr. Barry, testified that he did not know of any other marks in use in the marketplace for lodging services which include the term "SLEEP." (Dep., p. 71). Moreover, opposer introduced evidence of its efforts to enforce its rights in its various "SLEEP" marks.

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Inasmuch as the record shows there not similar marks in use for similar services, this factor favors opposer.

Considering the du Pont factors relating to actual confusion as to the source of applicant's services under its mark SLEEPERS and opposer's services sold under its SLEEP INN marks, applicant's mark is not in use and therefore these factors are neutral in this case.²¹

Accordingly, because of the similarity of the parties' marks; the fame of two of opposer's marks; the parties' similar, overlapping services, as identified; and the similarity of the trade channels and purchasers of the respective identified services; we find that there is a likelihood that the purchasing public would be confused if applicant uses SLEEPERS as a mark for his services.

With regard to opposer's second pleaded ground for opposition, we again note that we cannot present the details of applicant's "confidential" concepts and his actions relating thereto--motel/lodging and structural material. However, the record is clear that applicant fully intended to pursue both projects, including the

²¹ Evidence of possible confusion between applicant's mark for his services (involving applicant reserving a toll free telephone number) and a third-party's mark for goods (submitted as "confidential") certainly does not establish actual confusion

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motel/lodging concept, and for which he applied for
registration of the

involving the source of applicant's and opposer's respective
services under their involved marks.

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involved mark SLEEPERS. Although applicant shifted his emphasis from the temporary lodging concept to the structural material project for a time, we find that opposer has not established by a preponderance of evidence that applicant lacked a bona fide intention to use the applied-for mark in connection with his identified services.

Decision: The opposition is sustained on the ground of priority and likelihood of confusion, and registration to applicant is refused.