

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: April 23, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Duncan*  
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Serial No. 85909106  
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Matthew H. Swyers of The Trademark Company PLLC,  
for Spencer Duncan.

Karen Bracey, Trademark Examining Attorney, Law Office 116,  
Michael W. Baird, Managing Attorney.

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Before Quinn, Bergsman and Gorowitz,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Spencer Duncan (“Applicant”) seeks registration on the Principal Register of the mark **Joe Momma’s Place** (in standard characters) for “restaurant services,” in International Class 43.<sup>1</sup>

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the registered mark **JOE MAMMAS** (in

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<sup>1</sup> Application Serial No. 85909106 was filed on April 19, 2013, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

standard characters) for, *inter alia*, “catering for the provision of food and beverages; catering of food and drinks; contract food services; food preparation; serving food and drinks; serving of food and drink/beverages” in Class 43.<sup>2</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

- A. The similarity or dissimilarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

We turn first to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound,

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<sup>2</sup> Registration No. 3752367, issued February 23, 2010. The mark in the cited registration was issued pursuant to Concurrent Use No. 94002604. Applicant’s registration is limited to the area comprising the East and West Coast and Northern tier of the United States, its territories and possessions, and specifically excludes the states of Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Tennessee, Texas and Utah.

connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. In a particular case, “two marks may be found to be confusingly similar if there are sufficient similarities in terms of sound *or* visual appearance *or* connotation.” *Kabushiki Kaisha Hattori Seiko v. Satellite Int’l, Ltd.*, 29 USPQ2d 1317, 1318 (TTAB 1991, *aff’d mem.*, 979 F.2d 216 (Fed. Cir. 1992) (emphasis in the original; citation omitted). *See also Eveready Battery Co. v. Green Planet Inc.*, 91 USPQ2d 1511, 1519 (TTAB 2009).

In comparing the marks, we are mindful that “[t]he proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). *See also San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d mem.*, 972 F.2d 1353 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Since the services at issue are restaurant services and catering services, the average customer is an ordinary consumer.

Applicant's is seeking to register the mark **Joe Momma's Place** (in standard characters) and the mark in the cited registration is **JOE MAMMAS** (in standard characters). Marks presented in standard characters are not limited to any particular depiction. The rights associated with a mark in standard characters reside in the wording and not in any particular display. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909-11 (Fed. Cir. 2012); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983); *In re RSI Systems, LLC*, 88 USPQ2d 1445, 1448 (TTAB 2008); *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988). Accordingly, the marks may be presented in the same size, font, color, etc. (e.g., **JOE MOMMA'S PLACE** and **JOE MAMMAS** or **Joe Momma's Place** and **Joe Mammass**).

The addition of the word "Place" to Applicant's mark **Joe Momma's Place** does not serve to distinguish Applicant's mark from the mark in the cited registration because it is descriptive. The word "Place" is defined, *inter alia*, as "a business establishment."<sup>3</sup> It is well-settled that descriptive matter may have less significance in likelihood of confusion determinations. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) ("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.'") (*quoting In re*

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<sup>3</sup> **THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE** (ahdictionary.com) attached to the Trademark Examining Attorney's Brief (6 TTABVUE 12). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).

*National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997).

We acknowledge that the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). On the other hand, 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.*, 224 USPQ at 751.

In any event, consumers may refer to Applicant's restaurant as **JOE MOMMA'S** because they will shorten **Joe Momma's Place**, to Joe Momma's. "[U]sers of language have a universal habit of shortening full names – from haste or laziness or just economy of words. Examples are: automobile to auto; telephone to phone; necktie to tie; gasoline service station to gas station." *In re Abcor Development Corp.*, 588 F.2d 511, 200 USPQ 215, 219 (CCPA 1978) (J. Rich, concurring).

[C]ompanies are frequently called by shortened names, such as Penney's for J.C. Penney's, Sears for Sears and Roebuck (even before it officially changed its name to Sears alone), Ward's for Montgomery Ward's, and Bloomies for Bloomingdales.

*Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1333 (TTAB 1992).

*See also Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ

390, 395 (Fed. Cir. 1983); *Big M Inc. v. The United States Shoe Co.*, 228 USPQ 614, 616 (TTAB 1985).

**Joe Momma's Place** has the same meaning and engenders the same commercial impression as **JOE MAMMAS**. The marks identify a business run by a real or fictional character named Joe Momma or Joe Mamma.

We find that the marks are very similar in terms of their appearance, sound, connotation and commercial impression.

B. The similarity or dissimilarity and nature of the services.

To show that restaurant and catering services are related, the Trademark Examining Attorney submitted nine use-based, third-party registrations for marks for restaurant and catering services listed in both the application and registration at issue. Third-party registrations which individually cover a number of different services that are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed services are of a type which may emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-1786 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). The registrations listed below are representative:

- Registration No. 4238396 for the mark GET UP & GEAUX!
- Registration No. 4487240 for the mark MILK BURGER and design
- Registration No. 4480097 for the mark ADA'S CAFÉ

Moreover, Registrant's description of services includes "serving food and drinks," which are activities rendered in a restaurant. A restaurant is "an establishment

where meals are served to customers.”<sup>4</sup> Accordingly, the services are of the parties are very similar, if not legally identical.

C. The established, likely-to-continue channels of trade.

Because the services described in the application and the cited registration are very similar, if not legally identical, we must presume that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 101 USPQ2d at 1908 (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011).

Applicant argues that his restaurant services will be rendered in a restaurant located “in Missouri as [sic] will provide takeout and delivery services exclusively to the citizens of Osage Beach, Missouri.”<sup>5</sup> On the other hand, Registrant’s catering services “are offered exclusively to the citizens in and around the city of Rockville, Maryland.”<sup>6</sup> Accordingly, Applicant concludes that “Applicant’s services travel in a channel of trade wholly diverse from those which would be expected for the services

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<sup>4</sup> **THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (UNABRIDGED)**, p. 1641 (2nd ed. 1987).

<sup>5</sup> Applicant’s Brief, p. 9 (4 TTABVUE 10).

<sup>6</sup> *Id.*

of the cited mark.”<sup>7</sup> Applicant’s argument is inapplicable because we are constrained to evaluate similarities in terms of potentially nationwide markets when Applicant is seeking geographically unrestricted registration. *In re Integrity Mutual Insurance Company, Inc.*, 216 USPQ 895, 896 (TTAB 1982). In other words, because Applicant is not seeking a geographically restricted registration through a concurrent use registration, we must presume that Applicant is marketing his services in Registrant’s trading area.

D. Balancing the factors.

Because the marks are similar, the services are in part identical and otherwise related, and we must presume that the services move in the same channels of trade and are sold to the same class of consumers, we find that Applicant’s mark **Joe Momma’s Place** for “restaurant services” is likely to cause confusion with **JOE MAMMAS** for “catering for the provision of food and beverages; catering of food and drinks; contract food services; food preparation; serving food and drinks; serving of food and drink/beverages.”

**Decision:** The refusal to register Applicant’s mark **Joe Momma’s Place** is affirmed.

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<sup>7</sup> *Id.*