

This Opinion Is Not A
Precedent Of The TTAB

Mailed: January 25, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Global Phoenix Computer Technologies Solutions, Inc.

Serial No. 86739928

Kathy Hsu, Vice President of¹
Global Phoenix Computer Techno Solutions Inc., *pro se.*

Eugenia K. Martin, Trademark Examining Attorney, Law Office 114,
K. Margaret Le, Managing Attorney.

Before Ritchie, Kuczma, and Coggins
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Global Phoenix Computer Techno Solutions Inc. (“Applicant”) filed an application to register the mark POWERMASTER, in standard character format, on the Principal Register, for “Batteries; Batteries and battery chargers; Battery cables; Battery chargers; Battery chargers for use with telephones; Battery jump starters; Battery packs; Cell phone battery chargers; Cell phone battery chargers for use in

¹ Ms. Hsu was named as Applicant’s correspondent.

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vehicles; Chargers for batteries; Chargers for electric batteries,” in International Class 9.²

The Trademark Examining Attorney refused registration of the mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the previously-registered mark POWERMASTER, registered on the Principal Register in typed drawing format,³ for “Batteries, namely automotive, commercial, industrial, and marine batteries,” in International Class 9,⁴ that when used on or in connection with Applicant’s mark, it is likely to cause confusion or mistake or to deceive.

Upon final refusal of registration, Applicant filed a timely appeal. Both Applicant and the Examining Attorney filed briefs. After careful consideration of the arguments and evidence of record, we affirm the refusal.

Likelihood of Confusion

We base our determination under Section 2(d) on an analysis of all of the probative evidence of record bearing on a 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

² Application Serial No. 86739928, filed on August 28, 2015 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging Applicant’s bona fide intent to use the mark in commerce.

³ “Prior to November 2, 2003, ‘standard character’ drawings were known as ‘typed’ drawings. . . . A typed mark is the legal equivalent of a standard character mark.” TMEP § 807.03(i) (Jan. 2017).

⁴ Registration No. 2056896, issued April 29, 1997. Renewed twice.

any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard 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”). We consider each of the factors as to which Applicant or the Examining Attorney presented arguments or evidence. The others, we consider to be neutral.

The Marks

We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). The mark in the cited registration is POWERMASTER, in typed drawing format, while Applicant’s mark is POWERMASTER, in standard character format. Applicant has conceded that these marks are identical,⁵ and we find that indeed they are the same in sight, sound, and commercial impression.

The first *du Pont* factor strongly favors a finding of likelihood of confusion.

The Goods and Channels of Trade

Preliminarily, we note that the more similar the marks at issue, the less similar the goods need to be for the Board to find a likelihood of confusion. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001). Moreover, goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion.

⁵ 5 TTABVUE 9.

Rather, it is enough that the goods 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 parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991). That said, Applicant identifies, along with battery-related products, "batteries," while the cited registration identifies "batteries, namely automotive, commercial, industrial, and marine batteries." Applicant argues that it offers different types of batteries than those offered by registrant. However, we must look at the plain wording of the registration in making our determination of likelihood of confusion. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.") (citations omitted). In this regard, it is clear that Applicant's identified "batteries" include and encompass the more specifically identified batteries in the cited registration. The goods are thus identical-in-part.

Because the goods are identical-in-part, we must presume that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358,

101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (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). Although Applicant asserts that it reaches end consumers via “mail orders, internet orders” while registrant uses “yellow pages,”⁶ there are no limitations on the channels of trade. *Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983); *see also In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because there are no limitations as to channels of trade or classes of purchasers in either the application or the cited registration, it is presumed that the services in the registration and the application move in all channels of trade normal for those services, and that the services are available to all classes of purchasers for the listed services).

Accordingly, these *du Pont* factors, too, favor finding a likelihood of confusion.

Actual Confusion

Applicant asserts that there are no documented instances of actual confusion. We note, however, that the absence of actual confusion carries little weight, especially in an *ex parte* context. *See In re Majestic Distilling Co, Inc.*, ~~315 F3d 1311~~, 65 USPQ2d ~~at 1201~~, 1205 ~~(Fed. Cir. 2003)~~. We note in particular that Applicant has not yet filed a statement of use. This factor is neutral.

Conclusion

Considering all of the evidence and arguments of record as they pertain to the relevant *du Pont* factors, we find that the marks are identical in sight, sound and

⁶ 5 TTABVUE 12.

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commercial impression, and the goods are identical-in-part and are likely to travel through the same and similar channels of trade to the same classes of purchasers. Accordingly, we find a likelihood of confusion between Applicant's mark POWERMASTER for "Batteries; Batteries and battery chargers; Battery cables; Battery chargers; Battery chargers for use with telephones; Battery jump starters; Battery packs; Cell phone battery chargers; Cell phone battery chargers for use in vehicles; Chargers for batteries; Chargers for electric batteries," and the POWERMASTER mark in the cited registration for "Batteries, namely automotive, commercial, industrial, and marine batteries."

Decision: The refusal to register is affirmed.