

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Heldt

Serial No. 86903948

Gene Bolmarcich, Law Offices of Gene Bolmarcich,
for Daniel Heldt.

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Before Zervas, Mermelstein, and Larkin,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Daniel Heldt (“Applicant”) seeks registration on the Principal Register of the mark shown below for “Handyman service, namely, building repair and maintenance; Interior sealing and caulking services; Building sealing and caulking services; Door repair services; Installation, maintenance and repair of doors and fences; Cleaning of gutters for residential homes and buildings; Lock repair services; Installation, repair and replacement of locks; Carpentry services; Pressure washing services; Remodeling of homes, buildings, kitchens and bathrooms; General building contractor services;

Residential and commercial building construction; Construction of buildings and residential homes, in International Class 37.¹



The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the mark shown in Registration No. 4081624² and reproduced below



for “building repair and maintenance services for residential and commercial structures,” as to be likely, when used in connection with Applicant's services, to cause confusion, mistake, or deception. After the Examining Attorney made the refusal final, Applicant timely appealed and requested reconsideration, which was

¹ Application Serial No. 86903948 was filed on February 10, 2016 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1(a), claiming first use and first use in commerce on November 1, 2007. Applicant has disclaimed the exclusive right to use “HANDYMAN SERVICE” apart from the mark as shown.

² The cited Registration No. 4081624 issued on January 10, 2012.

denied. Applicant and the Examining Attorney have filed briefs. We affirm the refusal to register.

I. Record on Appeal

The record on appeal includes Applicant's specimen and pages from third-party websites made of record by the Examining Attorney to show that the building repair and maintenance services identified in the cited registration and the services identified in the application in addition to "building repair and maintenance" services are commonly provided under the same mark. May 26, 2016 and June 22, 2016 Office Actions.

II. Likelihood of Confusion Refusal

Section 2(d) of the Trademark Act prohibits the registration of a mark that so resembles a registered mark as to be likely, when used in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. Our determination of likelihood of confusion under Section 2(d) is based upon an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). In every case under Section 2(d), two key considerations are the similarities between the marks and the similarities between the goods or 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"). We turn first to the similarity of the services.

A. Similarity of the Services, Trade Channels, and Classes of Customers

Our determination of the similarity of the services is based upon the identifications of services in the application and in the cited registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The services do not have to be identical or even competitive for confusion to be likely. “[L]ikelihood of confusion can be found ‘if the respective [services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.’” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

The identification of services in Applicant’s application includes “Handyman service, namely, building repair and maintenance,” while the identification of services in the cited registration is “building repair and maintenance services for residential and commercial structures,” a more narrowly recited version of the “building repair and maintenance” services identified in the application. Applicant's services and the services in the cited registrations are thus legally identical in part.³ The record also shows that the other services identified in the application are frequently offered under the same mark by companies who also offer building repair and maintenance

³ Likelihood of confusion may be found if it exists with respect to any one of Applicant’s services and the services in the cited registration. *See Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

services, such that they are closely related to building repair and maintenance services.⁴ This *du Pont* factor supports a finding of a likelihood of confusion.

The identity of the services in part impacts upon our analysis of two other *du Pont* factors. First, because the services are identical in part, we must presume that their channels of trade and classes of customers are identical for purposes of the third *du Pont* factor. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012). This *du Pont* factor thus also supports a finding of a likelihood of confusion.

Second, the identity of the services in part reduces the degree of similarity between the marks necessary for confusion to be likely. *See, e.g., Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016). We turn now to the *du Pont* factor regarding similarity of the marks.

B. Similarity of the Marks

This *du Pont* factor focuses on “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imports Inc. v. Veuve Cliquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). “The 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

⁴ In his brief, Applicant does not address any *du Pont* factor other than the similarity of the marks. 7 TTABVUE 2-3.

persons who encounter the marks would be likely to assume a connection between the parties.” *Coach*, 101 USPQ2d at 1721 (quotation omitted).

The Examining Attorney argues that “the wording is the dominant feature of both marks,” 9 TTABVUE 5 (citing *Viterra*, 101 USPQ2d at 1908), and that “the word portions are very similar, and create the same meaning and a highly similar impression. Both marks have the common wording HANDY and DAN. The marks have a highly similar sound and meaning, and make the same commercial impression even though the common terms are used in reversed order. Specifically, both indicate that the services are provided by a person named DAN who is HANDY or a HANDYMAN.” 9 TTABVUE 6.

Applicant acknowledges that “the word ‘Dan’s’ is the prominent part of the mark, with ‘HANDYMAN SERVICE’ serving as a descriptive designator for the services” and that “consumers would focus on the possessive name ‘Dan’s’ as the primary source identifier,” 7 TTABVUE 2, but argues that the “mere fact that both marks refer to a man named ‘Dan’ is heavily outweighed by the many differences in overall look, sound, and meaning.” 7 TTABVUE 3. Applicant also argues that “names are weak source identifiers,” that consumers “will not automatically assume that there can only be one person named Dan who provides services of this type,” 7 TTABVUE 3, n.1, that the word “handy” is used differently in each mark, and that the words in the cited mark are “a play on the expression ‘handy dandy.’” 7 TTABVUE 2-3.

We find that the marks are quite similar. Although marks must be compared as to appearance, sound, connotation and commercial impression, “[i]n a particular case,

any one of these means of comparison may be critical in finding the marks to be similar.” *M.C.I. Foods, Inc. v. Bunte*, 96 USPQ2d 1544, 1550-51 (TTAB 2010) (citing *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)).

We agree with the Examining Attorney that the words in the cited mark are more significant than the design as source identifiers. The marks sound similar when verbalized as “Dan’s Handyman Service” and “handy dan” because both contain the name Dan together with a form of the word “handy.” The transposition of these words in the two marks does not significantly affect their similar impression on the ear because both marks will be heard as identifying someone named “Dan” who is “handy” or who offers “handyman services.” *See, e.g., In re Nationwide Indus., Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (RUST BUSTER for rust-penetrating spray lubricants found similar to BUST RUST for penetrating oil); *Bank of Am. Nat’l Trust and Savings Ass’n v. Am. Nat’l Bank of St. Joseph*, 201 USPQ 842, 845 (TTAB 1978) (BANKAMERICA and BANK OF AMERICA found similar to AMERIBANC).

We find the close similarity of the marks in connotation and commercial impression to be the most important means of comparison in finding the marks to be similar. Applicant acknowledges that “both marks refer to a man named Dan,” 7 TTABVUE 3,⁵ and we agree with the Examining Attorney that the “name DAN identifies a specific person in both marks.” 9 TTABVUE 6. In Applicant’s mark, the “man named Dan” is identified to consumers, through the use of the possessive case,

⁵ There is no evidence in the record to support Applicant’s claim that names in general are “weak source identifiers,” 7 TTABVUE 3, n.1, and Applicant cites no cases for that proposition.

as the owner of the “Handyman Service” that provides the services offered under the mark, while in the cited mark, the “man named Dan” is similarly identified (and depicted in cartoon form right next to his name) as the real or fictitious service provider.⁶ We agree with the Examining Attorney that “the design portion for the registrant’s mark does not add anything to the commercial impression to distinguish the two marks because the rendering in the registrant’s mark appears to be a depiction of a handyman.” 9 TTABVUE 5.⁷

Applicant argues that the marks are dissimilar in impression because the word “handy” “is used in very different ways in each mark.” 7 TTABVUE 3. We disagree. Applicant acknowledges that “handy” is “a highly descriptive word when used in connection with ‘handyman services,’” 7 TTABVUE 3, and the different uses of the word “handy” in the marks do not detract from the similarity of the marks in connotation and commercial impression. To the contrary, the use of the word in different forms in both marks in connection with the name “Dan” that is common to

⁶ Applicant argues that consumers “will not automatically assume that there can be only one person named Dan who provides services of this type.” 7 TTABVUE 3, n.1. There is no evidence in the record to support this argument or to show that the distinctiveness of the name “Dan” as a mark for building repair and maintenance services has been reduced by third-party uses or registrations of marks containing “Dan” for those services.

⁷ The marks differ somewhat in appearance because the word elements in the marks appear in different forms of stylization and the cited mark contains design elements and a cartoon figure that have no counterparts in Applicant’s mark, but those “design features merely emphasize, in a pictorial way, the main word portion of the cited mark,” *In re Wine Society of America*, 12 USPQ2d 1139, 1142 (TTAB 1989), and, in any event, “the proper test is not a side-by-side comparison of the marks.” *Coach*, 101 USPQ2d at 1721 (quotation omitted). The differences in appearance are outweighed by the close similarity of the marks in sound and, in particular, connotation and commercial impression.

the marks enhances the similarity of the marks in commercial impression because the adjective “handy” defines the attribute that makes “Dan” a “handyman.”⁸

Applicant also argues that the cited mark “uses rhyming and a play on the expression ‘handy dandy’ as a means of making a strong commercial impression on consumers.” 7 TTABVUE 2-3. We disagree with this claim as well. The word portion of the cited mark, “handy dan,” does not rhyme, Applicant made of record no evidence regarding the claimed “expression ‘handy dandy,’” and we find that the words “handy dan” in the cited mark do not evoke the words “handy-dandy” as that phrase is defined in the *Oxford Advanced American Dictionary* and the *Merriam-Webster Dictionary*.⁹

The marks are similar in appearance, sound, and connotation and commercial impression when they are considered in their entireties. This *du Pont* factor supports a finding of a likelihood of confusion.

Conclusion

All of the relevant *du Pont* factors support a finding of a likelihood of confusion. The parties’ services, channels of trade, and classes of customers are identical in part,

⁸ We may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed form or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006). We judicially notice that the adjective “handy” is defined in the *Merriam-Webster Dictionary* (www.merriam-webster.com) as “clever in using the hand especially in a variety of useful ways,” while the noun “handyman” is defined therein as “one competent in a variety of small skills or inventive or ingenious in repair or maintenance work.”

⁹ We judicially notice the definition of the adjective “handy-dandy” as “very simple and easy to use” (*Oxford Advanced American Dictionary* (www.oxfordlearnersdictionaries.com)), and the definition of the noun “handy-dandy” as “a child’s game in which one child guesses in which closed hand another child holds some small object” (*Merriam-Webster Dictionary* (www.merriam-webster.com)).

and the parties' marks are sufficiently similar for confusion to be likely when they are used for identical services. We find that a consumer who is familiar with the cited mark for building repair and maintenance services for residential and commercial structures and who encounters Applicant's mark for the identical services would be likely to believe that those services emanate from a common source.

Decision: The refusal to register is affirmed.