

This Opinion is Not a
Precedent of the TTAB

Mailed: February 22, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Hughes

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Serial No. 87017171

Phillip Thomas Horton, of The Law Office of Phillip Thomas Horton,
for Joshua Hughes.

Diane Collopy, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

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Before Kuczma, Heasley, and Larkin,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Joshua Hughes (“Applicant”) seeks registration on the Principal Register of the mark FATHERS 4 LIFE in standard characters for “education services, namely, providing group classes, individual classes, seminars and workshops in the fields of family, specifically, improving family relationships,” in International Class 41.¹

¹ Application Serial No. 87017171 was filed on April 28, 2016 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), on the basis of Applicant’s allegation of a bona fide intention to use the mark in commerce. Applicant originally identified his services as “education services, namely, providing group classes, individual classes, seminars and workshops in the fields of family.” The Trademark Examining Attorney refused registration in part on the ground that this identification was indefinite, August 15, 2016 Office Action at

The Trademark Examining Attorney has refused registration of Applicant's 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 mark DADS 4 LIFE in standard characters shown in Registration No. 4738037 for "charitable services, namely, providing motivational speaking services in the field of parenting; educational and entertainment services, namely, providing motivational speaking services in the field of parenting; educational services, namely, conducting classes, seminars, conferences, and workshops in the field of parenting and distribution of course material in connection therewith; on-line journals, namely, blogs featuring parenting; providing online newsletters in the field of parenting via e-mail," in International Class 41,² as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake, or to deceive.

After the Examining Attorney made the refusal final, Applicant appealed. Applicant and the Examining Attorney have filed briefs. We affirm the refusal to register.

1, and suggested an amendment adding the words "specifically, improving family relationships," if accurate. When Applicant did not respond to the indefiniteness refusal, the Examining Attorney made it final. February 14, 2017 Office Action at 1. Applicant consented to the suggested amendment in his appeal brief, 4 TTABVUE 15, and the Examining Attorney accepted that amendment in her appeal brief. 7 TTABVUE 7.

² The cited registration issued on May 19, 2015. The registrant has disclaimed the exclusive right to use DADS apart from the mark as shown.

I. Record on Appeal and Evidentiary Issue

The record on appeal consists of definitions of the words “dad” and “father” from the OXFORD DICTIONARIES (oxforddictionaries.com),³ and Internet webpages reflecting the rendition of educational services relating to families, and parenting classes, under the same mark.⁴

Applicant attached to his appeal brief a dictionary definition, of unknown origin, of the word “father,” what appears to be Applicant’s Facebook page, and screenshots from the websites at dadtography.com, dailyrepublic.com, and goodmenproject.com. 4 TTABVUE 17-24. The Examining Attorney has objected to this evidence on the ground that it is untimely, and has requested that we disregard it. 7 TTABVUE 4.

Rule 2.142(d) of the Trademark Rules of Practice, 37 C.F.R. § 2.142(d), provides that the “record in an application should be complete prior to the filing of an appeal” and that “[e]vidence should not be filed with the Board after the filing of a notice of appeal.” “Generally, materials not previously made of record during prosecution of an application are untimely if submitted for the first time at briefing and will not ordinarily be considered by the Board.” *In re Pedersen*, 109 USPQ2d 1185, 1188 (TTAB 2013); *see also In re Fiat Grp. Mktg. & Corporate Commc’ns S.p.A.*, 109 USPQ2d 1593, 1596 (TTAB 2014). The materials submitted by Applicant with his brief are untimely, so we sustain the Examining Attorney’s objection to them and give them no consideration.

³ August 15, 2016 Office Action at 2-3.

⁴ August 15, 2016 Office Action at 4-6; February 14, 2017 Office Action at 2-6.

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 on or in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). 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). We consider each *du Pont* factor that is relevant and for which there is record evidence. *See, e.g., M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015). Two key factors in every Section 2(d) case are the similarity of the marks and the similarity of the goods or services because 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.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

A. Similarity of the Services

This *du Pont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration” *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1159 (Fed. Cir. 2014). The analysis of this factor is premised upon the identifications of services in the application and in the cited registration. *Id.* at 1161-63; *Octocom Sys., Inc. v. Houston Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir.

1990). The services need not be identical or even competitive for confusion to be likely. *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012). “[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.’” *Id.* (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

The services identified in Applicant’s application, as amended, are “education services, namely, providing group classes, individual classes, seminars and workshops in the fields of family, specifically, improving family relationships.” The services identified in the cited registration include “educational services, namely, conducting classes, seminars, conferences, and workshops in the field of parenting and distribution of course material in connection therewith.” The subjects of the classes, seminars, and workshops identified in the application and registration are “improving family relationships” and “parenting,” respectively.

Applicant avers that he “must concede the similarity of the goods or services as recited in the Applicant’s applied-for trademark as well as the registered trademark.” 4 TTABVUE 13. His concession is consistent with the record, which shows that entities provide classes regarding improving family relationships and parenting, the subject areas of the educational services identified in the application and cited registration, under the same marks. The webpage of one such entity is reproduced below.

3:04:11 PM 8/15/2016
https://www.scanva.org/support-for-parents/parent-education-program/parenting-classes/

SCAN
Building hope for children & families
in Northern Virginia

ABOUT CONTACT NEWS & EVENTS VOLUNTEER INFORMACION EN ESPAÑOL

Search SCAN SEARCH

child advocacy parent support prevention tools & community resources support scan

Parenting can be tough.
It's critical that we provide the information, skills and support to help
parents become positive, nurturing influences
in their childrens lives.

DONATE
VOLUNTEER

Parent Support

- PARENT SUPPORT
- PARENT EDUCATION PROGRAM
- PARENTING CLASSES
- EDUCATIONAL PARENT SUPPORT GROUPS
- PARENT RESOURCE CENTER
- PARENTING WORKSHOPS
- PARENT CONNECTION RESOURCE GUIDE
- RESOURCE GUIDE

Parenting Classes

SCAN offers a series of classes using the **Nurturing Parenting Program**[®] curriculum that help families learn how to care for one another. In these classes, participants learn about: child development, how to communicate physical and emotional needs, establishing routines for regular family activities, effective discipline methods, handling stress, and building family cohesion.

These classes are offered free of cost in both English and Spanish. There are no eligibility or residency requirements. Classes meet from 6:00 – 8:30 PM one night a week for 8 weeks. SCAN staff and volunteers facilitate the class and provide a light dinner and childcare for all participating families. Interested parents must contact the Parent Education Coordinator to register and schedule an intake interview. Registration generally starts one month prior to class start date.

ABCs of Parenting[®] in English

The program covers topics such as child development, praise and empathy, building your child's self-esteem, family rules, age-appropriate discipline, alternatives to spanking, and family stress management. No eligibility requirements. **Registration is required.** Class includes a family meal, childcare for children ages 0 to 4, a children's program with yoga component for children ages 5 and older, weekly raffles and educational materials.

Next session is planned for Fall 2016

ABCs of Parenting in SPANISH (Los ABCs para Padres[®] en Español)

Check back for future dates.

Vuelva a chequear nuestro sitio para fechas futuras.

Strengthening Families Program

SCAN of Northern Virginia has recently been awarded a grant to implement this program for parents of elementary and

August 15, 2016 Office Action at 4 (highlighting supplied by the Examining Attorney).

This *du Pont* factor supports a finding of a likelihood of confusion.

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 Imps. Inc. v. Veuve Cliquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re*

White Swan Ltd., 8 USPQ2d 1534, 1535 (TTAB 1988). “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 persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs.*, 101 USPQ2d at 1721. In determining whether the marks are similar, “we recognize that purchasers have fallible memories.” *Davia*, 110 USPQ2d at 1813. As Applicant acknowledges, the “focus is on the recollection of the average purchaser who normally retains a general rather than a specific impression of trademarks.” 4 TTABVUE 11. *See In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016).

Applicant’s mark FATHERS 4 LIFE and the cited mark DADS 4 LIFE both have three elements, the last two of which are identical, and both notably use the numeral “4” in lieu of the word “FOR.” The only difference between the marks is that “FATHERS” appears in Applicant’s mark where “DADS” appears in the cited mark. We agree with the Examining Attorney that “[a]lthough the substitution of this wording results in differences in the sound and appearance of a portion of the mark[s], the marks retain an identical meaning.” 7 TTABVUE 7.

The words “father” and “dad” are synonyms, as both identify a male parent.⁵ Applicant does not dispute the synonymous nature of “father” and “dad,” but argues that the word “father” has multiple meanings in his mark, and that the words “father” and “dad” have subtle differences in meaning in the respective marks.

⁵ The record shows that “dad” means “one’s father,” and that “father” means “a man in relation to his natural child or children.” OXFORD DICTIONARIES (oxforddictionaries.com). August 15, 2016 Office Action at 2-3.

Applicant acknowledges that his mark “FATHERS 4 LIFE creates a commercial impression of a DNA bond between a child and the father.” 4 TTABVUE 10. He claims, however, that his mark “also has a different impression as it can also relate to being a father in priesthood who is engaged in supporting and counseling families.” 4 TTABVUE 10.⁶ According to Applicant, “the registered trademark DADS 4 LIFE creates a commercial impression of a special relationship and bond that goes beyond just sharing DNA with a child, but being present and supporting your child, regardless of DNA. Since the word ‘father’ has different meanings, consumers would not confuse ‘father’ with ‘dad.’” 4 TTABVUE 10.

The issue, of course, is not whether consumers would “confuse ‘father’ with ‘dad,’” but whether the two words imbue the marks in which they appear with the same meaning. Applicant acknowledges that “the meaning or connotation of a mark must be determined in relation to the named goods or services.” 4 TTABVUE 11. There is nothing in the nature of Applicant’s mark FATHERS 4 LIFE as used for educational services “in the fields of family, specifically, improving family relationships,” or in the record,⁷ that suggests that the word FATHERS would be understood to refer to

⁶ The Board 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 take judicial notice that “father” may mean “a priest of the regular clergy; broadly: PRIEST — used especially as a title.” MERRIAM-WEBSTER ONLINE DICTIONARY (merriam-webster.com, accessed on February 14, 2018).

⁷ The interchangeable nature of the formal word “father” and its more informal synonym “dad” is illustrated by webpages in the record that offers a “New Boot Camp for Dads” that provides “an opportunity for expectant and new dads (and their babies) to connect with veteran dads for a frank discussion on the experience of becoming a father,” and that list under the heading “Library of Parenting Articles” Fathers” articles entitled “Dads &

priests, rather than to male parents.⁸ FATHERS 4 LIFE, considered in its entirety and in the context of Applicant's services, connotes the development of lifelong relationships between male parents and their children. That meaning is virtually identical to the meaning attributed by Applicant to the cited mark DADS 4 LIFE, "a connotation of special relationship and bond that goes beyond just sharing DNA with a child, but being present and supporting your child, regardless of DNA." 4 TTABVUE 13. We find that although FATHERS 4 LIFE and DADS 4 LIFE have some differences in appearance and sound, they are virtually identical in connotation and commercial impression, and that this means of comparison is the most significant one given our focus "on the recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks." *In re Bay State Brewing*, 117 USPQ2d at 1960. 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.*, 101 USPQ2d at 1721. This *du Pont* factor supports a finding of a likelihood of confusion.

Daughters: Power and Potential" and "Want More Harmony & Cooperation from your Kids? 4 Things all Dads Should Avoid." February 14, 2017 Office Action at 2, 6.

⁸ The word FATHERS might be understood to refer to priests if the educational services with which the FATHERS 4 LIFE mark were used involved a subject more obviously associated with the priesthood, such as anti-abortion counseling. In that context, the word FATHERS might reasonably be understood to refer to the providers of the services, members of the "priesthood who [are] engaged in supporting and counseling families." 4 TTABVUE 10. In the context of Applicant's educational services, however, the word FATHERS plainly refers to the recipients of the services, not to their providers.

C. Sophistication of Purchasers

The fourth *du Pont* factor concerns the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing,” respectively. *Stone Lion*, 110 USPQ2d at 1159. Applicant argues that “[t]raditionally, consumers of these goods [sic] are sophisticated insofar as consumers know the difference between what it means to be a ‘father’ and what it means to be a ‘dad’” and “some consumers will see ‘father’ and think of a religious institution, so while consumers may confuse the word ‘father,’ consumers will not confuse the word ‘father’ with ‘dad.’” 4 TTABVUE 14. Applicant concludes that “consumers exercise sufficient care in the purchase of the respective goods or services that clearly would minimize any potential for a likelihood of confusion as between the respective trademarks.” 4 TTABUE 14.

As discussed above, there is nothing in the record supporting Applicant’s claim that consumers of the respective educational services will perceive subtle distinctions between the words “fathers” and “dads” or understand “fathers” to mean priests, or establishing that such consumers are otherwise sophisticated purchasers of the services. The record confirms that Applicant’s “education services, namely, providing group classes, individual classes, seminars and workshops in the fields of family, specifically, improving family relationships” and the registrant’s “educational services, namely, conducting classes, seminars, conferences, and workshops in the field of parenting” are offered to the general public, and “Board precedent requires the decision to be based ‘on the least sophisticated potential purchasers’” of the

services. *Stone Lion*, 110 USPQ2d at 1163 (internal quotation omitted). This *du Pont* factor is neutral.

D. Lack of Evidence of Actual Confusion

Applicant argues that “there is no evidence of record indicating that there has been actual confusion in the marketplace between Applicant’s services and the registrant’s services.” 4 TTABVUE 14. Applicant acknowledges that the “absence of any instances of actual confusion is a meaningful factor where the record indicates that, for a significant period of time, an applicant’s sales and advertising activities have been so appreciable and continuous that, if confusion were likely to happen, any actual incidents thereof would be expected to have occurred and would have come to the attention of one or all affected trademark owners.” *Id.* Here, of course, there has been no opportunity for actual confusion to have arisen because Applicant filed his application on the basis of his alleged intention to use his claimed mark, and there is no evidence of any “sales and advertising activities” by Applicant under the mark. This *du Pont* factor is neutral.

E. Conclusion

The relevant *du Pont* factors support a finding of a likelihood of confusion because the services are related and the marks are very similar. We find that confusion as to the source or sponsorship of Applicant’s services is likely.

Decision: The refusal to register is affirmed.