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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Mrs. United States National Pageant, Inc.

v.

Melvin A. Richardson and Mary C. Richardson

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Opposition No. 91165290  
to application Serial No. 76503247  
filed on March 26, 2003

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Peter Georges of Breneman & Georges for Mrs. United States  
National Pageant, Inc.

James W. Hiney of The Technology Law Offices of Virginia for  
Melvin A. Richardson and Mary C. Richardson.

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Before Hairston, Drost and Taylor, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Melvin A. Richardson and Mary C. Richardson  
(applicants) filed an intent-to-use application to register  
the mark MRS. U.S. INTERNATIONAL for services ultimately  
identified as "promoting the goods and services of others  
through the medium of pageants and contests conducted on a  
national and regional basis" in International Class 35.<sup>1</sup>

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<sup>1</sup> Serial No. 76503247, filed March 26, 2003.

**Opposition No. 91165290**

Registration has been opposed by Mrs. United States National Pageant (opposer) under Section 2(d) of the Trademark Act. Opposer alleges that since prior to the filing date of applicants' application, it has continuously used the registered marks MRS. UNITED STATES NATIONAL PAGEANT<sup>2</sup> (standard character form) and MRS. UNITED STATES<sup>3</sup> (stylized) in connection with "entertainment services in the nature of beauty and talent pageants;" and that applicants' mark MRS. U.S. INTERNATIONAL, if used in connection with applicants' services, so resembles opposer's previously used and registered marks as to be likely to cause confusion.

Applicants, in their answer, denied the salient allegations of the notice of opposition.<sup>4</sup>

Preliminary Matters

Before turning to the record and merits of the case, we must discuss several preliminary matters.

The first matter we consider is "Applicants' Motion To Strike Deposition Testimony And Objection To Conduct Of Opposer's Counsel During Rebuttal Testimony Deposition,

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<sup>2</sup> Registration No. 1851722, issued August 30, 1994; renewed. The words UNITED STATES NATIONAL PAGEANT are disclaimed apart from the mark.

<sup>3</sup> Registration No. 2083350, issued July 29, 1997; renewed. The words UNITED STATES are disclaimed apart from the mark.

<sup>4</sup> Applicants also asserted the affirmative defense of laches, alleging that opposer failed to object to prior use of the mark MRS. U.S. INTERNATIONAL by applicants' predecessor-in-interest. In a decision issued February 27, 2007 in connection with the parties' motions for summary judgment, the Board advised applicants that they had no basis for a laches defense. In view thereof, we have given no further consideration to this defense.

**Opposition No. 91165290**

filed October 2, 2007." By way of this motion, applicants seek to strike the rebuttal testimony depositions of opposer's witnesses Isabella Ilacqua and Sheila Strassburg in view of alleged misconduct by opposer's attorney. Applicants alternatively request that the Board treat the motion to strike as a motion to dismiss the opposition. In addition, applicants request an award of attorneys' fees in connection with filing the motion. On October 17, 2007 opposer filed a brief in opposition to the motion; action on the motion was subsequently deferred until final hearing.

In its main brief on the case, opposer states that "since the undersigned new counsel for the Opposer has not relied upon any of the rebuttal testimony, the Applicants' Motion is believed moot." (Brief, pp. 19-20). Applicants, in their brief, state that the motion to strike is still pending as is the request that the motion to strike be treated also as a motion to dismiss the opposition. We construe the statement in opposer's brief that it has not relied upon the rebuttal testimony as a concession of applicants' motion to strike. Thus, the Ilacqua and Strassburg rebuttal testimony depositions do not form part of the record in this case and have not been considered. Under the circumstances, applicants' alternative request that we treat the motion to strike also as a motion to dismiss the opposition is denied as moot. Moreover, insofar

**Opposition No. 91165290**

as applicants' allegations concerning misconduct by opposer's prior counsel are concerned, applicants are advised that the Board will not hold any person in contempt. See Trademark Board Manual of Procedure (TBMP) §502.05 (2d ed. rev. 2004). Conduct that is in violation of USPTO Canons and Disciplinary Rules may be referred to the Office of Enrollment and Discipline for appropriate action. See 37 CFR §§10.20, et. seq. Furthermore, applicants request for attorneys' fees is denied as the Board does not award attorneys' fees. See TBMP §502.05.

Both parties submitted notices of reliance on materials that are not proper subject matter for a notice of reliance. Although the parties did not file a motion or stipulation agreeing to the introduction of such materials by way of a notice of reliance, we note that neither party objected to the notices of reliance and they have treated all materials submitted by the notices of reliance as being of record. Under the circumstances, we deem the parties to have stipulated to the introduction of all materials through the notices of reliance.

Opposer, in its brief on the case, argues that applicants' mark is deceptively misdescriptive of applicants' services. This issue was not pleaded in the notice of opposition, and it cannot be deemed to have been placed in issue and tried by the parties by express or

implied consent, as provided by Fed. R. Civ. P. 15(b). In view thereof, opposer's arguments in this regard have not been considered.

Attached to applicants' brief on the case are Exhibits 1-5 which applicants maintain show that they are currently using the applied-for mark and related marks. Exhibits attached to a party's brief on the case can be given no consideration unless they were properly made of record during the time for taking testimony. In this case, the exhibits were not introduced during applicants' testimony period and, therefore, the exhibits have not been considered.

#### The Record

The record consists of the pleadings and the file of the involved application. Opposer submitted a notice of reliance on, inter alia, certified copies of its pleaded registrations, website printouts, souvenir program booklets, newspaper articles, letters, and responses to discovery requests; and the testimony depositions (with exhibits) of opposer's president, Ms. Isabella Ilacqua, and opposer's New York State Executive Director, Sheila M. Sgrassburg. Applicants submitted the discovery deposition of opposer's president Ms. Ilacqua; the testimony depositions of applicants Mary Richardson and Melvin Richardson, the director of the Arkansas state Mrs. International Pageant,

**Opposition No. 91165290**

Berneer Thurow, and a prior winner of the Mrs. International pageant, Virginia Thornton. Applicants also submitted a notice of reliance on, inter alia, a third-party registration, print and Internet web advertisements, newsletters, souvenir programs, emails, correspondence, and discovery responses.

The opposition has been fully briefed.

Standing and Priority

Because opposer has made of record certified copies showing status and title of its pleaded registrations, and because its likelihood of confusion claim is not without merit, we find that opposer has established its standing to oppose registration of applicants' mark. Lipton Industries, Inc. v. Ralston Purina Company, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Further, because opposer has made its pleaded registrations of record, priority is not an issue in this case with respect to the marks and services identified therein. King Candy Co., Inc. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Likelihood of Confusion

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the likelihood of confusion factors set forth in In re E. I. duPont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of

**Opposition No. 91165290**

confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods and/or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

The Parties

Opposer's president, Isabella Ilacqua, first became involved in the pageantry business in 1985. In 1990 opposer began using the mark MRS. UNITED STATES NATIONAL PAGEANT to identify its beauty pageant and the mark MRS. UNITED STATES to identify the winner of the pageant. Since 1990 opposer has continuously used these marks in connection with its beauty pageant.

Applicants Melvin A. Richardson and Mary C. Richardson are husband and wife. They entered the beauty pageant business in 2000 after purchasing the assets of the "Mrs. International" pageant from Dennis and Sue Holland, owners of that pageant. Among the assets applicants purchased from the Hollands included the applied-for mark MRS. U.S. INTERNATIONAL.

Fame

The first duPont factor we consider is fame, because this factor plays a dominant role in cases featuring a famous mark. *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894 (Fed. Cir. 200);

**Opposition No. 91165290**

and Kenner Parker Toys, Inc. v. Rose Art Industries, Inc., 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992). Fame for likelihood of confusion purposes arises "as long as a significant portion of the relevant consuming public ... recognizes the mark as a source indicator." Palm Bay Imports, Inc. v. Vieve Clicquot Ponsardin Maison Fondee En 1722, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). In this case, the relevant consumers would be potential beauty pageant contestants and pageant spectators.

Fame may be measured indirectly by the volume of sales and advertising expenditures of the goods and services at issue, by the length of time the mark has been in use, widespread critical assessments and notice by independent sources of the goods and services identified by the mark, as well as the general reputation of the goods and services. Bose Corp. v. Audio Products Inc., 63 USPQ2d at 1305-06.

Opposer contends that its registered marks are famous. The evidence of record shows that opposer has used its MRS. UNITED STATES NATIONAL PAGEANT and MRS. UNITED STATES marks for over 18 years. In addition, the evidence shows that since 1997 opposer has maintained a website where interested women can obtain information about its beauty pageant and since the same date opposer has advertised its beauty pageant in Pageantry Magazine. Ms. Ilacqua testified that she has received positive feedback from contestants in

opposer's pageant. The Las Vegas Sun newspaper, in an article dated August 1, 1997, described opposer's pageant as "the premier event of its kind." Ms. Strassburg, the executive director of the Mrs. New York State Pageant for the MRS. UNITED STATES NATIONAL PAGEANT testified that "MRS. UNITED STATES is a very well-respected pageant ... it's considered among the top two for married women in the United States." (Dep. at 23).

This evidence is insufficient to support a finding that opposer's marks are famous. Although opposer has used its MRS. UNITED STATES NATIONAL PAGEANT and MRS. UNITED STATES marks for over 18 years, opposer has offered no evidence regarding its profits and advertising expenditures. Moreover, the testimony of opposer's witnesses Mrs. Ilacqua and Mrs. Strassburg with respect to the reputation of opposer's beauty pageant is self-serving, and a single news article describing opposer's pageant as "the premier event of its kind" is hardly evidence of widespread critical assessments.

In view of the extreme deference that we accord a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting that its mark is famous to prove it.

Leading Jewelers Guild Inc. v. LJOW Holdings LLC, 82 USPQ2d

**Opposition No. 91165290**

1901, 1904 (TTAB 2007). We do not find on this record that opposer's MRS. UNITED STATES NATIONAL PAGEANT and MRS. UNITED STATES marks are famous for purposes of our likelihood of confusion determination.

The Services

We consider next the respective services of the parties and, in connection therewith, the trade channels and purchasers. The question of likelihood of confusion must be determined based on an analysis of the services recited in the involved application vis-à-vis the services recited in opposer's registrations, rather than what the services are asserted or shown to actually be. See *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that the services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the respective services are related in some manner, or the 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 therewith, to a mistaken belief that they originate

**Opposition No. 91165290**

from or are in some way associated with the same producer or that there is an association between the producers of each party's services. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991) and cases cited therein.

Opposer's services are identified in its two registrations as "entertainment services in the nature of beauty and talent pageants." Applicants' services are identified in their application as "promoting the goods and services of others through the medium of pageants and contests conducted on a national and regional basis." In the absence of any limitations in applicants' recitation of services, it must be presumed that the recited pageants include beauty and talent pageants. Therefore, there is no question that the parties' services are related, if not virtually identical, to the extent that they involve beauty and talent pageants. The only distinction is that, as recited, the primary purpose of applicants' pageant is to promote the sale of goods and services of others (i.e., the pageant sponsors) whereas opposer's pageant is presented primarily as entertainment for the general public. This is a distinction without a difference in the context of our likelihood of confusion analysis. In other words, the parties' services are not rendered different because applicants' pageant will have sponsors whereas opposer's pageant may not.

**Opposition No. 91165290**

Furthermore, we are not persuaded by applicants' argument that the services are different because applicants "provide a higher class of service" in terms of "control of content and quality of contestants" and "approach." (Brief, pp. 28-29). Applicants' recitation of services is not limited to "high class" pageants, and even if it were, opposer's recitation of services is broad enough to encompass "high class" pageants.

With respect to the trade channels and purchasers, applicants argue that the respective trade channels are different because applicants conduct their pageant in an "upscale venue" in Skokie, Illinois whereas opposer conducts its pageant in an "off the main strip" Las Vegas motel. However, neither party's recitation of services is restricted as to the geographic scope of services, channels of trade or classes of purchasers; thus we must presume that the services would be offered in all ordinary trade channels for these services and to all normal classes of purchasers for the services identified. See *Canadian Imperial Bank*, 1 USPQ2d at 1815. In other words, we conclude that the channels of trade and class of purchasers of the parties' services, at the very least, overlap.

Actual Confusion

The next duPont factor we consider is that of actual confusion. Opposer points to several incidents of what it contends is actual confusion with the use of MRS. U.S. INTERNATIONAL by applicants' predecessor-in-interest. Specifically, opposer's president Ms. Ilacqua testified that she had received three or four telephone calls inquiring whether the MRS. UNITED STATES PAGEANT was part of the MRS. U.S. INTERNATIONAL pageant. Also, Ms. Strassburg testified as follows with respect to actual confusion:

Q. ... During the time that you were employed were any New York contestants actually confused into thinking that if they won the Mrs. United States National Pageant, they would be going onto (sic) compete in the Mrs. US International pageant?

A. Yes, they were.

Q. And, can you give me a percentage of contestants that were actually confused?

A. Yeah. You know, honestly, I would say about between 16 to 20 percent depending on the year.

...

Q. Now, at the national pageant finals in Las Vegas for the Mrs. United States National Pageant, did you have discussions with other state directors about actual confusion among the contestants?

A. Absolutely. There was (sic) discussions.

Q. And what did they say about the percentage of their contestants -- or did they say anything about the percentage?

A. No. They didn't say anything about their percentage. But they took issue in the national director's meeting with Isabella.

Q. Did they confirm that there was some confusion?

A. Absolutely, yes. That was a great topic of discussion for a few years, actually.

(Dep. at 7-9).

In addition, opposer introduced a page from the September 21, 1994 edition of The Sentinel News which includes a picture of a woman wearing a crown and a sash bearing the title MRS. U.S. INTERNATIONAL with a caption that reads "Suzanne Burger of Adairsville, the new Mrs. United States International ..." (underlining added).

The telephone calls related by Ms. Ilacqua show, at most, that inquiries were made as to the relationship, if any, between opposer's pageant and the pageant of applicants' predecessor-in-interest. It is not clear, however, that the persons were, in fact, confused. Insofar as the newspaper page is concerned, this is hardly evidence of actual confusion between applicants' mark and opposer's marks since neither of opposer's specific marks appears on this page. The fact that the newspaper used the designation "United States" in a caption rather than the abbreviated equivalent "U.S." shown in the photograph is not evidence of actual confusion between the marks involved in this case.

Furthermore, Mrs. Strassburg's testimony that pageant directors in other states reported confusion among their pageant contestants is hearsay. With respect to Mrs.

**Opposition No. 91165290**

Strassburg's testimony concerning alleged confusion among contestants in her New York pageant, there is no specific information directly from any contestants as to why they believed if they won opposer's MRS. UNITED STATES NATIONAL PAGEANT, they would go on to compete in the MRS. U. S. INTERNATIONAL PAGEANT. In the absence of such information, Mrs. Strassburg's testimony is of little probative value. See *Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1690-91 (TTAB 1987) [testimony of others is of little probative value in the absence of testimony from the persons allegedly confused as to whether they were confused and, if so, what caused their confusion].

In short, we find opposer's proffered evidence of actual confusion too vague to constitute persuasive evidence of actual confusion.

Bad faith adoption

Opposer argues that applicants have acted in bad faith and with the intention of trading on opposer's goodwill in its MRS. UNITED STATES NATIONAL PAGEANT and MRS. UNITED STATES marks. Evidence of bad faith adoption is a relevant factor in a likelihood of confusion analysis. However, in this case, applicants purchased rights in the MRS. U.S. INTERNATIONAL mark from a predecessor-in-interest, and although applicants knew of opposer's marks, an applicant's mere knowledge of an opposer's mark does not establish that

the applicant adopted its mark in bad faith. In short, we are not persuaded that applicants acted in bad faith or that applicants intended to trade on opposer's goodwill in its MRS. UNITED STATES NATIONAL PAGEANT and MRS. UNITED STATES marks.

The Marks

We next consider whether applicants' mark, MRS. U.S. INTERNATIONAL and opposer's marks, MRS. UNITED STATES NATIONAL PAGEANT and MRS. UNITED STATES in the stylized form shown below,

*Mrs. UNITED STATES*

are similar or dissimilar. Opposer contends that the marks are similar:

Both the Opposer and the Applicants use the first term, Mrs. Potential beauty pageant contestants and members of the general public often abbreviate the second term "United States" as "U.S." which the Applicants intend to use.

Since the Applicants intend to use "International" as a part of their marks, potential beauty pageant contestants and members of the general public are also likely to think that the Applicants' "International" Pageant is an umbrella pageant which is held at least one level above the Opposer's "National Pageant."

(Brief, p. 23)

Applicants, on the other hand, contend that the marks are dissimilar; that the term "MRS." in the parties' marks denotes the classification of women who compete in the

**Opposition No. 91165290**

respective pageants; and the term "PAGEANT" in opposer's MRS. UNITED STATES NATIONAL PAGEANT simply informs the public of the nature of the services. With respect to opposer's contention that contestants and members of the general public are likely to think that applicants' pageant is an umbrella pageant which is one level above opposer's pageant, applicants maintain that such argument is unsupported.

To determine whether the marks are similar for purposes of our likelihood of confusion analysis, we must compare the marks in terms of appearance, sound, connotation and commercial impression. In addition, it is well-settled that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, while the marks are compared in their entireties, including any descriptive or disclaimed portions thereof, "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 that the ultimate conclusion rests on consideration of the marks in their entireties. Indeed this type of analysis appears to be unavoidable." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Furthermore, we must consider the recollection of the average purchaser who normally retains a general, rather than specific impression of trademarks. See Sealed Air Corp. v. Scott Paper Co., 190

**Opposition No. 91165290**

USPQ 106 (TTAB 1975). Finally, in making this determination, we must keep in mind that "[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992).

Applying these principles to the marks in this case, we find that applicants' MRS. U.S. INTERNATIONAL mark and opposer's MRS. UNITED STATES NATIONAL PAGEANT and MRS. UNITED STATES marks are more similar than dissimilar in terms of appearance, sound, meaning and commercial impression. Opposer's marks and applicants' mark share a similar structure in that the marks are comprised of the identical title "MRS." followed by the national designation "UNITED STATES" or its abbreviated equivalent "U.S." The stylization of opposer's MRS. UNITED STATES mark does not serve to distinguish the appearance of this mark from applicants' mark in any meaningful way. Also, we find that the different words, NATIONAL and INTERNATIONAL, in opposer's MRS. UNITED STATES NATIONAL PAGEANT mark and applicants' MRS. U.S. INTERNATIONAL mark do not serve to distinguish the respective marks. Rather, these words are likely to be perceived by the relevant consumers as indicating beauty pageant services from the same source

**Opposition No. 91165290**

covering different geographical regions. Insofar as the word PAGEANT in opposer's mark is concerned, this word is obviously generic for opposer's services and, therefore, has no source-identifying significance. We find, therefore, that the marks' similarities in appearance, sound, meaning and commercial impression overcome any differences. See Palm Bay, 73 USPQ2d at 1694.

Although applicants argue that there is no support for opposer's contention that the relevant consumers are likely to believe that applicants' MRS. U.S. INTERNATIONAL pageant is an umbrella pageant which is held at one level above opposer's MRS. UNITED STATES and MRS. UNITED STATES NATIONAL PAGEANT, we disagree. The following third-party advertisements of record are evidence that pageants are structured like pyramids, with pageants at the state, national and international levels, and that such pageants may be conducted by or affiliated with the same entity: "Halo Productions - Call for info on State and National Pageants;" "Renaissance - Renaissance World and Renaissance U.S.A. pageants;" "Mrs. US Globe - The national preliminary to the international Mrs. Globe;" "Miss Universe, Miss USA, TEEN USA - Trump Pageants Productions;" and "Miss Massachusetts Teen All American - Official State Preliminary to the Miss Teen All American Pageant." In addition, the record shows that there are thirty-two state pageants

affiliated with opposer (e.g., "Mrs. New York United States," "Mrs. Michigan United States") with the winners thereof going on to compete in opposer's MRS. UNITED STATES and MRS. UNITED STATES NATIONAL PAGEANT. We find, therefore, that it is quite plausible that potential beauty pageant contestants and pageant spectators who encounter applicants' MRS. U.S. INTERNATIONAL pageant would view it as the next level of competition for the winner of opposer's MRS. UNITED STATES and MRS. UNITED STATES NATIONAL PAGEANT, and that the respective pageants are affiliated with or sponsored by the same entity.

Number and nature of similar marks in use on similar services

Applicants submitted third-party advertisements for beauty pageants named "Mrs. U.S. Globe," "Ms. U.S. Continental Pageant," "Ms. America," "Ms. United States of America," "Ms. American United States Pageant," "U.S. Beauty National Pageant," "U.S. United Pageant," and "U.S. National Pageant." In addition, applicants introduced a third-party registration, namely, Registration No. 3039884 for the mark MRS. U.S. CONTINENTAL PAGEANT for "entertainment in the nature of beauty pageants; television show production in the nature of beauty pageants."

It is well settled that third-party registrations are not evidence of use of the marks shown therein, or that

**Opposition No. 91165290**

consumers have been exposed to them. *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268 (CCPA 1973). Also, insofar as the advertisements are concerned, there is no evidence bearing on the extent of such third-party use. Nonetheless, we find the advertisements and registration to be probative evidence that titles such as "Ms." and "Mrs." are highly suggestive of the marital status of pageant contestants, and that the designations "U.S." and "United States" are descriptive of the geographic coverage of the pageants. Under the circumstances, and in view of opposer's disclaimer of the words UNITED STATES NATIONAL PAGEANT and UNITED STATES in its respective marks MRS. UNITED STATES NATIONAL PAGEANT and MRS. UNITED STATES, we find that such marks are weak. Nonetheless, "even weak marks are entitled to protection against registration of similar marks, especially identical ones, for related goods and services." *In re Colonial Stores*, 216 USPQ 793, 795 (TTAB 1982); *In re The Clorox Co.*, 578 F.2d 305, 198 USPQ 337, 341 (CCPA 1978) [ERASE for a laundry soil and stain remover held confusingly similar to STAIN ERASER, registered on the Supplemental Register, for a stain remover]. Here, notwithstanding any weakness in opposer's marks, they are still very similar to applicants' mark, and the parties' services are virtually identical.

**Opposition No. 91165290**

In sum, although we have discounted opposer's evidence of actual confusion and notwithstanding any weakness in opposer's marks, we find that in view of the similarity of the parties' marks, the virtual identity of the parties' services, and the overlap in the parties' trade channels and purchasers, a likelihood of confusion exists. To the extent that any doubts as to this conclusion might exist, such doubts must be resolved against applicants. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

**Decision:** The opposition is sustained.