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Paper No. 20
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Classic Custom Vacations
v.
Royal Olympic Cruises, Ltd.

Opposition No. 112,583
to application Serial No. 75/255,119
filed March 7, 1997

Martin R. Greenstein of TechMark for Classic Custom
Vacations.

Hollis M. Walker for Royal Olympic Cruises, Ltd.

Before Quinn, Walters, and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

Royal Olympic Cruises, Ltd. (applicant) filed an
application to register the mark THE CLASSIC CRUISE
(typed drawing) for services ultimately identified as
"travel agency services, namely, making reservations and
bookings for transportation" in International Class 39.¹

¹ Serial No. 75/255,119 filed on March 7, 1997. The application
claims a date of first use and first use in commerce of February
2, 1997. The application disclaims the word "cruise."

On October 13, 1998, Classic Custom Vacations (opposer) filed a notice of opposition to the registration of applicant's mark alleging that applicant's mark was confusingly similar to various trademark registrations it owned under Section 2(d) of the Trademark Act. 15 U.S.C. § 1052(d). All the registrations are in typed form.

Opposer's oldest registration is for the mark "CLASSIC" for "organizing packaged vacation and travel tours" in International Class 39.² Opposer's second and third registrations are for the marks "CLASSIC HAWAII"³ and "CLASSIC AMERICA"⁴ for the same services ("organizing packaged vacation and travel tours").

Opposer's fourth registration is for the mark "CLASSIC DESTINATION MANAGEMENT" for "organizing and arranging custom and packaged vacation trips, travel tours and sightseeing tours, including on-location golf, sports and entertainment activities and activities packages as a part thereof; wholesale and retail travel agency services, namely, making reservations and bookings

² Registration No. 1,093,417 issued June 13, 1978, renewed.

³ Registration No. 1,416,966 issued November 11, 1986. Sections 8 and 15 affidavits have been accepted and acknowledged, respectively. The registration disclaims the word "Hawaii."

⁴ Registration No. 1,893,755 issued May 9, 1995. Section 8 and 15 affidavits have been accepted and acknowledged, respectively. The registration disclaims the word "America."

for air, ground and sea transportation services" and "wholesale and retail travel agency services, namely, making reservations and booking for temporary lodging at hotels, resorts, condominiums" in International Classes 39 and 42.⁵

Opposer's remaining registrations are for the marks "CLASSIC TURKEY",⁶ "CLASSIC GREECE,"⁷ "CLASSIC ITALY,"⁸ "CLASSIC CARIBBEAN,"⁹ "CLASSIC EUROPE,"¹⁰ and "CLASSIC PORTUGAL"¹¹ for the same services ("organizing and arranging custom and packaged vacation trips, travel tours and sightseeing tours, including on-location golf, sports and entertainment activities and activities packages as a part thereof; wholesale and retail travel agency services, namely, making reservations and bookings for air, ground and sea transportation services" and "wholesale and retail travel agency services, namely, making reservations and booking for temporary lodging at

⁵ Registration No. 2,099,736 issued September 23, 1997. The registration disclaims the words "Destination Management."

⁶ Registration No. 2,155,303 issued May 5, 1998. The registration disclaims the word "Turkey."

⁷ Registration No. 2,155,304 issued May 5, 1998. The registration disclaims the word "Greece."

⁸ Registration No. 2,192,523 issued September 29, 1998. The registration disclaims the word "Italy."

⁹ Registration No. 2,259,724 issued July 6, 1999. The registration disclaims the word "Caribbean."

¹⁰ Registration No. 2,290,331 issued November 2, 1999. The registration disclaims the word "Europe."

hotels, resorts, condominiums" in International Classes 39 and 42).

Applicant denied that its marks and opposer's marks are confusingly similar.

The Record

The record consists of the file of the involved application; the stipulated testimony of the opposer; status and title copies of opposer's registrations submitted by a notice of reliance; and opposer's requests for production of documents and requests for admissions and applicant's responses submitted by stipulation and notice of reliance.

Both parties have filed briefs, but no oral hearing was requested.

Priority

Priority is not an issue here in view of opposer's ownership of ten registrations for marks containing the word CLASSIC by itself and with other disclaimed terms. See King Candy Co. v. Eunice King's Kitchen, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

¹¹ Registration No. 2,371,387 issued July 25, 2000. The registration disclaims the word "Portugal."

Likelihood of Confusion

We analyze this issue in light of the factors set forth in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). Likelihood of confusion is decided upon the facts of each case. In re Dixie Restaurants, 105 F.3d 1405, 1406, 41 USPQ 1531, 1533 (Fed. Cir. 1997); In re Shell Oil Co., 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993). The various factors may play more or less weighty roles in any particular determination of likelihood of confusion. Shell Oil, 992 F.2d at 1206, 26 USPQ2d 1688; du Pont, 476 F.2d at 1361, 177 USPQ at 567. In considering the evidence of record on these factors, we must keep in mind that "[t]he 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).

Here, we start by noting that opposer's oldest registration is for the single word "classic." In any likelihood of confusion case, the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression is an important consideration. All of opposer's other

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registrations are for the word "classic" along with a disclaimed term, which is usually a geographic term. Applicant's mark is for the words "The Classic Cruise." Applicant has also disclaimed the word "cruise." While it is improper to dissect a mark and marks must be viewed in their entireties, Shell, 992 F.2d at 1206, 26 USPQ2d at 1688, more or less weight may be given to a particular feature of a mark for rational reasons. In re National Data Corp., 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985). Here, the dominant part of each mark would be the word "classic." Indeed, it is the only element in opposer's oldest registration. All the other words in opposer's remaining registrations are disclaimed as well as the word "cruise" in the application. Disclaimed matter is often given less weight than other elements of a mark. Hilson Research Inc. v. Society for Human Resource Management, 27 USPQ2d 1423 (TTAB 1993). This is particularly true in this case where the disclaimed matter includes the generic word "cruise" and geographic destinations of tours or travel. It is much more likely that potential purchasers would concentrate on the non-disclaimed term "classic" to distinguish these services. The addition of the definite article "the" and generic word "cruise" does not create a different commercial

impression. Dixie Restaurants, 105 F.3d at 1407, 41 USPQ at 1534 (THE DELTA CAFE and design was confusingly similar to DELTA; more weight given to common dominant word DELTA); John Winkler's Sons, Incorporated v. American Express Company, 175 USPQ 442 (TTAB 1972) (CAREFREE and CAREFREE CRUISE used on travel-related services, confusingly similar).

Regarding the services, it is clear that applicant's and opposer's services are virtually identical or at least closely related. Applicant seeks registration of its mark for services identified as "travel agency services, namely, making reservations and bookings for transportation." These services are very similar, if not encompassed, within opposer's "organizing packaged vacation and travel tours" in the services for the registrations of opposer's marks CLASSIC, CLASSIC HAWAII, and CLASSIC AMERICA. Each service would involve making reservations for transportation when it was part of a travel tour. Opposer's other registrations specifically include the virtually identical services of "wholesale and retail travel agency services, namely, making reservations and bookings for air, ground and sea transportation services." In effect, both applicant's and opposer's identification of services involve travel

agency services. Both travel agency services include making and booking transportation. Therefore, the services are very closely related, if not identical. Applicant argues that opposer "provides a pure travel agency function, in effect selling the services of third parties" while applicant "provides the cruise ships aboard which the passengers sail." Applicant's Br. at 3. However, we must compare the services as described in the application and the registrations to determine if there is a likelihood of confusion. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1493, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). Because the marks are used on virtually identically identified travel agency services, there is a greater likelihood that when similar marks are used in this situation, confusion would be likely. Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992) ("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines"). Even opposer's other services of "organizing packaged vacation and travel tours" are very similar to applicant's "travel agency services, namely, making reservations and bookings for transportation." See John Winkler's Sons, supra

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(American Express's mark CAREFREE for travel tour services held confusingly similar to the mark CAREFREE CRUISE for wardrobe services for use on cruises).

We also note that the specimens and evidence of record indicate that both applicant and opposer are actually using their marks on travel services relating to cruises.¹² Even applicant admits that "the initial services are similar." Applicant's Br. at 3.

Applicant's specimen of record advertises "Greek Island Cruises from \$1,685." Opposer's exhibit (No. 20) advertises a tour of Greece that includes a "Cruise to the Saronic Islands of Hydra, Poros & Aegina" along with the land portion of the tour. Opposer's exhibit 17 also shows use of the mark CLASSIC TURKEY in a brochure advertising "Cruising the Turkish Sea." Thus, not only are the parties' identifications of services almost identical, their actual use includes the same services, i.e. cruises in the Mediterranean.

In addition, we must assume that identical services would be marketed in similar trade channels and that travel agency services would often be purchased by all

¹² Opposer's Ex. 16 entitled "Classic Hawaii - 1999" is not in the record. Inasmuch as the other exhibits ("Classic Hawaii - 2000"; "Classic America - 1999"; "Classic Europe - 2000") are apparently similar and neither party relies on Exhibit 16, its absence is not significant.

types of purchasers. There is no evidence of any third-party uses of similar marks so this factor also favors opposer. Furthermore, the absence of actual confusion does not mean that there is no likelihood of confusion. Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 218 USPQ 390, 396 (Fed. Cir. 1983); J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460, 18 USPQ2d 1889, 1892 (Fed. Cir. 1991).

Based on the above, we conclude that the marks are very similar and that the differences do not outweigh these similarities. Therefore, their commercial impressions would be similar. National Data, 753 F.2d at 1060, 224 USPQ at 749.

When we consider, the virtually identical nature of the services and the close similarity of the marks, we hold that there is a likelihood of confusion.¹³

¹³ Applicant also inexplicably maintains that "it should be noted that even the Opposer's word 'Classic' was registered well after Applicant filed for registration of its trademark 'The Classic Cruise.'" Applicant's Br. at 3. This is simply not correct. Its application was filed on March 7, 1997. Opposer's registration for the word "CLASSIC" alone registered in 1978, nearly twenty years earlier. Before March 1997, opposer had also obtained registration of the marks CLASSIC HAWAII and CLASSIC AMERICA. All the applications for opposer's other registrations were filed more than six months before applicant's filing date and even its claimed date of first use.

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Decision: The opposition is sustained and registration to applicant of its mark THE CLASSIC CRUISE is refused.