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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Triton Boat Company, L.P.

Serial No. 75/646,479

Andrew S. Neely of Luedeka, Neely & Graham P.C. for Triton Boat Company, L.P.

Khanh Le, Trademark Examining Attorney, Law Office 104
(Sidney I. Moskowitz, Managing Attorney).

Before Cissel, Bucher and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

Triton Boat Company, L.P. (applicant) filed an application to register the mark SUMMIT BOATS (in typed form) for goods identified as "boats" in International Class 12.¹

The Examining Attorney has refused to register applicant's mark under Section 2(d) of the Trademark Act,

¹ Serial No. 75/646,479 filed on February 24, 1999. The application contains an allegation of a bona fide intention to use the mark in commerce. The word "boats" has been disclaimed.

15 U.S.C. § 1052(d), because of the registration of the mark SUMMIT (in typed form) for "snowmobiles and structural parts therefor" in International Class 12.²

After the Examining Attorney made the refusal final, this appeal followed. Both applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

We reverse.

The Examining Attorney maintains that the term SUMMIT as applied to snowmobiles is arbitrary and it deserves a broad scope of protection. The Examining Attorney submitted evidence to show that five retailers, one each in Seattle, Bangor, Portland, Denver, and Hanover, Pennsylvania, sell, inter alia, boats and snowmobiles from different manufacturers.³ The Examining Attorney argues that the "evidence also demonstrates that some companies manufacture both snowmobiles and boats." Examining Attorney's Br. at 6. While the Examining Attorney's brief does not cite or discuss this evidence, the record does contain one use-based registration with the goods

² Registration No. 1,846,188 issued July 19, 1994. Section 8 and 15 affidavits have been accepted and acknowledged, respectively.

³ We have not considered the Examining Attorney's evidence concerning retailers in Canada. In re Societe Generale des Minerales de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987) (Board "properly ignored an article cited by the Examining Attorney from the *Manchester Guardian Weekly* saying, 'this British publication is not evidence of the perception of the term (Vittel) by people in the United States'").

identified as "snowmobiles, boats, campers, and travel trailers"⁴ and two references to a company that filed for Chapter 11 protection under the Bankruptcy Act in 1981 as a company that "makes snowmobiles and boats."⁵ A second registration (No. 2,113,530), based on Section 44, also contains dates of use in commerce for goods including automobiles, motorcycles, motorized scooters, snowmobiles, motor boats, and motorized water scooters.⁶ The Examining Attorney concluded that there would be a likelihood of confusion if the marks SUMMIT and SUMMIT BOATS were used on snowmobiles and boats, respectively.

Applicant, on the other hand, submitted evidence that the term SUMMIT is registered for a variety of related goods including vehicle tires, bicycles, cargo carriers, and seats for heavy-duty trucks. Applicant cites two cases to support its argument that snowmobiles and boats are not related goods. See General Motors Corp. v. Cadillac Marine & Boat Co., 226 F. Supp. 716, 140 USPQ 447 (W.D. Mich. 1964) (no likelihood of confusion between CADILLAC for cars and CADILLAC for boats) and Riva Boats International S.p.a.

⁴ Registration No. 957,615.

⁵ *New York Times*, February 19, 1981, p. D6. See also *New York Times: Abstracts, Information Bank Abstracts, Wall Street Journal*. March 7, 1979, p. 8 (The "distributor of Artic snowmobiles, boats and other recreational products").

⁶ The remaining registrations were for distributorship services or they were based solely on Section 44.

v. Yamaha Motor Corp., U.S.A., 223 USPQ 183 (C.D. Calif. 1983) (RIVA for yachts and RIVA for motor scooters not likely to cause confusion). Applicant goes on to argue that the marketing conditions are different and that any potential overlap is miniscule. Furthermore, applicant maintains that the goods are expensive and that purchasers are sophisticated. In addition, applicant refers to a registration for SUMMIT MARINE and design for "watercraft lifts" in International Class 7.⁷ Applicant assumed that this registration might be cited by the Office as a bar to the registration of its mark. Therefore, applicant obtained a consent agreement from the owner of that registration. Applicant submits that if the owner of the SUBMIT MARINE registration did not think that there would be a likelihood of confusion with its mark for "arguably somewhat similar goods, it is unlikely that there would be any confusion between applicant's boats and the snowmobile goods" of the cited registration. Applicant's Br. at 13. Finally, applicant notes that even those retailers who sell both boats and snowmobiles also sell a variety of other

⁷ Registration No. 1,769,734, issued May 11, 1993. Affidavits under Section 8 and 15 have been accepted or acknowledged, respectively.

products, which would not normally be considered related products.

In a case involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors set out in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). 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).

The first question we address is whether applicant's and registrant's marks, when compared in their entireties, are similar in sound, appearance, or meaning such that they create similar overall commercial impressions. In this case, the marks both have the identical word SUMMIT. The only difference between the marks is applicant's addition of the generic word "BOATS," which it has disclaimed. We find that the marks are very similar in sound, appearance, and meaning, and the presence of the term "BOATS" would not significantly distinguish the two marks.

Regarding the strength of the mark, the Examining Attorney submitted definitions of "SUMMIT" to mean the

"highest point or part; the top," the highest level or degree that can be attained," and "the highest level, as of government officials." The Examining Attorney then concluded that "the mark 'summit' for use on snowmobiles and their parts, is an arbitrary designation" and it deserves a broad scope of protection. Examining Attorney's Br. at 3. We cannot agree that this term, which has a laudatory meaning and perhaps even a suggestive one, is an arbitrary term for snowmobiles.⁸ Furthermore, the evidence does not demonstrate that the mark SUMMIT is entitled to a broad scope of protection.

Next, we now look at the other relevant du Pont factors concerning the nature of applicant's and registrant's goods, their channels of trade, and prospective purchasers. While the Examining Attorney has argued that companies manufacture both boats and snowmobiles, our review of the record indicates that the evidence consists of, at best, two relevant registrations and a twenty-year old reference to a company filing for Chapter 11 bankruptcy. We find that this is scant evidence to support a finding that purchasers would expect that the use of similar marks on two products as diverse as

⁸ We have not considered the evidence that applicant submitted with its Reply Brief.

snowmobiles and boats would indicate that they both originate from the same source and we decline to reach that conclusion. There are numerous cases that have not found that boats are related to other vehicles or even other types of boats. Applicant has cited General Motors and Riva Boats as cases in which boats and cars and yachts and motor scooters were not held to be related enough for confusion to be likely when similar marks were used on both. "No one whose IQ is high enough to be regarded by the law would be likely to be confused in the purchase of a boat of the defendant branded 'Cadillac' because General Motors sold automobiles under the same name." General Motors, 140 USPQ at 456 (quotation marks omitted). "Even assuming arguendo plaintiff's Riva mark is 'strong' ... there is no likelihood of confusion ... [because] the respective products [yachts and motor scooters] do not compete in the same markets ... there is a substantial degree of care involved in the purchase of the respective products, and there is little likelihood of expansion of overlapping product lines bearing the Riva mark"). Riva Boats, 223 USPQ at 185.

To these cases, we add the following cases. In In re Oy Wilh. Schauman Ab, 189 USPQ 245 (TTAB 1975), the Board held that SWAN for sailing yachts and a representation of a

swan for canoes were not confusingly similar. "[I]t appears that the only thing in common between applicant's yachts and registrant's canoes is that they both are used in water. Otherwise, they are completely different in concept." Id. at 246. In J.C. Penney, Inc. v. Arctic Enterprises, Inc., 375 F. Supp. 913, 183 USPQ 342, 343 (D. Minn. 1974), the court held that "[a]utomobile tires and minibikes on the one hand and snowmobiles on the other are markedly dissimilar and sold in separate markets."

The mere fact that both applicant's and registrant's goods may be sold in the same retail establishments does not by itself establish that the goods are related. In re Mars, Inc., 741 F.2d 395, 222 USPQ 938 (Fed. Cir. 1984) (Federal Circuit held that there was no likelihood of confusion between the same mark CANYON for candy bars and fresh citrus fruit). Here, the goods are obviously not inexpensive and care would likely be involved in the purchases of these goods. See Riva Boats, 223 USPQ at 185.

The extremely limited evidence that the same entities are the source of both snowmobiles and boats is not enough to persuade us that these goods are related and that purchasers would assume that the source of both goods would be the same even when they are marketed under very similar marks. The differences between the goods are substantial.

Prior decisions of this Board and the courts have recognized that there is no per se rule that all vehicles are related. Furthermore, the mark SUMMIT is not arbitrary for snowmobiles and the evidence does not establish that the registered mark is entitled to a broad scope of protection. When we consider the factors discussed above, we conclude that there would not be a likelihood of confusion.

Decision: The refusal to register is reversed.