

This Opinion is not a
Precedent of the TTAB

Mailed: November 3, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re US Glove, Inc.
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Serial No. 86098046
—

Paul Adams of The Adams Law Firm,
for US Glove, Inc.

Maria-Victoria Suarez, Trademark Examining Attorney, Law Office 102,
Mitchell Front, Managing Attorney.

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Before Seeherman, Kuhlke and Lykos,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

US Glove, Inc. (“Applicant”) seeks registration on the Principal Register of the
mark TIGER PAW (in standard characters) for the following goods in International
Class 28:

Sporting goods for use in gymnastics, platform diving,
yoga and weight-lifting, namely, athletic wrist and joint
supports.¹

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¹ Application Serial No. 86098046 was filed on October 22, 2013, based upon Applicant’s
allegation of first use and use in commerce on January 1, 2008 under Section 1(a) of the
Trademark Act.

The Trademark Examining Attorney 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, when used in connection with the identified goods, so resembles the mark LION PAWS (in standard characters) registered on the Principal Register for "wrist supports for athletic use" in International Class 28,² as to be likely to cause confusion, mistake or deception.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

Likelihood of Confusion

When the question is likelihood of confusion, 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, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, 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 (CCPA 1976). These factors and others are discussed below. *See M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944 (Fed. Cir. 2006) (even within *du Pont* list, only factors that are "relevant and of record" need be considered).

² Registration No. 3049026, issued on January 24, 2006, Sections 8 & 15 declaration accepted and acknowledged.

Similarity of the Goods/Channels of Trade/Consumers

With regard to the goods, channels of trade and classes of consumers, we must make our determinations under these factors based on the goods as they are identified in the registration and application. See *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). See also *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Based on the identifications, Registrant’s “wrist supports for athletic use” encompass Applicant’s “athletic wrist supports” which are specifically “for use in gymnastics, platform diving, yoga and weight-lifting.” Applicant “does not challenge that the goods in the application and registration are related” (App. Br. p. 4, 7 TTABVUE 5) and examples of the respective goods in the record corroborate that the goods are in fact the same, as set forth below:³

Tiger Paw Wrist Supports



LionPaws

³ August 20, 2014 Office action, TSDR pp. 2, 7.



In addition, because the goods are identical and the identifications of goods in the application and the cited registration are not limited to any specific channels of trade, we must presume that they travel in the same trade channels and are purchased by the same classes of purchasers. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (Board “was entitled to rely on this legal presumption in determining likelihood of confusion”). Although Applicant submitted evidence to establish that the respective channels of trade do not in fact overlap, there is no such limitation in the identifications of goods in the registration or application and we are bound to consider all appropriate channels of trade for such goods, and not the actual trade channels. *Id.* See also *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, (765) (TTAB 1986). Applicant’s argument that its extrinsic evidence overcomes this presumption is misplaced. While such evidence may be used in a cancellation proceeding seeking to restrict a registration under Section 18, 15 U.S.C. § 1068, to obviate likely confusion, it may not be used to limit the scope of a cited registration in an *ex parte* proceeding. Applicant’s recourse, if it wanted to limit the scope of the identification of the cited registration, would have been to suspend prosecution of its application and bring a partial cancellation proceeding to have the cited registration restricted under Section 18. See also TBMP § 309.03(d) (June 2015).

In view of the above, these *du Pont* factors weigh in favor of a likelihood of confusion.

Conditions of Sale

As to the conditions of sale, Applicant submitted the declarations of several persons in the relevant market to support its position that these goods are not impulse purchase items and are purchased with care.

Mr. Jacobs, Applicant's president and chief executive officer, attests:

In my opinion, customers for wrist supports used in the field of athletics are careful buyers of these products, not merely based on cost, but also because the products are important for safety. It is well known that serious injuries may be incurred during, for example, gymnastics practice and competitions, if the wrist support is not properly designed and manufactured. My experience is that prospective purchasers choose their wrist supports carefully based on the product quality and reputation of the seller and manufacturer.⁴

Mr. Dreary, the president of Dreary's Gymnastic Supply, a distributor of sport and gymnastic equipment and the supplier of gymnastic products to the US National Gymnastics Team attests:

One reason that I do not believe that prospective customers are, or will be, confused is I have seen in my business dealings that consumers are careful in selecting gymnastic products because of the high potential for wrist injuries that comes with participation in the sport of gymnastics. Safety and quality are of the utmost importance and therefore purchasing decisions on products is carefully done following extensive research.⁵

⁴ August 3, 2014 Response, TSDR p. 4.

⁵ *Id.*, TSDR p. 6

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