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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

United States Golf Association
v.
T-Golf LLC

Opposition No. 91174712

United States Golf Association
v.
Dee M. MacDonald and Christopher J. MacDonald

Opposition No. 91181355

Philip R. Hoffman of Pryor Cashman LLP for United States Golf Association.

Vincent M. Amberly of Amberly Law for T-Golf LLC and Dee M. MacDonald and Christopher J. MacDonald.

Before Hairston, Walsh and Cataldo, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

The above captioned opposition proceedings were consolidated by order of the Board dated December 9, 2008. United States Golf Association is the opposer in both cases, and in this decision we shall refer to it as "opposer." T-Golf LLC is the applicant in Opposition No. 91174712, and Dee M. MacDonald and Christopher J. MacDonald (the

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"MacDonalds") are applicants in Opposition No. 91181355. Because the record shows that T-Golf LLC is owned by the MacDonald's, in this decision we will refer to T-Golf LLC and the MacDonald's collectively as "applicant." Furthermore, because the two oppositions essentially involve the same parties and common questions of law and fact, we shall decide them both in this single opinion.

In application Serial No. 78791564 involved in Opposition No. 91174712, applicant seeks to register on the Principal Register the mark SUPER OPEN (in standard characters; "OPEN" is disclaimed) for "men's, women's and children's clothing, namely, fleece tops and bottoms, caps, headwear, T-shirts, sweatshirts, shorts, tank tops, jeans, sweaters, pants, jackets, turtlenecks, jumpsuits, golf shirts, woven shirts, knit shirts, jerseys, wristbands, warm up suits, wind resistant jackets, raincoats, parkas, ponchos, gloves, ties, suspenders, cloth bibs, sleepwear, robes, night shirts and pajamas, mittens, knit hats and caps, scarves, aprons, headbands, ear muffs, underwear, sneakers and slippers" in International Class 25.¹

In application Serial No. 78834430 involved in Opposition No. 91181355, applicant seeks to register on the Principal Register the mark SUPER OPEN (in standard

¹ Filed January 13, 2006, alleging a bona fide intention to use the mark in commerce.

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characters; "OPEN" is disclaimed) for "entertainment in the nature of golf tournaments; fitting of golf clubs to individual users; golf caddie services; golf club services; golf courses; golf instruction; providing a website through which golfers locate information about golf courses and golf tournaments; providing a website through which golfers reserve tee times at golf courses; providing golf facilities; providing refitting of golf grips to individual users at the customer's location; rental of golf equipment" in International Class 41.²

Opposer asserts in both oppositions that applicant's mark, when used on the goods and services identified in its applications, is likely to cause confusion and dilution in view of opposer's previously used and registered marks. In both oppositions, opposer pleads ownership of the following registrations, which are alleged to comprise a family of "OPEN" marks:

1. Registration No. 1151942, issued April 21, 1981 (under the provisions of Section 2(f); renewed), for the mark UNITED STATES OPEN CHAMPIONSHIP for "educational and entertainment services, namely, conducting a golf tournament;"
2. Registration No. 1151943, issued April 21, 1981 (under the provisions of Section 2(f); renewed), for the mark U.S. OPEN for "educational and entertainment services, namely, conducting a golf tournament;"
3. Registration No. 1151944, issued April 21, 1981 (under the provisions of Section 2(f); renewed), for

² Filed March 10, 2006, alleging a bona fide intention to use the mark in commerce.

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the mark U.S. OPEN CHAMPIONSHIP for "educational and entertainment services, namely, conducting a golf tournament;"

4. Registration No. 1151945, issued April 21, 1981 (under the provisions of Section 2(f); renewed), for the mark U.S. WOMEN'S OPEN CHAMPIONSHIP for "educational and entertainment services, namely, conducting a golf tournament;"

5. Registration No. 1151946, issued April 21, 1981 (under the provisions of Section 2(f); renewed), for the mark UNITED STATES OPEN for "educational and entertainment services, namely, conducting a golf tournament;"

6. Registration No. 1832941, issued April 26, 1994 (under the provisions of Section 2(f); renewed), for the mark OPEN for "educational and entertainment services, namely, conducting a golf tournament;"

7. Registration No. 1880927, issued February 28, 1995 (under the provisions of Section 2(f); SENIOR and CHAMPIONSHIP disclaimed; renewed), for the mark UNITED STATES SENIOR OPEN CHAMPIONSHIP for "educational and entertainment services, namely, conducting a golf tournament;"

8. Registration No. 1968466, issued April 16, 1995 (renewed), for the mark U.S. OPEN for, inter alia, "men's, women's and children's clothing, namely, sweatshirts, shirts, caps, sweaters, vests, golf shirts, mittens, boxer shorts, windshirts, jackets, hats, baby rompers;"

9. Registration No. 2105083, issued October 14, 1997 (GOLF COLLECTION disclaimed; renewed), for the mark U.S. OPEN GOLF COLLECTION for "clothing, namely, shirts, t-shirts, sweater vests, cardigan sweater vests, jackets, shorts, pants, caps and hats;"

10. Registration No. 2397344, issued May 8, 2001 (affidavits under Section 8 and 15 accepted or acknowledged), for the mark NATIONAL OPEN for "clothing, namely, shirts, windshirts, hats and jackets;"

11. Registration No. 2448635, issued May 8, 2001 (under the provisions of Section 2(f); affidavits under Section 8 and 15 accepted or acknowledged), for the

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mark U.S. WOMEN'S OPEN for "men's, women's and children's clothing, namely, sweatshirts, shirts, caps, sweaters, vests, golf shirts, windshirts, jackets, hats, visors" and "educational and entertainment services, namely, the conducting of a golf tournament;"

12. Registration No. 2468933, issued July 17, 2001 (CHAMPIONSHIP disclaimed; affidavits under Section 8 and 15 accepted or acknowledged), for the mark NATIONAL OPEN CHAMPIONSHIP for "entertainment services; namely, the conducting of a golf tournament;" and

13. Registration No. 2590166, issued July 9, 2002 (under the provisions of Section 2(f) as to U.S. and OPEN as to the services; SENIOR disclaimed; affidavits under Section 8 and 15 accepted or acknowledged), for the mark U.S. SENIOR OPEN for "men's, women's and children's clothing, namely, sweatshirts, shirts, caps, sweaters, vests, golf shirts, windshirts, jackets, hats, visors" and "educational and entertainment services, namely, the conducting of a golf tournament."

Opposer also asserts in both oppositions that its family of "OPEN" marks is famous.

Applicant, in its answers to the notices of opposition, admitted that opposer is the owner of the pleaded registrations. Applicant denied the remaining salient allegations of the notices of opposition, and asserted as an affirmative defense that the word "OPEN" is merely descriptive of opposer's goods and services, and that applicant has a "fair use right to use its descriptive phrase OPEN." (Answers, p. 3)

The Record

The record consists of the pleadings; the files of the opposed applications; the testimony deposition (with exhibits) of opposer's Deputy Executive Director, Michael A.

Butz; applicant's notices of reliance on opposer's responses to applicant's requests for admissions and third-party registrations for marks that include the term "OPEN"; and the testimony deposition (with exhibits) of one of the owners of T-Golf LLC, Christopher J. MacDonald.

The Parties

Opposer is a non-profit organization which was formed in 1894 to preserve and promote the game of golf in the United States. It has 1.2 million members and is a governing body of golf in the United States. Opposer conducts thirteen golf championships in the United States, including the U.S. OPEN, U.S. WOMEN'S OPEN, and U.S. SENIOR OPEN. The U.S. OPEN is opposer's flagship tournament and has been conducted since 1895. The U.S. OPEN is one of the four major tournaments in men's golf. Opposer writes and interprets the rules of the game of golf in the United States, and has developed a handicapping system whereby players of all levels can compete against each other. Opposer also maintains a museum and library devoted to the history of golf.

Dee M. MacDonald and Christopher J. MacDonald are the owners of T-Golf LLC. T-Golf LLC was formed in 2001 or 2002 and offers golf equipment and instruction. The equipment consists of a modified golf club and a series of tees to aid

beginning players in developing golf swings. Applicant has not begun use of the SUPER OPEN mark.

Standing and Priority

Opposer made copies of its pleaded registrations of record and its witness, Mr. Butz, testified that the registrations are subsisting and owned by opposer. In view thereof, and because its likelihood of confusion claim is not without merit, we find that opposer has established its standing to oppose registration of applicant's mark for the identified goods and services. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 942, 55 USPQ2 1842 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Further, because opposer's pleaded registrations are of record, priority is not an issue in this case with respect to the marks and goods and services identified in the registrations. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ (CCPA 1974).

Likelihood of Confusion

Our likelihood of confusion determination is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005).

In considering the evidence of record on these factors, we 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 [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1975). We also must bear in mind that the fame of an opposer's mark, if it exists, plays a "dominant role in the process of balancing the *DuPont* factors." *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000).

Family of Marks

Opposer pleaded and argues that it owns a family of "OPEN" marks for conducting golf championships and goods related thereto. Applicant, however, argues that "OPEN" is a descriptive term for golf tournaments, and thus, can not serve as the basis for a family of marks.

Evidence that a plaintiff adopted, used, and registered a group of marks sharing a particular feature is not, in and of itself, sufficient to prove plaintiff's ownership of a family of marks. Rather, to prove ownership of a family of marks, a plaintiff must show that (1) prior to the defendant's first use of its mark, the various marks said to constitute the family, or at least a good number of them, were used and promoted in such a manner and to such an

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extent as to create, among the members of the purchasing public, a recognition that the shared feature is indicative of common origin, and (2) that the shared feature is distinctive. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); *Marion Laboratories Inc. v. Biochemical Diagnostics Inc.*, 6 USPQ2d 1215 (TTAB 1988); *American Standard Inc. v. Scott & Fetzer Co.*, 200 USPQ 457 (TTAB 1978).

Even assuming that the term "OPEN" may serve as the basis for a family of marks, we find that the evidence offered by opposer is not sufficient to establish that it owns a family of marks characterized by the term "OPEN." Aside from its thirteen registrations, opposer's evidence of a family of "OPEN" marks consists of the following testimony of its witness Mr. Butz:

Again, especially with the United States Open championship, we have been running that championship for over 100 years and between that and the Women's Open and Senior Open they are run as national championships as or at the highest level of competition in the United States and so when people hear U.S. Open championship or Senior Open or Women's Open or National Open they connect that with conducted by the United States Golf Association. We continue to promote it that way so people have made the connection over the years.

(Butz dep., p. 32)

In addition, among opposer's exhibits, we have identified a few examples of instances where the U.S. OPEN, U.S. WOMEN'S OPEN and U.S. SENIOR OPEN marks appear

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together. For example, Butz Test. Exhibit 9E, the 2003 U.S. SENIOR OPEN program states on page 128 that: "The USGA conducts golf's national championships. These include the U.S. Open, the U.S. Women's Open, the U.S. Senior Open, the 10 national amateur championships and the State Team Championships"; and Butz Test. Exhibit 14B, an apparel and gift catalog featuring men's clothing bearing the U.S. OPEN mark and women's clothing bearing the U.S. WOMEN'S OPEN mark on page 9. However, we have not found sufficient evidence to establish that opposer has advertised and promoted its "OPEN" marks together and in association with each other in such a manner that the public would recognize common ownership thereof in opposer based on the common feature. Although opposer submitted a large number of exhibits, there is no evidence of a significant number of the thirteen "OPEN" marks herein used together; rather there is evidence of, at most, use of three "OPEN" marks in the same programs and catalogs by opposer. Generally, opposer's evidence shows use of the U.S. OPEN, U.S. WOMEN'S OPEN and U.S. SENIOR OPEN marks individually and independent of each other in opposer's official programs, annuals and catalogs. Even those uses where there are three "OPEN" marks (i.e., U.S. OPEN, U.S. WOMEN'S OPEN and U.S. SENIOR OPEN), the uses are inside the programs and catalogs and are not especially prominent. See e. g., Butz Test. Exhibit No. 9B, the 2006

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U.S. OPEN program features a preview of all of opposer's championship tournaments, including the U.S. WOMEN'S OPEN on page 100 and the U.S. SENIOR OPEN on page 103. All of these factors do not leave an impression of a family of marks. Viewing the totality of opposer's evidence regarding its asserted family of "OPEN" marks, the record before the Board is not sufficient to prove that opposer has used and promoted its "OPEN" marks in a manner resulting in public recognition of "OPEN" as a family feature such that opposer's various "OPEN" marks would be assumed to have a common origin.³

Because opposer's evidence is insufficient to prove a family of "OPEN" marks, the issue of likelihood of confusion must be determined by comparing applicant's mark with each of opposer's registered marks considered individually.

The most pertinent of opposer's marks is the mark U.S. OPEN, the strongest of opposer's marks by reason of opposer's extensive use and promotion thereof, and the mark to which most of opposer's evidentiary record is devoted.

³ There are also a few instances where opposer uses the U.S. OPEN, U.S. WOMEN'S OPEN and U.S. SENIOR OPEN marks together in media guides, press kits and annual reports. However, inasmuch as these materials are generally not distributed to the public, they are not probative of whether the public regards opposer's various "OPEN" marks as being part of an "OPEN" family of golf tournaments.

Fame

In turning to consider the marks, we first take up the factor of fame, because fame of the prior mark plays a dominant role in likelihood of confusion 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, supra* and *Kenner Parker Toys, Inc. v. Rose 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. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d at 1694. That is, we look to the class of customers and potential customers of a product or service, and not the general public. Here, the relevant consuming public comprises amateur and professional golfers, recreational golfers, and attendees and viewers of golf tournaments.

As previously indicated, the U.S. OPEN has been conducted since 1895 and it is one of the four major tournaments in men's golf. Opposer's evidence on fame includes annual reports for the years 1997 and 2002-2007. Opposer's total revenue from its golf championships and related goods and services totaled \$72,998,000 in 1997; \$115,990,000 in 2003; \$122,239,000 in 2004; \$99,561,000 in

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2005; \$126,672,000 in 2006; and \$137,772,000 in 2007.⁴

Although the figures are not broken down to reflect the revenue of opposer solely under the U.S. OPEN mark, we believe it is reasonable to infer that the overwhelming majority of revenue earned is under such mark. In this regard, opposer's witness, Mr. Butz, testified that the U.S. OPEN is "the most important thing that we do. It's our showcase flagship event." (Butz dep., p. 23)

The U.S. OPEN is televised, with weekend play broadcast on the NBC network and weekday rounds broadcast on ESPN, NBC and/or The Golf Channel throughout the day, in addition to highlight shows. Opposer generates publicity for the U.S. OPEN beginning with a press release at the time of site selection. This is followed by additional press releases which promote the fact that the U.S. OPEN is coming to that particular site. These press releases are distributed to all media outlets by way of wire service, e-mail "blasts" and at opposer's website. Immediately prior to and at the U.S. OPEN itself, opposer creates and distributes to the media press kits and handouts with facts and figures related to the championship. Opposer also sells and distributes to spectators and its members official programs for the U.S.

⁴ Opposer's witness, Mr. Butz, attested to the accuracy of the figures in the annual reports.

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OPEN championship. Articles concerning the U.S. OPEN have appeared in the sections of numerous newspapers, including *The New York Times*, *Boston Globe*, and *The Washington Post*.

Opposer engages in a substantial amount of licensing in connection with the U.S. OPEN mark, with 656 manufacturers who are licensed to produce apparel and gift items bearing the mark.

Finally, opposer vigilantly polices its U.S. OPEN mark, ranging from cease and desist letters to filing legal proceedings against "OPEN" marks to which it objects. Opposer uses a watch service to look for persons using and/or attempting to register "OPEN" marks. Opposer's witness, Mr. Butz, identified over twenty-five examples of cease and desist letters sent and legal proceedings filed against alleged infringers.

Based on the foregoing evidence, we find that opposer's U.S. OPEN mark is famous among the relevant purchasers in this case. We note that applicant's witness, Mr. MacDonald, answered "Yes" to the question "Would you say that the U.S. Open is a famous golf tournament?" (MacDonald dep., p. 156)

The *du Pont* factor of fame weighs heavily in opposer's favor in our likelihood of confusion analysis.

Third-party use

Applicant argues that opposer's U.S. OPEN mark is weak because other similar trademarks have been used and

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registered, and that no one should be accorded exclusive rights to the term "OPEN." Applicant has made of record by notice of reliance third-party registrations for marks that include the word "OPEN" for golf tournaments and other sports competitions (e.g., Registration No. 939209 for GREATER GREENSBORO OPEN for promoting and managing golf tournaments, Registration No. 2277430 for TEXAS OPEN for conducting golf tournaments, Registration No. 2655626 for MASSACHUSETTS OPEN CHAMPIONSHIPS for promoting an annual golf tournament for others, Registration No. 2832021 for U.S. OPEN OF SURFING for arranging and conducting surfing competitions, Registration No. 2975892 for COLORADO OPEN for entertainment in the nature of golf, and Registration No. 2857099 for EAST COAST FREESKIING OPEN for arranging and conducting skiing competitions and exhibitions); and opposer's responses to applicant's requests for admissions wherein opposer admits that a number of golf tournaments have been held in the United States under names which include the word "OPEN." In addition, applicant introduced during the testimony deposition of its witness, Mr. MacDonald, listings of golf tournaments under names which include the word "OPEN" (e.g. Shell Houston Open, Sony Open

in Hawaii, Legends Reno-Tahoe Open, Valero Texas Open, and Dick's Sporting Goods Open).⁵

We judicially notice the following relevant definition of the word "open" in *The Random House Dictionary* (2009) from www.dictionary.com: "noun" - "a contest or tournament in which both amateurs and professionals may compete, esp. in golf and tennis."⁶

Opposer does not seriously dispute that the word "Open" is merely descriptive of golf tournaments. Indeed, most of opposer's pleaded registrations which consist of or include the word "OPEN" for conducting a golf tournament issued under the provisions of Section 2(f). Furthermore, although the third-party registrations and listings from the Internet are not evidence of use of the marks shown therein, or that consumers have been exposed to them, they nonetheless are probative evidence that marks using the descriptive term "Open" are attractive to many organizers of sports tournaments and competitions, are adopted to convey that the tournament or competition is "open" to professionals and amateurs, and that such marks often coexist and are

⁵ Mr. MacDonald testified that he compiled this information from Internet websites.

⁶ The Board may take judicial notice of online reference works which exist in printed format or have regular fixed editions. See *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1590 n. 8 (TTAB 2008).

distinguished because of the other indicia used in connection with "Open."

A review of the third-party registrations and listings reveals that virtually every one of the marks shown therein includes a geographic term and/or sponsor name in conjunction with the word "Open." Thus, these third-party marks are different from applicant's SUPER OPEN mark which does not include any such indicia. Furthermore, the third-party registrations and listings are consistent with opposer's position that it will not object to an entity's use of the word "Open" so long as the word is qualified by a geographic term or sponsor name. (Butz dep., pp. 78-79)

Under the circumstances, we find that applicant's evidence fails to show that opposer's U.S. OPEN mark is a weak mark. Moreover, any asserted weakness in opposer's mark is overcome because opposer's U.S. OPEN mark is famous.

This *du Pont* factor is neutral.

Goods and Services

Applicant's recitation of services in application Serial No. 78834430 includes "entertainment in the nature of golf tournaments." These services are essentially identical to "educational and entertainment services, namely, conducting a golf tournament" in opposer's Registration No. 1151943 for the mark U.S. OPEN. Furthermore, many of the clothing items in application Serial No. 78791562 are

identical/closely related to the clothing items in opposer's Registration No. 1968466 for the mark U.S. OPEN. For example, applicant's application includes sweatshirts, sweaters, golf shirts, woven shirts, knit shirts, wind resistant jackets, and knit hats; and opposer's registration includes sweatshirts, shirts, caps, sweaters, golf shirts, mittens, jackets, and hats.

In view of the identical/closely related nature of opposer's and applicant's goods and services, the *du Pont* factor of the similarity of the goods and services favors a finding of likelihood of confusion.

Channels of Trade and Classes of Purchasers

As noted above, the parties' golf tournament services are essentially identical and their clothing items are identical/closely related. Furthermore, there are no restrictions as to their channels of trade or classes of purchasers. When identical/closely related goods and services are recited in an application and registration with no limitations as to their channels of trade or classes of purchasers, such channels of trade and classes of purchasers must be considered to be legally identical. See *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ["Given the in-part identical and in-part related nature of the parties' goods and the lack of any restrictions in the identifications thereof as to trade channels and purchasers,

these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade.”]; and *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) [“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers.”]

The *du Pont* factors of channels of trade and classes of purchasers favor a finding of likelihood of confusion.

Conditions of Sale

With respect to the conditions of sale, we recognize that amateur and professional golfers are likely to be at least somewhat knowledgeable as to the source of golf tournaments in which they play. However, the applicable standard of care is that of the least sophisticated consumer. There is no evidence that recreational golfers or other persons who attend or view golf tournaments exercise more than ordinary care in selecting a tournament to attend or view. Furthermore, the parties' clothing items are ordinary consumer items which generally are purchased with nothing more than ordinary care.

In view of the fact that the relevant consuming public in this case includes persons who would use nothing more than ordinary care in purchasing clothing and deciding upon a golf tournament to attend or view, this *du Pont* factor is neutral.

The Similarity or Dissimilarity of the Marks

We next consider the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. In comparing the marks, we are mindful that the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods and services offered under the respective marks is likely to result. The proper focus is on the recollection of the average purchaser who normally retains a general, rather than specific impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, 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).

Finally, we must keep in mind that where, as here, opposer's U.S. OPEN mark is famous for a golf tournament, it is entitled to a broad scope of protection.

When an opposer's trademark is a strong famous mark, it can never be "of little consequence." The fame of a trademark may affect the likelihood purchasers will be confused inasmuch as less care

may be taken in purchasing a product under a famous mark.

Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.,
748 F.2d 669, 223 USPQ 1281, 1284 (Fed. Cir. 1984).

In terms of sound and appearance, the respective marks are obviously similar to the extent that they share the word "OPEN." They also share a similar structure in that "OPEN" is modified by a single term, "U.S." in opposer's mark, and "SUPER" in applicant's mark.

In terms of connotation and commercial impression, the respective marks are somewhat different due to the term U.S. in opposer's mark and SUPER in applicant's mark. This fact, however, is insufficient to distinguish the marks. Rather, the terms U.S. and SUPER are likely to be perceived by the relevant consumers as indicating golf tournaments from the same source, with applicant's SUPER OPEN mark indicating a golf tournament featuring champions from other tournaments. In this regard, we note the following testimony of applicant's witness, Mr. McDonald:

Q. So what makes your Super Open an open, as you define the term?

A. It's open to that year's champion golfers.

(MacDonald dep., p. 102)

Q. How would your propose[d] tournament differ from the PGA Grand Slam of Golf?

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A. This is four guys. There's roughly 40 domestic champions in the PGA tour.

Q. Many of who[m] could be the same.

A. Yeah, could be the same. Then the women's tour. Then the senior tour. Then the international. So this is four champions versus roughly a field of 70 to 100.

(MacDonald dep., p. 106)

Finally, we note Mr. MacDonald's testimony that applicant's SUPER OPEN golf tournament will be "like the Super Bowl ... a season ending big event" that "assemble[s] the year's champions in one final collision." (MacDonald dep., pp. 207-208).

In view of the fact that opposer conducts not only the U.S. OPEN, but the U.S. WOMEN'S OPEN and U.S. SENIOR OPEN golf championships, we find it likely that persons who encounter applicant's SUPER OPEN golf tournament would view it as a championship for the winners of these and other golf tournaments, and that opposer's and applicant's respective golf tournaments emanate from, or are sponsored by or affiliated with, the same source.

For similar reasons, we find that purchasers and prospective purchasers familiar with opposer's U.S. OPEN clothing items, could reasonably assume, upon encountering applicant's SUPER OPEN clothing items, that such

identical/closely related clothing items are sponsored by or affiliated with, the same source.

The *du Pont* factor of the similarity of the marks favors a finding of likelihood of confusion.

Conclusion

We have considered all evidence of record bearing on the likelihood of confusion factors and conclude that there is a likelihood of confusion between opposer's U.S. OPEN mark for conducting golf tournaments and clothing and applicant's SUPER OPEN mark, also for conducting golf tournaments and clothing. We conclude so principally based on the fame of opposer's U.S. OPEN mark, the identical/closely related nature of the goods and services, and the similarity of the marks.

Dilution

Opposer also asserted dilution as a ground for opposition. In view of our decision to sustain the oppositions on the ground of likelihood of confusion, it is not necessary for us to consider opposer's dilution claim.

Decision: The oppositions are sustained on the ground of priority and likelihood of confusion and registration is refused in each of the applications in these proceedings.