

Mark: CHRONOS

Argument Against 2(d) Refusal

Only July 2, 2019, the Examiner Attorney for the USPTO issued an Office Action refusing registration of the applied for mark CHRONOS for:

“Portable photography equipment, namely, lenses, lens filters, mounts, mouth mounts, straps, protective cases, floatation devices, reflectors, tripods, light stands and supports and bags specially adapted for these goods; Drone accessories, namely, carrying cases, replacement batteries, replacement blades, charging cables, camera covers, drone camera accessories including lenses and lens filters, lanyards, helipads, controllers and sunshades”

in view of CHONUS for

"Binoculars; Cameras; Laser Rangefinder; Riflescopes; Spotting scopes; Hunting binoculars"

The applied-for-mark is CHRONOS. The registered mark is CRONUS.

Determination of likelihood of confusion under Section 2(d) is made on a case-by-case basis aided by the factors set forth in *In Re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Depending on the evidence of record, not all of the du Pont factors are necessarily relevant or of equal weight in a given case, here the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. See *In re Viterro Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012).

Comparison of the Marks

It is well settled that when determining likelihood of confusion, the Examining Attorney should look not at a single aspect of a mark but should view the mark as a whole. See, e.g., *Columbian Steel Tank Co. V. Union Tank & Supply Co.*, 125 U.S.P.Q. 406 (CCPA 1960); see also, *Vitarroz Corp. v. Borden, Inc.*, 209 U.S.P.Q. 969, 976-77 (2nd Cir. 1981) (no likelihood of BRAVO and BRAVO'S due to the different contexts in which the marks are presented). The central issue is whether the marks create the same overall impression. *Visual Information Institute, Inc. v. Vicon Industries, Inc.*, 209 U.S.P.Q. 179, 189 (TTAB 1980). Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression, du Pont at 1358, 1362. The use of identical, even dominant, words in common does not automatically mean that two marks are similar. *Freedom Sav. & Loan*, 757 F.2d at 1183. Rather, in analyzing the similarities of sight, sound, and meaning between two marks, a court must look to the overall impression created by the marks and not merely compare individual features. See, e.g. *Sun Banks of Fla., Inc. v. Sun Fed. Sav. and Loan Ass'n*, 651 F.2d 311, 317-18 (5th Cir. 1981).

Sound and Aural Impression. The Examining Attorney cites to *In re White Swan Ltd.* so state that "[s]imilarity in sound alone may be sufficient to support a finding that the marks are confusingly similar." *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv), citing to *Trak, Inc. v. Traq Inc.*, 212 USPQ 846, 850 (TTAB 1981); *General Foods Corp. v. Wisconsin Bottling, Inc.*, 190 USPQ 43, 45 (TTAB 1976); *In re Mack*, 197 USPQ 755, 757 (TTAB 1977); *Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968). The Examining Attorney also concluded that the "marks are essentially phonetic equivalents and thus sound similar." However, in this case the two marks are not pronounced the same nor could they be pronounced similar.

While it's understood that when assessing sound similarity, there is no correct pronunciation of a mark because it is impossible to predict how consumers will pronounce a given mark (*see, for example, Centraz Indus. Inc. v. Spartan Chem. Co.*, 77 U.S.P.Q.2d 1698, 1701, 2006 WL 236413, at *4 (T.T.A.B. 2012)), the marks in this case were clearly pronounced identically (ISHINE versus ICE SHINE). In the present case, the distinct differences in spelling clearly dictate different pronunciations:

- CRONUS: kroh-nuh-s¹
- CHRONOS: kron-oh-s²

Accordingly, the differences in aural impression should be a factor given significant weight.

Visual Impression.

The applied-for-mark is CHRONOS and the registered mark is CRONUS – the spelling and visual impression of the marks is vastly different. Applicant submits that the visual impression of CHRONOS compared to CRONUS is markedly different and should be given significant weight.

Word Meanings. As the Examining Attorney points out, CHRONOS and CRONUS are both in some fashion related to Greek mythology. However, CHRONOS as compared to CRONUS have different meanings. According to Greek mythology, Cronus was the leader and youngest of the first generation of Titans, the divine descendants of Uranus, the sky, and Gaia, the earth.³ The distinct Chronos is the personification of time in pre-Socratic philosophy and later literature.⁴

¹ <https://www.dictionary.com/browse/cronus>

² <https://www.dictionary.com/browse/chronos?s=t>

³ Plato. *Timaeus* 40e. Translated by W.R.M. Lamb. Cambridge, Massachusetts, Harvard University Press; London, William Heinemann Ltd. 1925.

⁴ Henry George Liddell, Robert Scott, *A Greek-English Lexicon*. Retrieved 2015-07-13.

Comparison of the Goods

The buyer of electronics is sophisticated. The buyer of electronics and related accessories typically performs extensive research prior to purchasing. Applicant's CHRONOS is not for cameras, but rather accessories. The sophisticated buyer of a new camera, or aftermarket accessories for their camera, are not likely to be confused between CHRONOS and CRONUS as they are likely to do research before they buy.

Goods or services "may fall under the same general product category but operate in distinct niches. When two products are part of distinct sectors of a broad product category, they can be sufficiently unrelated that customers are not likely to assume the products originate from the same mark." Checkpoint Systems, Inc. v. Check Point Software Technologies, Inc., No. 00-2373 (3rd Cir. Oct. 19, 2001). Many courts have held that the mere fact that "two products or services fall within the same general field ... does not mean that the two products or services are sufficiently similar to create a likelihood of confusion." Harlem Wizards Entertainment Basketball, supra. 952 F.Supp. at 1095 ("Meaningful differences between the products and services are often cited as a factor tending to negate reverse confusion, even when the products are superficially within the same category"). In Sunenblick v. Harrell, 895 F.Supp. 616 (S.D.N.Y. 1995), aff d., 101 F.3d 684, (2d Cir. 1996), for example, the court found that plaintiffs and defendant's use of the UPTOWN RECORDS mark for music recordings did not create a likelihood of confusion because "[plaintiff]'s products [were] addressed to a somewhat esoteric market, viz., purchasers interested in lost or forgotten jazz artists, in the 'straight ahead jazz' category, whereas defendants sell rap recordings," and because the distinct recordings were "featured in different sections of the stores ... according to genre and not by label name." Id. at 629. Here, as in Sunenblick, the goods/services of CHRONOS are marketed to different consumers than CRONUS.

Applicant's CHRONOS is specifically for "[p]ortable photography equipment, namely, lenses, lens filters, mounts, mouth mounts, straps, protective cases, floatation devices, reflectors, tripods, light stands and supports and bags specially adapted for these goods; Drone accessories, namely, carrying cases, replacement batteries, replacement blades, charging cables, camera covers, drone camera accessories including lenses and lens filters, lanyards, helipads, controllers and sunshades". In sharp contrast, CRONUS is registered in connection with "Binoculars; Cameras; Laser Rangefinder; Riflescopes; Spotting scopes; Hunting binoculars." In this case, the customer base is vastly different. Obviously, a customer purchasing all goods other than cameras (Binoculars; Laser Rangefinder; Riflescopes; Spotting scopes; Hunting binoculars), is entirely different with no overlap. Regarding cameras, as the Examining Attorney focuses on, there are numerous other similar registrations for chronos OR cronus OR chronus OR cronos in class 009 and somehow relating to cameras or optics or systems using cameras. Accordingly, each company should be entitled to carve out their own section of the market.

CHRONO MA:GIA	5582994	ultrasonic sensors
DR CHRONO	5867303	Downloadable software in the nature of a mobile application for use in providing information relating to healthcare providers, electronic health records, patient files and charts, laboratory test

		results, pharmacy data, medical and optical supplies and inventory...
DRCHRONO	5861911	Downloadable software in the nature of a mobile application for use in providing information relating to healthcare providers, electronic health records, patient files and charts, laboratory test results, pharmacy data, medical and optical supplies and inventory...
KHRONOS	5532911	Computer software, namely, cross-platform application programming interfaces for the integration of graphics, parallel computing, vision processing, neural nets, and dynamic media on a wide variety of platforms.
KRONOS UNLEASHED	5465263	Computer software and firmware for playing games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals.
KRONOS	5410036	Fiber Laser for non-medical purposes, Laser Engines, namely, fiber laser sub-systems and fiber laser sub-assemblies, for non-medical purposes, Fiber Laser Modules comprised of optical lenses, isolators, optical couplers, splitters, wavelength division multiplexer, optical filters, pump and signal combiners, fiber laser mirror gratings, fiber bragg gratings, cladding power strippers, frequency taps, splitters, optical connector, multimode combiners, interrogator, pump laser, for non-medical purposes, Lidar, Optical semiconductor amplifiers, Pulsed Fiber Laser for non-medical purposes, Pulsed Laser for non-medical purposes
CHRONOS	4877425	Computer hardware for collecting and transmitting human responses to tactile, visual, auditory and analog stimuli.
CHRONO DIAMOND	4445670	Horological and chronometric instruments featuring diamonds
CRONUS	5372067	...computer security software for hardening and scanning systems, fingerprint images and scanners, computer operating systems
KRONOS TOUCH ID	2735480	Security data entry terminal having fingerprint recognition hardware and software.
CHRONO TRIGGER	2270900	electrical and cinematographic apparatus and instruments, namely blank audio cassettes, prerecorded cassettes featuring music, blank video cassettes, prerecorded video cassettes featuring

		<p>action and adventure stories, compact discs featuring music, kaleidoscopes, motion picture films featuring action and adventure stories, magnets, eyeglasses, phonographic records featuring music, stereoscopes and photographic slide transparencies used therewith and] computer programs in the nature of interactive action adventure stories for use in the field of entertainment.</p>
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*all attached hereto as Exhibit A

The Examining Attorney has the burden to "provide evidence showing that the goods and services are related to support a finding of likelihood of confusion." TMEP 1207.01 (a)(vi). In this case, the Examiner has not met this burden. Accordingly, this factor strongly weighs against a finding of likelihood of confusion.

Conclusion

Here, the real question is whether the ordinarily prudent consumer is likely to see the composite mark CHRONOS and confuse it with CRONUS for different goods and services. For the foregoing reasons - notably, the distinctive differences between the marks themselves and the unrelated goods and services demonstrate that CHRONOS and CRONUS can clearly coexist without a likelihood of consumer confusion. For the foregoing reasons. Applicant respectfully requests that its mark, CHRONOS, be registered.

As always, the Examiner is welcomed and encouraged to contact Applicant's representative, Erin Klug at 248-567-7829 or emklug@varnumlaw.com, to discuss.

Please also note that Applicant is willing to consider amendments the identification of goods and services to help distinguish the subject mark from the cited registrations.