

The Trademarks ECHO and THE WILDERNESS COMPANY ECHO are Not Likely to Cause Confusion

The Trademark Examiner has refused registration of the mark CATAMARAN ECHO KEY WEST under Section 2(d) citing the mark in U.S. Registration No. 1205733 ECHO and U.S. Registration No. 2658560 ECHO THE WILDERNESS COMPANY, both owned by the same Registrant and both for “travel advisory services especially arranging and conducting river rafting trips.” The refusal is based on the similarity of the marks, and the relatedness of the services.

As the Examining Attorney points out, the likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “du Pont factors”).

While the marks admittedly all contain the word ECHO and both Registrant’s and Applicant’s services involve some type of boat, an analysis of all the relevant du Pont factors reveals that there is no likelihood of confusion.

The Similarity of the Marks

The test of likelihood of confusion for the similarity of the marks, is not a side-by-side comparison but rather, whether the marks are sufficiently similar that there is a likelihood of confusion as to the source of the goods. *In re Nat’l Data Corp.*, 753 F.2d 1056,1058 (Fed. Circ. 1985).

Relatedness of the Services

As mentioned above, while both the Applicant’s and the Registrant’s services involve some type of boat, the services are quite divergent. Applicant’s services are “chartering of private boats; arranging cruises on catamarans” and Registrant’s services are “Travel advisory services, namely, arranging and conducting river rafting trips for others.” The differences between river rafting and catamaran cruising are dramatic and Applicant proposes to assuage the Examining Attorney’s concerns by amending and limiting the services to “chartering of private **catamarans**; arranging cruises on catamarans.”

Several additional du Pont factors must be considered as well.

The channels of trade and conditions of sale must also be considered. Applicant’s consumers are vacationers in Key West Florida. The focus of these consumers is a relaxing vacation and the catamaran cruise is only one of many leisurely activities that tourists enjoy during a visit to Key West. While tourists will book Applicant’s trips in advance, they may also do so after arriving in Key West. Applicant’s services can be booked on the streets of Key West, through street vendors, as well as by phone, and through Key West hotels concierge’s services. There are no particular physical abilities need to go on the Applicant’s catamaran cruises.

Registrant’s consumers, while also travelers, must be assumed to research and plan their

vacations around the river rafting, wilderness experience. Note, that one of the cited marks even includes the word WILDERNESS. River rafting is a dangerous sport - not a leisure activity. Levels of the consumer's experience must be considered when planning such excursions, as well as the availability of appropriately sized, safety gear. The weather must be considered and the season during which the activity takes place, unlike Applicant's services which are available year-round, is a major consideration. Registrant's consumer are likely to plan their river rafting excursions months in advance. Further, not everyone can river raft - consumers must be physically able to walk, with gear, to the river and get in and out of slippery, wet rafts.

The length of time the marks have coexisted and the lack of any actual confusion are two additional factors that must be considered as well. While Applicant's logo is fairly new, Applicant has been operating under the name ECHO since 1995 and Registrant has been operating since 1971. In the 25 years of co-existence, my client is not aware of a single instance of confusion! This is very powerful evidence of a complete lack of likelihood of confusion.

The Amazon Echo Applications:

The Examining Attorney has also cited five pending applications, all owned by Amazon, which include the word ECHO. Two of them also contain the word AMAZON (SN: 87441444 and 86926991) and a third contains the word AUTO (SN: 88125044). Due to the fame of the mark, the addition of the word AMAZON is sufficient to immediately communicate to consumers the source of the services and negate any chance of confusion. The addition of the word AUTO also refers to a completely different mode of travel and there can be no confusion between these services as well. Application SN: 88125078 lists the services in class 039 as –

Arranging of transportation for travel tours; providing information, news, and commentary in the field of travel, available vehicle parking, current vehicle traffic, and transportation; providing traffic status information and responsive directional guidance information to vehicle operators; providing navigation and information services, namely, information regarding traffic and traffic congestion; provision of information regarding travel; provision of information to travelers regarding fares, time tables and means of public transport; services of a travel agency, namely, the booking of rental services of cars, boats and other vehicles; all of the aforesaid services also provided via a communications network or a mobile telephone or a wireless navigation device; providing vehicle location and direction information; GPS navigation services, namely, transmitting points of interest to vehicles.

This lengthy description makes only one reference to boats and it is specifically mentioned in the context of travel agency services - *not* the services itself. Again, given the fame of the Amazon trademark, it should be assumed the mark in the application will always appear in connection with AMAZON and thus, there is no likelihood of consumer confusion.

Application SN: 87441447 list the services in class 39 “as providing information, news, and commentary in the field of travel and transportation”. This mark as well, is not offering any travel or transportation services, let alone catamaran cruises. And again, given the fame of the

Amazon trademark, it should be assumed the mark in the application will always appear in connection with AMAZON and there is no likelihood of consumer confusion.

Based on the above, Applicant respectfully requests Examiner withdraw her objections and allow the application to proceed to publication. Should the Examiner wish to discuss any of the above issues, please contact the Applicant's attorney. Thank you.