

Hearing:
August 12, 1998

Paper No. 17
HRW

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 15, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re J. L. Honigberg & Associates, Inc.

Serial Nos. 75/072,200 and
75/072,201

Stephen Rubin for J. L. Honigberg & Associates, Inc.

Mitchell Front, Trademark Examining Attorney, Law Office
101 (R. Ellsworth Williams, Managing Attorney).

Before Cissel, Hairston and Wendel, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

J. L. Honigberg & Associates, Inc. has filed
applications to register the marks SUN BELLE¹ and SUN BELLE
in the following design format²

¹ Serial No. 75/072,200, filed March 13, 1996, claiming a first
use date of Nov. 9, 1993 and a first use in commerce of April 19,
1994.

² Serial No. 75/072,201, filed March 13, 1996, claiming a first
use date of Nov. 19, 1993 and a first use in commerce of April
19, 1994.

for "fresh fruits and vegetables."

Registration has been finally refused under Section 2(d) of the Trademark Act, on the ground of likelihood of confusion with the registered mark SUN BELL for "canned tuna, canned clams, canned oysters and canned mandarin oranges."³

Applicant filed a request that the appeals for the two applications be consolidated and the Board approved this request on March 24, 1998. Accordingly, both applicant and the Examining Attorney have filed consolidated briefs and a single oral hearing was held. This opinion is issued for both applications.

The Marks

The Examining Attorney maintains that applicant's marks SUN BELLE and SUN BELLE and design create overall commercial impressions similar to that of the registered mark SUN BELL. He points out that the word portions of the marks, SUN BELLE and SUN BELL, are identical in sound and nearly identical in appearance, in that they differ only by

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the final letter "E." In his analysis, the word portion remains the dominant element in applicant's composite mark, since it is the word portion which would be impressed on the purchaser's memory and used to call for the goods.

Applicant argues that the Examining Attorney has placed undue emphasis on the similarity in sound of the respective marks, particularly since these are not goods which are normally ordered orally, and has failed to consider the different connotations of the marks SUN BELLE and SUN BELL, which lead to different overall commercial impressions. Applicant contends that its mark SUN BELLE brings to mind a beautiful woman or object (belle) enjoying or celebrating the sun, whereas SUN BELL refers to a cup-shaped device that rings (bell) rung in connection with the sun. Applicant argues that the word "sun" itself is weak, being frequently used in trademarks, but that the compound marks SUN BELLE and SUN BELL, particularly when used in connection with the respective goods, result in two distinct marks with totally different meanings.⁴

³ Reg. No. 696,159, issued Apr. 12, 1960, claiming first use dates of June 24, 1957. Section 8 affidavit and renewal filed.

⁴ Applicant's request to supplement its brief, filed January 25, 1999, to add a citation to *Streetwise Maps, Inc. v. Vandam, Inc.*, 159 F.2d 739 (2nd Cir. 1998) is granted. Upon consideration of this decision, however, we cannot agree with applicant that the situation in that case is comparable to the present one. Not only was the cited case an infringement suit in which the trade

In certain cases, similarities in sound or visual appearance or connotation alone may be sufficient to find the marks confusingly similar. *Krim-ko Corp. v. Coco-Cola Co.*, 390 F.2d 728, 156 USPQ 523 (CCPA 1968). On the other hand, two marks may be extremely similar or even identical in one aspect and yet not be confusingly similar because of significant differences in one or more of the other two aspects. See *Kabushiki Kaisha Hattori Seiko v. Satellite International Ltd.*, 29 USPQ2d 1317 (TTAB 1991).

Here the word marks SUN BELLE and SUN BELL are obviously identical in sound. The fresh produce and canned goods involved, however, are admittedly not items which would normally be called for orally, but rather would often be purchased in a self-serve market. Thus, identity in sound is not sufficient in itself to render the marks confusingly similar.

The marks are also highly similar in appearance. The only distinction is the final letter "E" in applicant's mark, which easily might be overlooked by purchasers of

dress and manner of use of the marks was taken into consideration in determining likelihood of confusion, but also the plaintiff's mark STREETWISE was found to be weak in its entirety, both the words "street" and "wise" being extensively used by others. Thus, no likelihood of confusion was found with use of the mark STREETSMART for similar goods. Here there has been no showing by applicant that the registered mark SUN BELL is weak. Applicant's only evidence is directed to showing that the word "sun" is frequently used in trademarks.

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either produce or canned items while doing their grocery shopping.

Thus, the question is whether the words SUN BELLE and SUN BELL convey sufficiently different meanings, when viewed by these purchasers, to result in distinct overall commercial impressions. In the first place, while we agree that SUN BELL may in some way connote a type of "bell," we know of no generally recognized "sun bell," such that purchasers would immediately make this association. But even more significantly, the connotation of SUN BELLE is equally uncertain. Although applicant presently argues that its mark "conjures" the idea of a "beautiful woman or object enjoying the sun," applicant made of record during the prosecution of this case the declaration of John Hedges, an officer of applicant, in which he stated that "the word 'belle,' the French word for beautiful, is an adjective modifying the word 'sun', and was chosen to emphasize the products' aesthetics, flavor, and foreign origin, thus appealing directly to sophisticated consumers." He simply adds that "this meaning ...parallels its use as a noun in the South wherein it describes a beautiful and sophisticated young lady." [Paragraph 5]. As for the design feature, he states that it was "inspired by traditional American 'mariner's

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compass' quilt designs... and reinforces the sun theme and the foreign origin of [applicant's] product line."

Thus, applicant itself has demonstrated that there are at least two potential interpretations of SUN BELLE, one being "beautiful sun," the other "a beautiful lady enjoying the sun." The design element reinforces only the "sun" portion of the mark and, if anything, points the viewer of the mark in the direction of the "beautiful sun" connotation.

Moreover, this is not a case where the goods to which the marks are applied lead to different commercial impressions for the respective marks. Any link which might be discerned between SUN BELLE and fresh fruits and vegetables might just as easily be seen between SUN BELL and canned fruit. Both focus on the same sun image. Cf. *In re Sears, Roebuck & Co.*, 2 USPQ2d 1312 (TTAB 1987)[different meanings are projected by the mark CROSSOVER when used on brassieres and on ladies' sportswear, respectively].

Accordingly, we are faced with two marks which are phonetically identical, highly similar in appearance, and although not the same in meaning, both focus on the same general sun image. Given these similarities, together with the well-recognized fact that purchasers often retain only

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a general impression of marks they have encountered in the marketplace, we do not find the marks sufficiently different to create distinct overall commercial impressions which will be remembered over a period of time. See *Interco Incorporated v. Acme Boot Co.*, 181 USPQ 664 (TTAB 1974)[likelihood of confusion between marks GOLDEN SPUR and GOLDEN SPIKE, which are substantially similar in sound and appearance and, although the literal meanings are different, both convey a similar connotation]. Instead, the marks are highly likely to be confused by the ordinary consumers of the goods involved.

The Goods

The Examining Attorney argues that applicant's fresh fruit and vegetables are closely related to the canned mandarin oranges of registrant. In support of his position that a single entity often markets both fresh fruits and vegetables and processed fruits and vegetables, he has made of record several third-party registrations in which a single mark has been registered by the same entity for both types of goods. As appropriate representative examples, we note

Reg. No. 1,501,506 for the mark LOTUS for "fresh fruits" and "canned fresh fruits";

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Reg. No. 1,369,602 for the mark MAINE WILD for "fresh blueberries" and "frozen, canned or processed blueberries";

Reg. No. 1,109,554 for the mark SUN-LAND for "raisins, roasted nuts, dried fruits, canned fruits, preserved fruits, mincemeat, jam and jelly" and "edible nuts in their natural state and fresh fruits"; and

Reg. 984,626 for the mark HAWAIIAN GOLD (stylized) for "canned fruits, canned fruit juices and fresh fruits."

In addition, he made of record five registrations owned by the Dole Food Company, Inc. for the mark DOLE or DOLE and design for both fresh fruits and vegetables and processed fruits and vegetables.⁵

Applicant argues against any relationship between fresh and canned fruits and vegetables. Applicant strongly objects to the evidence introduced by the Examining Attorney of the use of the same mark by a single source for both types of goods on the basis that several of the registrations relied upon by the Examining Attorney are multi-class registrations wherein a single mark is registered as a house mark. Applicant argues that, if registrations of this type are taken under consideration, all food products would be related. Applicant points out that John Hedges, a declarant with "first-hand" knowledge of the produce industry, states that the produce department

⁵ Reg. Nos. 1,792,210; 1,568,638; 1,509,411; 1,494,440 and 1,334,608.

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of a supermarket is "essentially a self-contained fruit stand/produce market within the supermarket"; that canned mandarin oranges "would not be found anywhere near fresh produce in the supermarket"; and that canned fruit items are no longer considered or used as substitutes for the fresh products.

We agree with applicant that the multi-class registrations introduced by the Examining Attorney in which single marks are used for all varieties of supermarket items cannot properly be relied upon to demonstrate any relationship between the goods upon which these house-type marks are being used. In fact, we purposely did not cite those registrations above. The Examining Attorney's evidence, however, was not limited to registrations of this nature. Instead, he included several registrations for marks registered exclusively, or almost exclusively, for fresh and processed fruits and vegetables. On the basis of these registrations, and particularly, the registrations for the DOLE marks, we find that the Examining Attorney has adequately established that both fresh and canned fruits and vegetables might well be assumed to emanate from the same source when highly similar marks are used in connection therewith. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co.*

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Inc., 6 USPQ2d 1467 (TTAB 1988). It is not a question of whether fresh fruits and vegetables are interchangeable with the canned varieties, but rather whether both might be assumed to originate from a single source, on the basis of known marketing practices. Here, we find it highly likely that purchasers would assume a common origin.

Accordingly, on the basis of the overall similarity of the marks SUN BELLE (or SUN BELLE and design) and SUN BELL and the close relationship of the goods upon which they are being used, we find that purchasers are likely to be confused as to the source of the respective goods.

Decision: The refusal to register under Section 2(d) is affirmed.

R. F. Cissel

P. T. Hairston

H. R. Wendel
Trademark Administrative Judges,
Trademark Trial and Appeal Board