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PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Chase Products Company

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Serial No. 75/361,738

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Thomas C. McDonough of Altheimer & Gray for Chase Products Company.

Marc J. Leipzig, Trademark Examining Attorney, Law Office 115 (Tomas Vlcek, Managing Attorney).

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Before Hairston, Bottorff and Rogers, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Chase Products Company has filed an application to register the mark SPRING LINEN for "aerosol air fresheners and all purpose disinfectants."[1]

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used on or in connection

[1] Serial No. 75/361,738 filed September 23, 1997, based upon applicant's bona fide intention to use the mark in commerce.

with the identified goods, so resembles the following marks, which are registered to different entities, as to be likely to cause confusion, mistake or deception:

FRESH LINEN for "room deodorant";[2] and

CRISP LINEN for "all purpose disinfectants and carpet deodorizers".[3]

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

At the outset, we note that applicant, in urging reversal of the refusal to register, relies heavily on a decision of the Board which was not designated for publication in full. Decisions which are not designated for publication in full are not citable as precedent, even where as here, a copy of the unpublished decision is submitted. See Trademark Trial and Appeal Board Manual of Procedure (TBMP) §101.03 and cases cited therein. Thus, in reaching our decision herein, we have not relied on the unpublished decision submitted by applicant. Moreover, we find that decision factually distinguishable from the case at hand.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are

[2] Registration No. 1,224,822 issued January 25, 1983; Section 8 & 15 affidavit accepted and acknowledged.
[3] Registration No. 2,081,799 issued July 22, 1997.

relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities/dissimilarities between the marks and the similarities/dissimilarities between the goods.

Turning first to the goods, applicant has not seriously disputed that its aerosol air fresheners are closely related to the goods covered by the mark FRESH LINEN, i.e., room deodorant. Moreover, in the case of the mark CRISP LINEN, the goods are identical in part, i.e., all purpose disinfectants. Consequently, if applicant's and the registrants' goods were to be sold under the same or substantially similar marks, confusion as to the source or sponsorship of such products would be likely to occur.

With respect to the marks, applicant contends that unlike SPRING LINEN, FRESH LINEN and CRISP LINEN have recognized meanings. In particular, applicant argues that one would refer to putting "fresh linen" or "crisp linen" on one's bed. Further, applicant argues that the word "linen" is highly suggestive of scented products marketed to individual consumers, such as those involved herein, and that marks consisting of or containing "linen" are entitled to only a narrow scope of protection. In addition to the

two cited registrations, applicant submitted the results of a search of a private company's data base of marks consisting of the word "linen" for scented products.[4] The search revealed six such marks, two registered and one the subject of an application which cover fragrances, and three registered marks which cover cleaning preparations.

The Examining Attorney, on the other hand, argues that applicant's mark SPRING LINEN is substantially similar to both of the cited marks, FRESH LINEN and CRISP LINEN, because each mark consists of an adjective followed by the word LINEN. In addition, the Examining Attorney contends that the term SPRING LINEN is not devoid of meaning, as argued by applicant. In this regard, the Examining Attorney submitted four NEXIS excerpts which make reference to "spring linen" in connection with fashions and home furnishings for spring. Further, the Examining Attorney argues that the third-party registrations relied on by applicant cover goods which are unrelated to those involved herein and therefore are not probative evidence that the

[4] Third-party registrations/applications generally may not be made of record by introducing a trademark search report wherein the registrations/applications are listed. However, inasmuch as the Examining Attorney has considered the registrations/applications listed in the search report to be properly of record, we deem this evidence to be stipulated into the record. Accordingly, we have considered the evidence in making our determination.

cited marks are entitled to only a narrow scope of protection. The Examining Attorney contends that the word LINEN is arbitrary as used in connection with the involved goods and that it is the term SPRING that is weak when used in connection with applicant's goods. In this regard, the Examining Attorney made of record copies of a number of third-party registrations of marks containing the word "spring" for cleaning preparations and air fresheners/room deodorizers.

Notwithstanding the relatedness/identity of the goods involved herein, in our view, applicant's mark SPRING LINEN differs from the cited marks FRESH LINEN and CRISP LINEN in sound and appearance. Applicant's mark also differs from the cited marks in meaning, i.e., SPRING LINEN connotes linen for use in spring, FRESH LINEN connotes linen which is clean or freshly laundered and CRISP LINEN connotes linen which is clean and neat or recently pressed.

In addition, the word LINEN is somewhat suggestive of various scented products marketed to individual consumers, including those involved herein. Further, the words FRESH

and CRISP, in the cited marks, are suggestive of such products.[5]

The case at hand is not unlike an earlier Board decision involving an allegation of likely confusion among consumers based on the concurrent use of HERITAGE HEARTH and OLD HEARTH both for bread. See Bost Bakery, Incorporated v. Roland Industries, Inc., 216 USPQ 799 (TTAB 1982). In the Bost case, third-party registrations for marks including the term HEARTH, despite the opposer's argument that they were limited in number and only a few were used for bread, were found probative of the appeal of HEARTH "to others as a trademark element in the baked goods field." Id. At 801 n.6. The Board found the shared term an "insufficient basis on which to predicate a [finding] of likelihood of confusion." Id.

As in the Bost case, we find that similarly suggestive marks can coexist if they are "readily distinguishable in sound and appearance." Bost, supra at 801.

When we consider the suggestiveness of the cited marks as well as the differences between SPRING LINEN and FRESH LINEN and CRISP LINEN in sound, appearance and meaning, we

[5] We judicially notice that The Random House College Dictionary defines "**fresh**" as, inter alia, "not faded, worn, obliterated, etc."; "pure, cool, or refreshing, as air" and "**crisp**" as, inter alia, "firm and fresh; not soft or wilted"; "clean and neat, well-groomed."

conclude that applicant's intended use of SPRING LINEN for aerosol air fresheners and all purpose disinfectants is not likely to cause confusion with either FRESH LINEN for room deodorant or CRISP LINEN for all purpose disinfectants and carpet deodorizers.

Decision: The refusal of registration is reversed.

P. T. Hairston

G. F. Rogers
Administrative Trademark Judges
Trademark Trial and Appeal Board

Bottorff, Administrative Trademark Judge, dissenting:

I would affirm each of the Trademark Examining Attorney's Section 2(d) refusals, and accordingly I dissent.

I am not persuaded that the evidence of record supports the majority's finding that LINEN is "somewhat suggestive" of scented products in general or of the disinfectants and deodorizers involved in this case, or its tacit finding that the cited registered marks are entitled to a relatively narrow scope of protection. Rather, I find that the evidence of record shows that LINEN is an arbitrary term or, at most, a slightly suggestive term as applied to the goods involved here. The third-party registrations submitted by applicant, which are the only evidence of record on this point, are not sufficient to prove otherwise, inasmuch as: they cover goods, i.e., perfumes and laundry or cleaning preparations, which are markedly different from applicant's and registrants' goods; they are not evidence that the registered marks are in use or that purchasers are accustomed to distinguishing between different LINEN marks on the goods involved here; and they are not particularly probative in this case as dictionary-

type evidence of the meaning of LINEN as applied to such goods.

I also find that the arbitrary term LINEN is the dominant feature of each of the three marks, and that it accordingly is entitled to greater weight in our comparison of the marks' respective commercial impressions. The other words in the respective marks, FRESH, CRISP and SPRING, each are merely adjectives which are used to modify the arbitrary term LINEN. LINEN certainly is the dominant feature of applicant's mark, in view of the Trademark Examining Attorney's evidence of numerous third-party registrations of marks containing the word SPRING for goods of the type involved in this case.

I do not believe that the connotations of the respective marks are as dissimilar as the majority has found them to be. The Trademark Examining Attorney has submitted NEXIS® evidence showing that "spring linens" would include bed linens, i.e., "…check out the latest in spring linens for your bed," and "…make your bed look good with some new spring linens." Upon laundering, such "spring linens" presumably would also be "fresh linens" and/or "crisp linens." These terms might have different connotations or specific meanings when they are used in reference to linens, per se, but they have the same general

connotation when used on the goods involved in this case, i.e., the arbitrary (for these goods) concept of “linen,” be it “spring” linen, “fresh” linen, or “crisp” linen.

Although the respective marks, when viewed in their entireties, are slightly different in terms of appearance, sound and connotation due to the presence in each mark of a different first word modifying LINEN, I do not believe that those slight differences are sufficient to outweigh the basic similarity in the overall commercial impressions of the marks which arises from each mark’s use of the arbitrary term LINEN as its dominant feature. Accordingly, I find that applicant’s mark is more similar than dissimilar to each of the cited registered marks.

Where, as here, the respective goods of applicant and registrant are identical, a lesser degree of similarity between the respective marks is needed to support a determination that confusion is likely than would otherwise be required. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). I find that the requisite degree of similarity between applicant’s mark and each of the cited registered marks exists in this case. Therefore, I would affirm the Trademark Examining Attorney’s Section 2(d) refusal as to

each of the cited registrations.

Charles M. Bottorff
Administrative Trademark Judge,
Trademark Trial and Appeal Board