Paper No. 15
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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 22, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Duststop Filters, Inc.

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Serial No. 74/244,421

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Arthur G. Yeager for Duststop Filters, Inc.

Raul F. Cordova, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney)

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Before Seeherman, Quinn and Hairston, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Duststop Filters, Inc. has appealed the refusal of the Trademark Examining Attorney to register DUSTSTOP FILTERS, with the word FILTERS disclaimed, for "air filters for heating, air conditioning and ventilating equipment, namely disposable filters, washable filters, pleated filters, and

replaceable pad framed filters."[1] Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground of likelihood of confusion with the stylized marks DUST STOP, shown below, and registered by the same entity for "air filters in the form of adhesive-coated porous or fibrous materials, and for supporting frames for air filters arranged in tiers."[2]

Applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

We affirm the refusals of registration.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of

[1] Application Serial No. 74/244,421, filed February 10, 1992, and asserting first use on October 1, 1991 and first use in commerce on November 21, 1991.

[2] Registration Nos. 581,738 and 581,738, issued November 3, 1953, pursuant to the provisions of Section 2(f); Section 8 affidavit accepted; Section 15 affidavit received; renewed twice. The registrations originally issued to Owens-Corning Fiberglas Corporation; Office records now show ownership to be in Dust Stop Corporation.

confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. **Federated Food, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the goods, applicant's identification is for disposable filters, washable filters, and pleated filters. This identification is so broadly worded that it would encompass the registrant's identified air filters in the form of adhesive-coated porous or fibrous materials. Thus, we must consider the goods to be legally identical, and therefore to travel in the same channels of trade and be sold to the same classes of consumers.

It is a well-established principle that when 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, 1700 (Fed. Cir. 1992). With this in mind, we turn to a consideration of the marks.

Applicant's mark is DUSTSTOP FILTERS, while the cited marks are for the words DUST STOP, with the word DUST shown above and to the left of the word STOP. The slight differences between the cited marks and applicant's mark are not sufficient to distinguish the marks. As the

Examining Attorney has pointed out, the addition of the generic term FILTERS in applicant's mark has no source-indicating value. Further, applicant's mark and the registered marks are virtually identical in pronunciation, identical in connotation, and convey the same commercial impression. The fact that DUSTSTOP is depicted as a single word in applicant's mark, and as two words on two lines in the registered marks, is not likely to be noted or remembered by consumers. Under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections. **Dassler KG v. Roller Derby Skate Corporation**, 206 USPQ 255 (TTAB 1980). Even if consumers were to note the slight differences in the marks, they will view applicant's mark as another variation of the two registered marks, rather than as an indicator of a separate source for applicant's goods.

Although we have focused our discussion on the du Pont factors which form the basis for applicant's and the Examining Attorney's arguments, we reiterate that we have, in reaching our decision, considered the evidence bearing on all of the relevant du Pont factors.

Decision: The refusals of registration based on Registration Nos. 581,738 and 581,739 are affirmed.

E. J. Seeherman

T. J. Quinn

P. T. Hairston
Administrative Trademark Judges
Trademark Trial and Appeal Board