THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

June 9, 1997

Hearing:
October 8, 1996

Paper No. 19
PTH

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Boyer Candy Company, Inc.

Serial No. 74/382,736

David L. Just of Lucas & Just for Boyer Candy Company, Inc.

John Michos, Trademark Examining Attorney, Law Office 105 (Thomas Howell, Managing Attorney).

Before Cissel, Quinn and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Boyer Candy Company, Inc. to register the mark BONBONNIERE for filled chocolate candies.[1] Applicant seeks registration of its mark pursuant to the provisions of Section 2(f) of the Trademark Act.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act,

[1]Application Serial No. 74/382,736, filed April 21, 1993; alleging a date of first use and date of first use in commerce of March 1968.

contending that applicant's mark, when applied to filled chocolate candies, is likely to cause confusion with the registered mark LA BONBONNIERE BAKE SHOPPE (the words "BAKE SHOPPE" are disclaimed) for retail bake shop and wholesale baking services.[2]

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. Applicant's counsel and the Examining Attorney appeared at the oral hearing before the Board.

In determining likelihood of confusion, two key considerations are the similarities in the marks and the similarities in the goods/services.

Turning first to a consideration of the marks, applicant does not dispute that its mark BONBONNIERE is substantially similar to registrant's mark LA BONBONNIERE BAKE SHOPPE. As pointed out by the Examining Attorney, BONBONNIERE is the dominant portion of registrant's mark and the portion of the mark customers are most likely to remember. This portion is identical to the entirety of applicant's mark.

We turn next to a consideration of the goods and services. Applicant maintains that filled chocolate candies are in no way related to bake shops and baking services; that bake shops ordinarily sell cakes, donuts, pastries, muffins and the like; and that filled chocolate candies are

[2]Registration No. 1,516,846 issued December 13, 1988; Sections 8 & 15 affidavit filed.

a specialty item, made with equipment not generally found in bake shops.

The Examining Attorney, however, maintains that it is common knowledge that bake shops sell candy; that the recitation of services in the cited registration is broad enough to encompass all of the goods normally sold in a bake shop, including candy; and that the use of substantially similar marks on applicant's goods and registrant's services would be likely to cause confusion. In an attempt to demonstrate the relatedness of the goods/services, the Examining Attorney relies on one third-party registration which covers candy and bakery store services, and several third-party registrations which indicate (1) that entities have registered a single mark for candy on the one hand and baked items on the other hand and (2) that entities have registered a single mark for bake shops on the one hand and candy store services on the other hand.

We note that goods and/or services do not have to be the same or even competitive in order to support a finding of likelihood of confusion. It is quite enough if the goods and/or services with which the marks are used are related in some manner such that they would be seen by the same individuals under circumstances which would cause them to believe, albeit mistakenly, that they emanate from the same source. See General Mills Fun Group, Inc. v. Tuxedo Monopoly Inc., 204 USPQ 396 (TTAB 1979), aff'd 648 F.2d 1335, 209 USPQ 986 (CCPA 1981) and cases cited therein.

One of the third-party registrations submitted by the Examining Attorney (Registration No. 1,430,447 for the mark THE ORIGINAL COOKIE CO. and design for, inter alia, candy and retail bakery store services) serves to suggest that the specific goods and services involved in this appeal are of a type which emanate from a single source. In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993). The other third-party registrations cover slightly different goods or services, designating either candy and bakery products as the goods or bakery store services and candy store services as the services. Although these registrations do not list the goods as candy and the services as bakery store services, they nonetheless serve to demonstrate that candy, baked goods, candy store services and bakery store services are closely related and may be expected to emanate from a single source if offered under the same mark.

Even without this third-party registration evidence, we would still find that candy and retail bake shop services are sufficiently related that when substantially similar marks are used in connection therewith, confusion is likely. The registrant's services involve the sale of baked goods, and in the absence of any limitations in the recitation of services, we must presume that registrant sells all kinds of baked goods to all classes of purchasers. Candy and baked goods, such as donuts, muffins, pies and cakes all fall into the category of goods served for snacks or desserts. Such items are purchased by average purchasers upon impulse with

little or no discrimination. See eg., Paul F. Beich Company v. J & J Oven Company, Inc., 147 USPQ 162 (TTAB 1965) [use of virtually identical marks on candy and retail pretzel shop services is likely to cause confusion]. We find therefore, that, customers familiar with registrant's LA BONBONNBIERE BAKE SHOPPE retail bake shop and wholesale baking services would be likely to believe, upon encountering applicant's BONBONNBIERE filled chocolate candies, that the goods and services originated with, or were in some way associated with the same source.

Although applicant did not raise this matter, we have not overlooked the suggestiveness of the registered mark. However, even assuming that such mark is weak due to its suggestive nature, even weak marks are entitled to protection where confusion is likely.

Finally, even if we had doubt on the issue of likelihood of confusion, such doubt must be resolved in favor of the registrant. See In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

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

R. F. Cissel

T. J. Quinn

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