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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re WABI Fishing Company, Ltd.

Serial No. 75/234,823

Susan L. Heller of Howard, Rice, Nemerovski, Canady, Falk & Rabkin for WABI Fishing Company, Ltd.

Carol A. Spils, Trademark Examining Attorney, Law Office 101 (Jerry Price, Managing Attorney)

Before Seeherman, Hanak and Hairston, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

ABI Fishing Company, Ltd. has appealed from the refusal of the Trademark Examining Attorney to register LEO'S OWN as a trademark for "food products, namely, seafood."[1] Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on

the ground that applicant's mark so resembles the following marks, all owned by the same registrant, that if used on applicant's identified goods it would be likely to cause confusion or mistake or to deceive.

	Packaged chopped ham, packaged chopped beef and packaged chopped turkey, and bottled meat flavored spreads[2]
	chicken, turkey, ham, and other meats[3]
	packaged chopped ham, packaged chopped beef and packaged chopped turkey and bottled meat flavored spreads[4]

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[1] Application Serial No. 75/234,823, filed February 3, 1997, based on an asserted bona fide intention to use the mark in commerce.

[2] Registration No. 744,162, issued January 22, 1963; Section 8 affidavit accepted; renewed. The drawing is lined for the color red, but no claim to color is made.

[3] Registration No. 949,900, issued January 2, 1973; Section 8 affidavit accepted; Section 15 affidavit received; renewed. The drawing is lined for the colors yellow and red but no claim to color is made.

[4] Registration No. 745,926, issued February 26, 1963; Section 8 affidavit accepted; renewed. The drawing is lined for the colors red and yellow.

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

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. **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). 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, 29 (CCPA 1976).

Turning first to a consideration of the goods, the Examining Attorney has made of record several third-party registrations which show that a single entity has registered the identical mark for the goods identified in applicant's application and the cited registrations. For example, United Grocers, Inc. registered TEAM WORK for meat, seafoods, poultry and sausage;[5] Quantum Foods, Inc. has registered BUTCHER'S FINEST for processed meats, poultry and seafood sold in portions;[6] and Sysco Corporation

[5] Registration No. 2,073,622.

[6] Registration No. 2,113,362.

has registered HOT THANGS for meats, namely, beef, pork, poultry, seafood.[7] Although third-party registrations are not evidence that the marks shown therein are in commercial use, or that the public is familiar with them, third-party registrations which individually cover a number of different items and which are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. **In re Albert Trostel & Sons Co.**, 29 USPQ2d 1783 (TTAB 1993).

In addition to the third-party registrations the Examining Attorney has made of record a page from a booklet from Geo. A. Hormel & Co. called "The Casual Cuisine" which features two recipes, one for "Fruity Chicken Pita" which lists, as an ingredient, cans of HORMEL Chunk Chicken, and another for "Seafood Salad" which lists, as an ingredient, cans of HORMEL Chunk Skinless & Boneless Pink Salmon. These recipes would indicate to readers of them that a single company produces both canned chicken and canned salmon. The Examining Attorney has also submitted advertisements featuring both seafood items and meat items.

Although there are obvious differences between the meat products identified in the registrations and seafood,

[7] Registration No. 1,967,267.

it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same person under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. **In re International Telephone & Telegraph Corp.**, 197 USPQ 910, 911 (TTAB 1978).

In view of the Examining Attorney's evidence that meat products and seafood can emanate from the same producer, be sold under the same mark, and be advertised together, we find that the Office has established the necessary relationship between the goods, such that the use of similar marks on them is likely to cause confusion.

Applicant asserts that its product is a high-quality, specially-prepared, expensive and healthful salmon product, and argues that consumers are unlikely to assume that a company that offers "a healthful and specially-prepared gourmet seafood product would also offer packaged, preserved meats.

The difficulty with applicant's position is that its goods are not identified as a "high-quality, specially-prepared, expensive and healthful salmon product." Rather, applicant has identified its goods as "food products, namely, seafood." It is a well-established principle that the question of likelihood of confusion must be determined on the basis of the identification of goods set forth in the subject application and the cited registration. **In re William Hodges & Co., Inc.**, 190 USPQ 47 (TTAB 1976). Because there is no limitation on the seafood identified in the application that would restrict it to the special, gourmet salmon referred to in applicant's brief, we must deem applicant's goods to include canned as well as fresh seafood of all types, including inexpensive, non-gourmet products. We also note that the cited registrations are not just for "chopped ham and packaged chopped beef and packaged chopped turkey." The registration for LEO'S GOURMET CUT is for chicken, turkey, ham and other meats. This identification would include fresh meats, and would encompass expensive as well as inexpensive cuts of meat.

Moreover, applicant's and registrant's goods, as identified, can be sold in the same channels of trade to the same class of consumers, namely, the general public.

Turning then to a consideration of the marks, we find that LEO'S OWN is confusingly similar to the registered marks LEO'S and design and LEO'S GOURMET CUT and design. Although marks must be compared in their entireties, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark. **In re In re National Data Corp.**, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). In this case, while there are minor differences between LEO'S OWN and the registered marks, these differences are not sufficient to distinguish them. Specifically the design feature in the registered marks would be perceived as merely a simple background for the word mark, while the descriptive and disclaimed words "gourmet cut" have no source-indicating quality. Because of the prominent display of the word LEO's, and the fact that the registrant's goods would be called for by this name, it is this word which is the dominant part of these marks.

As for applicant's mark, although it includes the word OWN as well as the word LEO'S, the effect of this additional word is to indicate that this is a product produced by LEO. Applicant itself argues that the inclusion of the word OWN suggests that the LEO'S OWN product is Leo's Own personal, specialty product. In our

view the commercial impressions of all three marks are the same, that is, that the products sold under the marks LEO'S OWN, LEO'S and LEO'S GOURMET CUTS all emanate from "Leo." We would also point out that since applicant's mark is depicted as a typed drawing, a registration for this mark would encompass use of the mark in the script form shown in the cited registrations.

As noted previously, the purchasers of applicant's and the registrant's goods must be deemed to be the public at large, and not the health-conscious gourmets applicant has described as the consumers of its goods. Such consumers are not likely to make a detailed analysis of the marks. Rather, they are likely to assume that LEO'S OWN, used on seafood, is a variant of the registrant's LEO'S and LEO'S GOURMET CUT marks.

Finally, we find that the third cited registration, for the design of a lion wearing a chef's hat, with the word LEO on the hat, creates a sufficiently different commercial impression from LEO'S OWN, that confusion is not likely.

Decision: The refusal of registration is affirmed with respect to Registrations Nos. 744,162 for LEO'S and design and 949,900 for LEO'S GOURMET CUT and design, and

reversed with respect to Registration No. 745,926 for LEO's with lion design.

E. J. Seeherman

E. W. Hanak

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

ay well be packages of eitherfresh chopped meat, or frozen will not assume its seafood product, which it describes as a salmon product that is smoked and packaged through a special process, is distinct from packaged meat products, and that fish is entirely different from meat

Applicant argues that "fish is entirely different from meat and the two cannot be considered confusingly similar products." Brief, p. 5. Applicant also asserts that its product is a high-quality, specially-prepared and healthful salmon product, and that consumers are unlikely to assume that a company that offers "a healthful and specially-prepared gourmet seafood product would also offer packaged, preserved meats.

There are several problems with applicant's position. First, although applicant describes its product as a salmon product that is smoked and packaged through a special process, in its application its goods are identified as "food products, namely, seafood." It is a well-established principle that the question of likelihood of confusion must be determined on the basis of the identification of goods set forth in the subject application and the cited regsitration. **In re William Hodges & Co., Inc.**, 190 USPQ

47 (TTAB 1976). Because there is no limitation on the seafood identified in the application that would restrict it to the special, gourmet salmon referred to in its brief, we must deem applicant's goods to include canned as well as fresh seafood of all types, including inexpensive, non-gourmet products. Further, the cited registrations are not just for "chopped ham and packaged chopped beef and packaged chopped turkey. The registration for LEO'S GOURMET CUT is for chicken, turkey, ham and other meats. This identification would include fresh meats, and would encompass expensive as well as inexpensive cuts of meat. Nor can we assume, as applicant asserts, that the products listed in the other registrations would include preservatives. The fact that registrant's goods are identified as packaged chopped beef, turkey and ham does not require that they have preservatives. Fresh or frozen chopped meat does not necessarily require preservatives.

The evidence submitted by the Examining Attorney amply demonstrates that seafood and various meats may be produced by the same company, and sold by that company under a single mark. Such goods may also be advertised together.

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