

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

DEC 10, 97

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Louise A. Rollins

Serial No. 74/469,383

Bernhard Kreten for Louise A. Rollins

Andrew P. Baxley, Trademark Examining Attorney, Law Office
104 (Sidney I. Moskowitz, Managing Attorney)

Before Cissel, Hanak and Walters, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Louise A. Rollins (applicant) seeks registration of
CASTMASTER in typed capital letters for "threaded metal pins
and plugs used in the repair of cracks in metal castings."
The application was filed on December 14, 1993 with a
claimed first use date of June 17, 1993.

The Examining Attorney refused registration pursuant to
Section 2(d) of the Lanham Trademark Act on the basis that
applicant's mark, as applied to applicant's goods, is likely
to cause confusion with the mark CAST MASTERS, previously

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registered in the form shown below for "precision metal castings." Registration No. 732,368 issued June 5, 1962.

Cast Masters

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key considerations are the similarities of the marks and the similarities of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the marks, we find that they are virtually identical in terms of pronunciation and meaning. The fact that applicant's mark is depicted as one word and registrant's mark is depicted as two words is of virtually of no consequence. Likewise, the fact that applicant's mark is depicted in the singular form and registrant's mark is depicted in the plural form is of virtually no consequence.

Moreover, in terms of visual appearance, the marks are extremely similar. Applicant makes the argument that her "mark is in the form of an unstylized word mark ... [whereas]

the registrant's mark is depicted in a highly stylized form." (Applicant's brief page 5). However, what applicant fails to note is that because her drawing is depicted in typed capital letters, then pursuant to Trademark Rule of Practice 2.51(e) "this means that [applicant's application] is not limited to the mark [CASTMASTER] depicted in any special form." Phillips Petroleum Co. v. C. J. Webb, Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). Thus, applicant is free to depict her mark in typical script form, as does the registrant. When so depicted, the two marks are extremely similar in terms of visual appearance. See also INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992).

It is been held that in appropriate cases, marks will be held to be confusingly similar if there is sufficient similarity as to either visual appearance or pronunciation or meaning. Krim-Ko Corp. v. Coca-Cola Co., 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968). In this case, the two marks are virtually identical in terms of pronunciation and meaning, and when both marks are depicted in normal script form, they are extremely similar in terms of visual appearance.

Turning to a consideration of applicant's goods and registrant's goods, it must be remembered that when "the marks are the same or almost so, it is only necessary that

there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion." In re Concordia, 222 USPQ 355, 356 (TTAB 1983). See also 3 J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 23:20 at page 23-46 (4th ed. 1997).

There is no dispute that applicant's goods are utilized in the repair of cracks in metal castings. The term "metal castings" is not limited and thus would include registrant's goods, namely, "precision metal castings." Nevertheless, applicant argues that "it does not necessarily follow that [applicant's goods] will be used to repair registrant's precision metal castings." (Applicant's brief page 7, emphasis added). Whether applicant's actual goods will be used to repair registrant's actual goods is not the relevant consideration. What is relevant is that the goods as described in the application are used to repair the goods as described in the registration. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USP2d 1813, 1815 (Fed. Cir. 1987).

We find that the use of nearly identical marks on precision metal castings and metal pins and plugs used in the repair of such castings would cause purchasers to assume that the castings and the repair items come from a common source. Thus, there exists a likelihood of confusion.

Decision: The refusal to register is affirmed.

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R. F. Cissel

E. W. Hanak

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board.

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