

THIS DISPOSITION IS NOT CITABLE AS  
PRECEDENT OF THE TTAB

June 10, 1997  
Paper No. 14

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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Klein Bicycle Corporation

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Serial No. 74/509,515

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Jim Zegeer, Esq. for applicant.

Todd A. Pilot, Trademark Examining Attorney, Law Office 104  
(Sidney I. Moskowitz, Managing Attorney).

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Before Cissel, Hanak and Walters, Administrative Trademark  
Judges.

Opinion by Walters, Administrative Trademark Judge:

Klein Bicycle Corporation has filed a trademark  
application to register the mark AURORA for "bicycles as  
sold in bicycle specialty shops."<sup>1</sup>

The Trademark Examining Attorney has finally refused  
registration under Section 2(d) of the Trademark Act, 15

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<sup>1</sup> Serial No. 74/509,515, in International Class 12, filed April 6, 1994, based on an allegation of a bona fide intention to use the mark in commerce. Applicant first amended its identification of goods to "bicycles and structural parts thereof." Applicant sought a further amendment to its identification, as reflected in the body of this decision, in a request submitted with its brief on appeal. As the Examining Attorney, in his brief, expressly accepted this proposed amendment, we shall consider the identification to be so amended.

U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark AURORA, previously registered for "tires and tubes,"<sup>2</sup> that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs,<sup>3</sup> but an oral hearing was not requested. We affirm the refusal to register.

In a likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. In this case, there is no question that the marks are identical. Further, in the absence of contrary evidence, we conclude that AURORA is an arbitrary term as applied to either applicant's or registrant's goods.

We turn then to a consideration of the parties' goods. In deciding cases such as this, we are required to determine

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<sup>2</sup> Registration No. 1,173,103, issued October 13, 1981, to Hyosung (America) Inc., in International Class 12. (Sections 8 and 15 affidavits accepted and acknowledged, respectively.) The current owner of this registration, as reflected in the records of the PTO, is Hankook Tire America Corp.

<sup>3</sup> Applicant's request for an extension of time to file its reply brief is granted and the reply brief is considered herein. Applicant's request, submitted with its reply brief, that the application be remanded to the Examining Attorney for consideration of a proposed amendment to the identification of goods and certain evidence of third-party registrations included therein is denied. Remand during an ex parte appeal is a matter of discretion with the Board. In this case, not only is the request filed more than six months after the date of the action from which the appeal was taken, but the requested amendment to the identification of goods would serve no useful purpose as it does not distinguish applicant's goods from registrant's identified goods. See, Section 1205, *Trademark Trial and Appeal Board Manual of Procedure*.

the issue of likelihood of confusion on the basis of the goods as set forth in the application and the cited registration. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). As pointed out by the Examining Attorney, the registrant's goods are broadly identified as "tires and tubes." This identification encompasses all tires and tubes, including those for bicycles. Applicant's contentions regarding the actual nature of registrant's goods and the extent of its use of its registered mark are irrelevant in the proceeding before us. Such allegations are a collateral attack upon the validity of the cited registration, which matters are properly addressed before the PTO in a cancellation proceeding. *In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278, 280 (CCPA 1971); *In re Peebles, Inc.*, 23 USPQ2d 1795 (TTAB 1992). Thus, while applicant has offered various amendments to its identification of goods in its attempt to distinguish its goods from those of registrant, such amendments have little relevance to our determination of the issue before us. As indicated herein, applicant's apparent assumption that registrant's tires are only for motor vehicles is misplaced.

While the goods of the parties are clearly not the same, it is a general rule that goods or services need not be identical or even competitive in order to support a

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Likewise, consideration of the proffered third-party registrations would

finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services.<sup>4</sup> *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein. "If 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 International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983).

Tires are necessary parts of a bicycle, as a bicycle is a type of vehicle that moves on tires.<sup>5</sup> The Examining Attorney has submitted evidence of seven applications filed by third parties, based on use, to register marks in connection with, *inter alia*, both bicycles and "tires" or

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not serve a useful purpose.

<sup>4</sup> Thus, applicant is equally mistaken in the apparent assumption that applicant may distinguish its goods from those of registrant simply by excluding bicycle tires from the scope of its identification of goods. We must still determine whether, or the extent to which, there is a relationship or connection between bicycles and tires, including bicycle tires, such that a likelihood of confusion may exist.

<sup>5</sup> We judicially notice the definition of "bicycle," submitted by the Examining Attorney with his appeal brief, as "a vehicle with two wheels tandem, a steering handle, a saddle seat and pedals by which it is propelled." *Ninth New Collegiate Dictionary* (1990).

"bicycle tires." Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988). Applications based on use in commerce are of similar probative value.<sup>6</sup>

As a tire is a necessary component of a bicycle, it is reasonable to assume that the majority of bicycle tire purchasers are bicycle owners. Clearly, bicycles and bicycle tires are sold to the same class of purchasers and, in the absence of evidence to the contrary, it is reasonable to assume that bicycles and bicycle tires are sold through the same channels of trade. Therefore, we conclude that bicycles and bicycle tires are closely related products.

In view of the identity of applicant's and registrant's marks, their contemporaneous use on the closely related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

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<sup>6</sup> The Examining Attorney submitted information concerning eighteen applications; however, we consider only the information concerning the seven applications which are based on use in commerce.

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Decision: The refusal under Section 2(d) of the Act is affirmed.

R. F. Cissel

E. W. Hanak

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