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HANAK/DAVIS

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re John A. Notaras and Angelo L. Notaras

Serial No. 74/510,312

Hugh D. Jaeger of Hugh D. Jaeger, P.A. for John A. Notaras
and Angelo L. Notaras.

Karen K. Bush, Trademark Examining Attorney, Law Office 104
(Sidney Moskowitz, Managing Attorney)

Before Hanak, Quinn and Hohein, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

John A. Notaras and Angelo L. Notaras (applicants)
seek registration of EDGE EATER in typed capital letters
for "power operated lawn edgers." The intent-to-use
application was filed on April 8, 1984. Applicants have
disclaimed the exclusive right to use EDGE apart from the
mark as shown.

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The Examining Attorney refused registration pursuant to Section 2(d) of the Lanham Trademark Act on the basis that applicants' mark, when applied to applicants' goods, is likely to cause confusion with two previously registered WEED EATER marks, both owned by the same entity.

Registration No. 977,700 depicts WEED EATER in typed capital letters for "weed and grass cutting machinery for edging and trimming lawns." Registration No. 1,273,316 depicts WEED EATER in typed capital letters for "machinery for edging and trimming vegetation."

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

In any likelihood of confusion analysis, two key considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.")

Considering first the goods, while the application and the registrations employ somewhat different terminology, all three are broad enough to include power lawn edgers.

Indeed, in their reply brief, applicants have conceded that "the goods are virtually identical lawn care products."

(Applicants' reply brief p. 2).

Turning to a consideration of the marks, we note that "when marks would appear on virtually identical goods or services, the degree of similarity [of the marks] 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).

In this case, the two marks both consist of two words, with the second word being identical, namely, EATER. The first word in applicants' mark (EDGE) is highly descriptive of "power operated lawn edgers." (emphasis added). The word EDGE in applicants' mark has quite properly been disclaimed. The first word in registrant's mark (WEED) is highly suggestive when applied to power edgers. Clearly, power edgers are utilized to cut weeds as well as grass. While marks must be compared in their entirety, by the same token, in any likelihood of confusion analysis, it is not improper to give less weight to those portions of word marks which are descriptive or highly suggestive. See In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) In both marks, the EATER portion is, at

most, only minimally suggestive of power edgers. Edgers do not "eat" weeds or grass. Rather, they cut grass or weeds.

Given the fact that the goods are identical; the fact that both marks consist of two words with the second word being identical; the fact that the first word in each of the two marks is either descriptive (applicants' mark) or highly suggestive (registrant's mark); and the fact that the second word in both marks is more of a source identifying feature than are the first words, we find that the contemporaneous use of EDGE EATER and WEED EATER is likely to cause confusion.

One final comment is in order. During the examination process, applicants made of record a search report showing approximately 150 marks registered with the PTO which include the word EATER. In so doing, applicants were attempting to demonstrate that the term EATER is not the dominate portion of either mark, "especially in light in all of the other EATER marks." (Applicants' paper of June 29, 1995). The problem with applicants' evidence is that virtually all of the other EATER registrations are for goods or services totally dissimilar from the identical goods involved in this proceeding, namely, power edgers. Applicants' list of third-party registrations in no way

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demonstrates that, as applied to power edgers or related goods, the word EATER has in any way become a weak source identifier.

Decision: The refusal to register is affirmed.

E. W. Hanak

T. J. Quinn

G. D. Hohein
Administrative Trademark
Judges,
Trademark Trial and
Appeal Board

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