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THIS DISPOSITION IS NOT CITABLE AS
PRECEDENT OF THE TTAB

June 9, 1997

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Courtaulds Performance Films, Inc.

Serial No. 74/555,094

Thomas J. Moore of Bacon & Thomas for Courtaulds Performance
Films, Inc.

Charles Weigell, Trademark Examining Attorney, Law Office
109 (Deborah S. Cohn, Managing Attorney).

Before Rice, Cissel and Walters, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

Applicant applied to register the mark shown below

VISTA 

on the Principal Register for what were originally
identified as "tinted, laminated or reflective plastic films
for use on windows of buildings," in Class 17. The goods

were subsequently identified by amendment as "tinted, laminated or reflective plastic films marketed and sold through professional designers for retrofit on the interior surfaces of windows of buildings by professional installers; in International Class 17." The lining shown on half of the circle design in the mark represents the color red.

Registration was refused under Section 2(d) of the Act on the ground that applicant's mark, as used on the goods set forth in the application, so resembles the mark shown below,



which is registered¹ for "metal custom windows," in Class 6, and "non-metal custom windows," in Class 19, that confusion is likely.

When the refusal was made final, applicant appealed.

This appeal is similar in several ways to the appeal of applicant's earlier-filed application, Serial No. 74/441,668, but in the case at hand, the goods, as amended, are identified in a different way, the marks are not the

¹Reg. No. 1,808,796, issued on Dec.7, 1993 to Vista Custom Millwork, Inc.

same, and the evidence submitted by the Examining Attorney in support of the refusal is also different. The mark there was simply the word "VISTA" in typed form, with no design component, and the goods were identified in that case with the same language which appeared in this application as it was originally filed, i.e., as simply "tinted, laminated or reflective plastic films for use on the windows of buildings," without all the language now used in the instant application about how applicant's products are marketed, sold and installed. In the earlier application, however, the cited registered mark was the same one which is cited in the instant case.

Applicant's February 3, 1997 motion to consolidate the two appeals was denied because the Board had already rendered a decision in the appeal involving the word "VISTA" alone, affirming the refusal to register on January 3, 1997.

The record before us in this appeal leads us to reach a different conclusion than the one we reached in the earlier appeal. Based on the record in the instant application, we hold that confusion is not likely because these marks, when considered in their entireties, create different commercial impressions, and the goods identified in the cited registration have not been shown to be commercially related to the goods set forth in the amended application.

It is well settled that in resolving the issue of whether confusion is likely, we must compare the marks in their entireties. In appropriate cases, greater weight has

sometimes been accorded to the word portions of a particular marks, but design components may not be ignored.

In the case at hand, the marks in their entirety create different commercial impressions because the graphic designs with which the word "VISTA" is combined are not at all alike. Both marks do include the word "VISTA," which is suggestive, as applied to products such as windows and films for use on windows, but the marks as wholes are readily distinguishable.

The marks at issue here each combine the suggestive word with designs which are very different from each other. Applicant's mark includes a design of a circle within a square with a diagonal line through it. Half of the circle is colored red, and the portion of the other half of the square which is outside the circle is shown in black. The design is abstract, but it can be interpreted to suggest the benefits of applicant's product, which reflects heat while allowing in light. The design in the cited registered mark, however, bears absolutely no resemblance to the design in applicant's mark. The registered mark is suggestive of a semicircular window with four pie-shaped panes. There is no graphic or verbal reference whatsoever to reflectivity.

When the suggestive term "VISTA" is combined with these two very different design components, the resulting marks do not resemble each other enough to be likely to cause confusion, especially given the differences between the

goods identified in the application and the goods set forth in the registration.

In our earlier opinion explaining how we resolved the appeal of the refusal to register the word "VISTA" alone, we noted that the Examining Attorney had attempted to establish that the respective goods identified in the application and the cited registration were related because they travel through the same channels of trade, but that the evidence was insufficient for the purpose. We stated that even without such evidence, however, based on the unrestricted ways the application and the registration identified the goods, we found them to be commercially related because they were complementary.

In the instant case, as noted above, applicant has amended the identification-of-goods clause to severely limit the channels of trade through which its window films move and to restrict the circumstances in which they are installed and used. Whereas the application as filed was silent on these points, the amendment specifies that applicant's films are "marketed and sold through professional designers for retrofit on the interior surfaces of windows of buildings by professional installers." The declaration of Robin P. Randall, applicant's officer, provides more details in support of these limitations.

The Examining Attorney made of record copies of several advertisements from various telephone advertising directories in an effort to establish "the same entities

offering window tinting as well as windows." (Office Action 3, Nov. 20, 1995). Applicant makes persuasive arguments that most of this evidence does not demonstrate that plastic window films are offered by the same businesses that sell metal and non-metal custom windows, but we do not even have to get that far in analyzing this evidence. In view of the aforementioned language in the application limiting the goods in terms of how they are marketed, sold, installed and used, even if the Examining Attorney's evidence did show that some retail businesses offer both windows and window tinting materials, the evidence does not demonstrate that the kinds of windows identified in the registration move through the same narrow channels to the same sophisticated professional designers as the plastic films set forth in the application do.

In summary, we find that the marks at issue in this case, when considered in their entireties, are not so similar that confusion is likely when they are used in connection with the goods set forth in the respective application and registration. Accordingly, the refusal to register under Section 2(d) of the Act is reversed, and the application will be published for opposition in due course.

J. E. Rice

R. F. Cissel

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

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