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NOV 6, 97

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Spinergy Inc.**

Serial No. 74/557,929

Clarence A. Green of Perman & Green for Spinergy Inc.

Jeffery D. Frazier, Trademark Examining Attorney, Law Office
104 (Sidney I. Moskowitz, Managing Attorney)

Before Cissel, Hanak and Hohein, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Spinergy Inc. (applicant) seeks registration of REV-X
in typed capital letters for "mountain bicycle wheels and
racing bicycle wheels made of carbon fiber composite
materials." The intent-to-use application was filed August
4, 1994.

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 REV and design, previously registered in the form shown below for "bicycle parts and accessories - namely, handlebar pads, frame bar pads, single stem pads, double stem pads and seat covers." Registration No. 1,371,220.



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 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).

In this case, while the marks are obviously similar, by the same token, they are by no means identical. We simply do not share the examining attorney's view that "the letter X in the applicant's mark does not serve to change the commercial impression created by the term REV." (Examining attorney's brief page 5). The letter X is a significant component of applicant's mark, and in addition, it is

clearly noticeable because it is separated from the REV portion of applicant's mark by means of a hyphen.

Moreover, we note that the only component common to both applicant's mark and registrant's mark is the term REV. The examining attorney has attached to his brief a dictionary listing for the term "rev" showing that it means "to increase the speed of." Thus, as applied to applicant's carbon fiber bicycle wheels, the term REV is highly suggestive. Applicant has made of record the declaration of its Vice President, Gary Marcus. Attached to the Marcus declaration are advertisements for carbon fiber bicycle wheels manufactured by applicant and by applicant's competitors. These advertisements make it clear that one of the reasons for purchasing very expensive carbon fiber bicycle wheels is to enable the bicycle to go faster by reducing the weight of the bicycle and by reducing the amount of air drag. Because the term REV is highly suggestive of at least applicant's goods, it must be remembered that "the mere presence of a common, highly suggestive portion [word] is usually insufficient to support a finding of likelihood of confusion." Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693, 694 (CCPA 1976).

Considering next the goods, they are obviously related in that they all are bicycle parts. However, once again, the goods are by no means nearly identical.

In addition, applicant has established through the Marcus declaration that carbon fiber bicycle wheels in general, and not just applicant's particular carbon fiber bicycle wheels, are very expensive. Moreover, the examining attorney has never taken issue with applicant's contention that purchasers of carbon fiber bicycle wheels are sophisticated. In this regard, in deciding whether there is a likelihood of confusion, it must be remembered that "there is always less likelihood of confusion where goods are expensive" and that purchaser "sophistication is important and often dispositive because sophisticated consumers may be expected to exercise greater care." Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992). As an example of just how expensive carbon fiber bicycle wheels are, the exhibits to Mr. Marcus' declaration demonstrate that the typical retail price for just one such wheel is in the range of \$300 to \$600.

Given the very high cost of carbon fiber bicycle wheels in general, we share applicant's view that before making such a purchase, these sophisticated consumers would exercise careful consideration. Again, it should be

remembered that "there is always less likelihood of confusion where goods are ... purchased after careful consideration." Electronic Design, 21 USPQ2d at 1392.

Given the fact that the marks and goods involved are by no means nearly identical; the fact that the term REV is highly suggestive when applied to applicant's goods; and, perhaps most importantly, given the fact that applicant's goods as described in the application are quite expensive and are purchased only by sophisticated consumers exercising considerable care, we find that the contemporaneous use of the two marks for the respective goods is not likely to result in confusion.

The decision: The refusal to register is reversed.

R. F. Cissel

E. W. Hanak

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