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Paper No. 9
CEW

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fabrica D'Armi P. Beretta, S.p.A.

Serial No. 74/597,219

Michael A. Cornman, Schweitzer, Cornman & Gross for
applicant.

Cindy B. Greenbaum, Trademark Examining Attorney, Law Office
104 (Sidney Moskowitz, Managing Attorney).

Before Simms, Hohein and Walters, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Fabrica D'Armi P. Beretta, S.p.A. has filed a trademark
application to register the mark GOLD PIGEON for "guns."¹

The Trademark Examining Attorney has finally refused
registration under Section 2(d) of the Trademark Act, 15
U.S.C. 1052(d), on the ground that applicant's mark so
resembles the mark SUPER PIGEON, previously registered for

¹ Serial No. 74/597,219, in International Class 13, filed November 10,
1994, based on use in commerce, alleging dates of first use and first
use in commerce of January, 1994.

"small arms ammunition,"² 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, 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. Turning, first, to a consideration of the goods, we agree with the Examining Attorney's conclusion that guns and ammunition are closely related, complementary items. Although the Examining Attorney has not made any evidence of record in support of this statement, we find sufficient support for her conclusion in applicant's admission that "it is not denied that there is a relationship between ammunition and weapons (indeed, the applicant's famous BERETTA mark has been registered for both guns and ammunition)" (brief, p. 5).

Turning our consideration to the marks, we are cognizant of the well-established principles that while marks must be compared in their entireties, in articulating reasons for reaching a conclusion on the issue of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to

² Registration No. 1,078,873 issued December 6, 1977, to Olin Corporation, in International Class 13. (Sections 8 and 15 accepted and

a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp.*, 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

We surmise that PIGEON may be suggestive of a kind of prey or target at which a hunter would shoot a gun loaded with, of course, ammunition. Applicant has stated in the record that the word PIGEON "has no particular meaning with regard to the goods in point . . . other than to identify prey or targets with which ammunition and guns may be employed to shoot such prey or targets" (brief, p. 5). Applicant's brochure, submitted with its response of October 10, 1995, shows several lines of guns for various purposes. The gun identified by the trademark GOLD PIGEON is featured in the section of the brochure entitled "Field Grade and Sport Over-And-Under Shotguns" and the entry with respect to the S687 EL GOLD PIGEON shotgun states "[h]unting dog and upland game are featured in gold against a woodland background" (applicant's brochure, pps. 16 and 21). However, there is no reference to a more specific use for which applicant's GOLD PIGEON gun is intended, such as hunting birds or, more specifically, pigeons. Applicant has referred to third-party applications and registrations for marks which include the term PIGEON, but applicant has not made those applications and registrations of record

acknowledged, respectively.)

herein. Thus, there is no basis in the record before us to conclude that the term PIGEON, while arguably a suggestive term, is either highly suggestive or a common term as applied to guns and ammunition such that applicant's and registrant's marks could be adequately distinguished by the addition of the terms GOLD and SUPER, respectively.

Based on the meager record before us, we conclude that PIGEON is the dominant portion of both applicant's and registrant's marks. GOLD and SUPER are both superlatives modifying PIGEON and suggestive of the quality of the parties' respective goods. We must remember that the proper test for determining the issue of likelihood of confusion is the similarity of the general commercial impression engendered by the marks. Due to the consuming public's fallibility of memory and consequent lack of perfect recall, the emphasis is on the recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks. *Spoons Restaurants, Inc. v. Morrison, Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd*. No. 92-1086 (Fed. Cir. June 5, 1992). In this case, we find the overall commercial impression of the two marks to be substantially similar. Even if a consumer remembered the differences between the two marks, in view of the identical dominant terms PIGEON and the identical formats of the marks, consumers are likely to believe that

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the products are related and that they are intended for use together.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, GOLD PIGEON, and registrant's mark, SUPER PIGEON, 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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Decision: The refusal under Section 2(d) of the Act is affirmed.

R. L. Simms

G. D. Hohein

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