

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 16, 97

Paper No. 9
RLS/TAF

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Revere Ware Corporation

Serial No. 74/607,814

Paul R. A. Burke for Revere Ware Corporation.

Angela Lykos, Trademark Examining Attorney, Law Office 102
(Myra Kurzbard, Managing Attorney)

Before Simms, Seeherman and Hohein, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Revere Ware Corporation (applicant) has appealed from
the final refusal of the Trademark Examining Attorney to
register the mark D-E-C-O-R for non-electric metal cookware,
namely, stainless steel skillets, frying pans, saucepans,
Dutch ovens and stockpots.¹ The Examining Attorney has
refused registration under Section 2(d) of the Act, 15 USC

¹ Application Serial No. 74/607,814, filed December 7, 1994,
based upon applicant's bona fide intention to use the mark in
commerce. During the prosecution of this case, applicant filed
an amendment to allege use, reciting use of the mark since at
least as early as February 28, 1995. The amendment to allege
use was accepted by the Examining Attorney.

Section 1052(d), on the basis of two registrations held by the same entity (Decor Corporation Pty. Ltd.) for the mark DECOR for the following goods:

Plastic products for household use, namely, servers; small domestic utensils and containers, namely, ice pails, insulated ice pails, cups, beakers, mugs, jugs, drink carriers, bowls, basins, dishes, plates, saucers, trays, strainers, colanders, spice sets, flower pots, saucers for flower pots, hanging baskets for use with plants, and planters, all made of plastic; and plastic trays;² and

Plastic cooking utensils, namely, ladles, spatulas, measuring spoons, knives, forks and spoons; plastic wine buckets, wine chillers, goblets, lunch boxes, picnic sets, sauce dispensers, whisks, potato mashers, pet sets, litter scoops, planters, including mobile and self-watering planters, and watering cans.³

Briefs have been filed but no oral hearing was requested.

The Examining Attorney argues that the respective marks have the same pronunciation and that the goods of applicant and the registrant would be called for in the same way. With respect to the hyphens in applicant's mark, the Examining Attorney contends that the average purchaser will likely retain but a general rather than a specific impression of a trademark and would not be likely to notice this minor difference in the respective marks. Concerning the goods, the Examining Attorney argues that registrant's plastic utensils could be used for cooking with applicant's

² All of these goods are listed in Registration No. 1,317,684, issued February 5, 1985, Sections 8 and 15 affidavit filed.

³ Registration No. 1,804,138, issued November 11, 1993.

cookware and that otherwise registrant's goods may be used for serving. The Examining Attorney contends that applicant's cookware and registrant's plastic utensils may be sold in the same stores. Finally, the Examining Attorney has made of record copies of third-party registrations where the same registrant has registered the same mark for some of registrant's goods on the one hand as well as some of applicant's goods on the other. The Examining Attorney contends that this evidence demonstrates the commercial relatedness of the goods of applicant and registrant.⁴

Applicant, on the other hand, argues that the term "decor" is a diluted mark entitled to a limited scope of protection. In this regard, applicant argues that registrant's mark has "a significant descriptive aspect" (Response, November 7, 1995, p. 2),⁵ and that the marks are otherwise different in visual and overall impression. With respect to the goods, applicant argues that they are different in nature, function and material, applicant's goods being made of metal while registrant's are made of plastic. Applicant also points to what it regards as price differences between metal cookware and plastic utensils, and

⁴ In his brief, the Examining Attorney concedes that there is no likelihood of confusion vis-à-vis the registered mark used in connection with pet sets, litter scoops, planters, watering cans, flower pots, saucers for flower pots, hanging baskets for use with plants, and waste paper bins.

⁵ In response to this argument, the Examining Attorney notes a dictionary definition of "decor," meaning "the style and layout of interior furnishings," and argues that the registered mark is not merely descriptive of a feature, quality, characteristic or function of the goods.

argues that these goods are not likely to be produced by the same manufacturer, and may be sold in different sections of retail stores. Applicant also argues that they are not competitive in that a consumer would not purchase registrant's products instead of applicant's. Applicant argues that the nature of registrant's utensils suggest that they are primarily intended to be used with non-stick coated cookware and not stainless steel cookware. Applicant maintains that consumers in need of cookware "are likely to be very discriminating and sophisticated." Brief, 5. Finally, applicant points to three third-party registrations (one covering the mark DECOR for coasters, tablecloths, appliance covers, placemats and table pads; another for the mark DECORWARE for canisters, bread boxes, cake savers, dust pans, stove mats and cylindrical containers for small domestic utensils) as evidence that the term "DECOR" is a weak mark.⁶

Upon careful consideration of this record and the arguments of the attorneys, we believe that applicant's mark, used in connection with stainless steel skillets,

⁶ In his brief, the Examining Attorney has objected to this listing of third-party registrations on the ground that they were not made of record by the submission of copies of these registrations or the electronic equivalent thereof. While normally this would be a good objection (see, e.g., *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1231-32 (TTAB 1992), in this case, the Examining Attorney in his final refusal treated this listing as being of record by commenting on the registrations and arguing that they were for the most part for different marks. The Examining Attorney did not object at that time to the fact that this was a mere listing of registrations and not copies thereof. Accordingly, we consider the Examining Attorney's objection to have been waived.

frying pans, saucepans, Dutch ovens and stockpots, so resembles the registered mark, used in connection with a variety of plastic utensils (cups, mugs, jugs, bowls, basins, dishes, plates, saucers, trays, colanders, spice sets, ladles, spatulas, measuring spoons, knives, forks, spoons, picnic sets, potato mashers, etc.), that confusion is likely. First, applicant's mark and registrant's mark are substantially identical in sound, appearance and commercial impression. With respect to the goods, while applicant's stainless steel cookware and registrant's plastic utensils are obviously not identical and serve different purposes, we believe that they are commercially related products which may be sold near each other in retail stores and may be used together. Moreover, the Examining Attorney has made of record third-party registrations tending to demonstrate that the same entity may make both applicant's goods and those of registrant.⁷ See In re

⁷ For example, Registration No. 1,926,189, issued October 10, 1995, covers measuring spoons on the one hand and frying pans, sauce pans, skillets, Dutch ovens and stock pots on the other; Registration No. 1,911,128, issued August 15, 1995, covers knives, spoons and forks on the one hand and pots, pans and Dutch ovens on the other; Registration No. 1,917,087, issued September 5, 1995, covers mixing bowls and colanders on the one hand and frying pans, sauce pans, Dutch ovens and stock pots on the other; Registration No. 1,859,610, issued October 25, 1994, covers mixing bowls and bowls on the one hand and pots and pans on the other; Registration No. 1,897,896, issued June 6, 1995, covers bowls, saucers and serving trays on the one hand and Dutch ovens and pans on the other; Registration No. 1,847,171, issued July 26, 1994, covers cups, saucers, wooden forks and spoons on the one hand and sauce pans, Dutch ovens and skillets on the other; and Registration No. 1,763,702, issued April 6, 1993, covers cups, saucers, bowls, plates and dishes on the one hand and pots, pans and frying pans on the other. We note that the Examining Attorney has also made of record registrations

Ser No. 74/607,814

Perez, 21 USPQ2d 1075, 1076 (TTAB 1991). We also find no support in this record for applicant's argument that purchasers of cookware are discriminating and sophisticated. The items listed in applicant's application may be relatively inexpensive and are not necessarily purchased with a great deal of care. Finally, we note that the registered mark has been issued for a variety of goods. This factor, we believe, makes it more likely that purchasers, aware of the registered mark DECOR used on a variety of goods, who then encounter applicant's mark D-E-C-O-R for stainless steel cookware, will believe that applicant's goods are produced or are made under license by the same entity that makes registrant's goods. See *Rival Manufacturing Company v. Van Brode Milling Co., Inc.*, 137 USPQ 610 (TTAB 1963)(likelihood of confusion between RIVAL for housewares and cooking utensils including pots and pans vs. RIVAL for plastic spoons). Applicant's other arguments do not persuade us to reach a contrary result.

Decision: The refusal of registration is affirmed.

R. L. Simms

which issued under the provisions of Section 44 of the Act, 15 USC Sec. 1126. We have ignored these registrations.

Ser No. 74/607,814

E. J. Seeherman

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

Ser No. 74/607,814