

THIS DISPOSITION IS NOT  
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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Jason Incorporated

v.

Munck Cranes Inc.

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Cancellation No. 24,549

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John W. Renner of Renner, Otto, Boisselle & Sklar, P.L.L.  
for Jason Incorporated

Munck Cranes Inc., pro se.

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Before Sams, Seeherman and Quinn, Administrative Trademark  
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Jason Incorporated has petitioned to cancel the  
registration of Munck Cranes Inc. for the mark LOADRUNNER  
for overhead cranes.<sup>1</sup> As grounds for cancellation,  
petitioner asserts that it and its predecessors-in-interest

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<sup>1</sup> Registration No. 1,647,882, issued June 18, 1991. Office records indicate that this registration was cancelled on December 22, 1997 for failure to file a Section 8 affidavit. In view of the stage of the proceedings at which this occurred, we have issued the instant decision on the merits.

are the prior users of the mark LOAD RUNNERS for idler rollers; that it owns a registration for this mark; that the goods are closely related, and that confusion is likely to result from petitioner's use of LOADRUNNER for overhead cranes. Respondent has denied the salient allegations of the petition.

The record includes the pleadings; the file of the registration sought to be cancelled; and the testimony deposition, with exhibits, of William A. Hoagland, vice president of sales of the Load Runner Division of The Osborn Manufacturing company, a unit of Jason Incorporated. Petitioner has also made of record, under a notice of reliance, a notice of recordation with the Patent and Trademark Office of an assignment of, inter alia, Registration No. 973,349 for LOAD RUNNERS from Jason Incorporated, a Wisconsin corporation, to Jason Incorporated, a Delaware corporation.<sup>2</sup> Respondent submitted no testimony, and only petitioner filed a brief on the case. An oral hearing was not requested.

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<sup>2</sup> With its notice of reliance petitioner also submitted what appear to be "soft copies" of Registration No. 973,349 and the renewal of this registration in the name of Jason Incorporated. Such documents are not sufficient to make the registration of record. See Trademark Rule 2.122(d)(2). "A registration owned by any party to a proceeding may be made of record in the proceeding by that party...by filing a notice of reliance, which shall be accompanied by a copy of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration." However, the registration is of record through the identification

Turning first to the issue of priority, petitioner has shown that it, through its predecessor-in-interest, began using the mark LOAD RUNNERS for idler rollers in 1970, and that it has used the mark continuously since that time. Moreover, petitioner has made of record its registration for this mark for such goods.<sup>3</sup> Respondent, who did not submit any evidence whatsoever, can rely only on the June 5, 1989 Section 44(d) priority date of the application which matured into the registration sought to be cancelled. We also note that applicant, a Canadian company, has never alleged any use in the United States. Thus, there is no question as to petitioner's priority.

This brings us to the question of likelihood of confusion. Petitioner uses its mark on idler rollers, which are used in foundry mold making and in industries using power transmission and conveying applications to support and move heavy equipment and components. This machinery and conveyors require a large number of idler rollers. The idler-rollers come in various types and sizes, and sell for prices ranging from \$40 to \$1800.

Although petitioner candidly admits that the overhead cranes identified in respondent's registration are not the same as an idler roller, and that one would not be mistaken

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and introduction during the testimony of William Hoagland. Trademark Rule 2.122(d)(2).

for the other, the record shows that both products are used in the power transmission industry, and can be found adjacent to each other as part of the same conveying system to move heavy loads. Moreover, the record shows that idler rollers and overhead cranes are advertised in the same periodicals and trade shows, and that they are purchased by the same classes of purchasers.

It is well established that it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade in order to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that they conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. **In re International Telephone & Telegraph Corp.**, 197 USPQ 910, 911 (TTAB 1978).

In this case, because of the above-indicated reasons, we find that the parties' goods are related.

With respect to the marks, we find that they are virtually identical. We recognize that petitioner's mark LOAD RUNNERS is shown as two words, and in the plural, while

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<sup>3</sup> Registration No. 973,349, issued Nov. 20, 1973; Section 8

respondent's mark is the singular, one-word LOADRUNNER. However, these minor differences are unlikely to be noted or remembered by purchasers, and do not serve to distinguish the marks. The marks, as used on the respective goods, also convey the same connotation, in that both suggest that the goods are helpful in moving heavy equipment and material.

We also consider petitioner's mark to be strong. The record shows that petitioner has used the mark continuously for over 25 years; from 1975 until 1995 sales increased from half a million dollars to almost \$7 million. Petitioner promotes its LOAD RUNNERS idler rollers heavily, through advertisements in such periodicals as "Industrial Equipment News," "Power Transmission Design," and the "Thomas Register"; distribution of numerous brochures and catalogs devoted to its LOAD RUNNERS products for over 25 years; and participation in both local, national and international trade shows. Through the years petitioner has spent millions of dollars in promoting its mark.

Nor is there any evidence that any other party, other than petitioner and respondent, use LOAD RUNNERS or a variant for products in the power transmission field. On the contrary, petitioner has conducted a trademark search, and has submitted excerpts of the trademark section of the

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affidavit accepted; Section 15 affidavit received; renewed.

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"Thomas Register," which do not list any third-party registrations or uses.

We recognize that petitioner's and respondent's goods are specialized items, and that they are marketed to design engineers who must be considered sophisticated and careful purchasers. Nonetheless, even sophisticated and careful purchasers are not immune from confusion. Given the relationship between the goods, in particular the fact that they may be used as part of the same system, and the near identity of the marks, we find that the purchasers of these goods are likely to believe that LOAD RUNNERS idler rollers and LOADRUNNER overhead cranes emanate from the same source.

Decision: The petition for cancellation is granted.

J. D. Sams

E. J. Seeherman

T. J. Quinn  
Administrative Trademark Judges  
Trademark Trial and Appeal Board