Hearing: Paper No. 24
August 4, 1998 HANAK/md

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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Semco, Inc.

Serial Nos. 74/484,309 and 74/709,177

Devon A. Rolf for Semco, Inc.

Anthony R. Masiello, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney).

Before Hanak, Quinn and Wendel, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Semco, Inc. (applicant) seeks registration of FLO-TRONICS for "machines for conveying and blending powdered, pelletized and granular materials, namely gravity blenders, rotary airlocks, airlock feeders, line diverters, elutriators and cyclones." The application was filed on January 31, 1994 with a claimed first use date of June 30, 1960. Serial No. 74/484,309.

In addition, applicant seeks registration of MAC FLOTRONICS for essentially the same goods which are described in a very slightly different fashion as follows: “Machinery for conveying and blending powdered, pelletized and granular materials through a conduit, namely, gravity blenders, rotary airlocks, airlock feeders, line diverters, elutriators and cyclones.” This second application is an intent-to-use application which was filed on July 31, 1995. Serial No. 74/709,177.

In both cases, the same Examining Attorney refused registration pursuant to Section 2(d) of the Lanham Trademark Act on the basis that applicant’s marks, as applied to applicant’s goods, are likely to cause confusion with two marks previously registered to two different companies. The first mark is FLOTRONICS registered for “filter apparatus used for filtering solids from gases and liquids or filtering liquids from gases, and for filtering one immiscible liquid from another.” Registration No. 1,016,806. The second mark is FLOTRONICS and design registered for, among other goods, “pneumatic system controls, namely regulated valves … for precision control and/or change of pneumatic pressure, rate of flow and/or direction that are used in pneumatically operated

manufacturing and other apparatus …" Registration No. 1,412,804.

When the two refusals were made final, applicant took separate appeals to this Board. In both appeals, applicant and the Examining Attorney filed briefs. In addition, in the appeal involving the refusal to register MAC FLOTRONICS an oral hearing was held before the Board on August 4, 1998.

Because these two appeals involve common questions of law and fact, they will be decided in this one opinion.

There can be no dispute that both of applicant's marks share certain similarities with both of the cited marks. However, because applicant's goods are quite different from registrants' goods and because applicant's and registrants' goods are not consumer products but rather are sold only to professional buyers, we find that there exists no likelihood of confusion. In addition, we note that as described in the applications, applicant's goods are expensive and would be purchased only after significant study.

In arguing that applicant's goods are similar to registrants' goods, the Examining Attorney is in error by focusing not on applicant's conveying and blending system in its entirety, but rather by focusing on the individual

components of applicant's system. With regard to the goods of cited Registration No. 1,016,806 (filter apparatus), the Examining Attorney makes the following argument: "Applicant's elutriators are 'apparatus for filtering solid from gases.' An elutriator is 'an apparatus for separating particles … according to size by elutriation.' See Webster's Third New International Dictionary (1986)." (Examining Attorney's brief pages 3 and 4). With regard to the goods of Registration No. 1,412,804 (pneumatic system controls), the Examining Attorney argues that "applicant's rotary airlocks are goods of the type described in [Registration No. 1,412,804]." (Examining Attorney's brief pages 5 and 6).

Even assuming for the sake of argument that certain components of applicant's conveying and blending machines are identical to or extremely similar to the goods of the two cited registrations, this does not mean that applicant's conveying and blending machines are related to the goods of the two cited registrations. For example, an automobile has literally thousands of components. However, this does not mean that automobiles are commercially related to, for example, radios or the components of radios.

Moreover, in this case there is an additional flaw in the reasoning of the Examining Attorney in that the two components of applicant's goods singled out by the Examining Attorney (elutriators and airlocks) are simply not that similar to the goods described in the two cited registrations. As the Examining Attorney has noted, an elutriator is an apparatus for separating particles (solids) according to size. Thus, an elutriator is not that similar to the goods set forth in Registration No. 1,016,806, namely, "filter apparatus used for filtering solids from gases and liquids or filtering liquids from gases, and for filtering one immiscible liquid from another." As described, the goods of Registration No. 1,016,806 do not include elutriators which are devices for separating solids (particles) according to size.

Likewise, there is nothing in the record to indicate that the other mentoined component of applicant's conveying and blending machines (rotary airlocks) are encompassed by the description of goods set forth in Registration No. 1,412,804.

Given the significant dissimilarities between, on the one hand, applicant's conveying and blending machines and, on the other hand, the goods described in the two cited registrations, we find that there is no likelihood of

confusion. Moreover, as previously noted, the purchasers of applicant's and registrants' goods are not ordinary consumers, but rather are somewhat sophisticated professional buyers. As our primary reviewing Court has noted, in determining whether confusion is likely, 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). Finally, the Examining Attorney has never disputed the contention that applicant's goods, as described in the application, are expensive and are designed to the individual needs of particular customers. As has been stated on many occasions, "there is always less likelihood of confusion where goods are expensive and purchased after careful consideration." Electronic Design & Sales, 21 USPQ2d at 1392.

Decision: The two refusals to register are reversed.

E. W. Hanak

T. J. Quinn

H. R. Wendel
Administrative Trademark
Judges, Trademark Trial and
Appeal Board