

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Leslie Weinstein

Serial No. 74/622,150

James M. Slominski of Hornberger & Criswell for Leslie Weinstein.

Thomas Wellington, Trademark Examining Attorney, Law Office 104 (Sidney L. Moskowitz, Managing Attorney)

Before Hanak, Hairston and Walters, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Leslie Weinstein (applicant) seeks registration of TRUE LOCK in typed capital letters for "locking metal fasteners." The application was filed on January 17, 1995 with a claimed first use date of January 10, 1995.

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 locking metal fasteners, is likely to cause confusion with the mark TRU-LOK, previously

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registered in typed capital letters for "metal screws."
Registration No. 1,485,024.

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) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."). Considering first the goods, we note that by definition, a "screw" is a type of "fastener." The term "screw" is defined as follows: "A cylindrical fastener that is usually pointed, that has a head with a slot or recess, that is helically or spirally threaded, and that is designed for insertion into material by rotating (as with a screwdriver)." Webster's Third New International Dictionary Unabridged (1976). Moreover, the Examining Attorney has made of record excerpts of articles from the NEXIS database wherein the terms "screws" and "fasteners" are used interchangeably. Thus, applicant's chosen description of goods (locking metal fasteners) is broad enough to include the goods of the registration (metal screws).

We note that applicant has never argued that his goods as described in his application and the registrant's goods as described in the registration are not extremely similar (if not identical). Rather, applicant argues that his actual goods are different from registrant's actual goods. At page 2 of his rely brief, applicant makes the following comments: "The file history for the TRU-LOK mark makes it clear that the registrant uses that mark in the drywall industry...In contrast, the applicant uses his mark in the high technology aerospace and military industries wherein specialty fasteners are required." Even if we assume for the sake of argument that applicant's statement regarding registrant's actual goods is correct, what applicant fails to appreciate is that in a proceeding such as this, "the question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-a-vis the goods and/or services recited in [the cited] registration, rather than what the evidence shows the goods and/or services to be." Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). In this case, the goods as recited in the cited registration are included within the broader description of goods set forth in the application. Thus, the goods are legally identical.

Turning to a consideration of the marks, it must be kept in mind that "when marks would appear on virtually identical goods or services, the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). In this case, the marks are identical in terms of pronunciation and connotation. Both marks connote that the metal fasteners (including metal screws) will securely hold parts in place. Moreover, in terms of visual appearance, the marks are similar.

Under such circumstances, we find that the use of TRUE LOCK and TRU-LOK on legally identical goods is likely to result in confusion.

Decision: The refusal to register is affirmed.

E. W. Hanak

P. T. Hairston

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