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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re South Central Group Incorporated

Serial No. 74/645,990

Carroll F. Palmer for South Central Group Incorporated

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

Before Sams, Hanak and Walters, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

South Central Group Incorporated (applicant) seeks
registration of MAX for "boat anchors." The application was
filed on May 13, 1995 with a claimed first use date of
December 15, 1989.

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 applicant's goods, is likely

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to cause confusion with the identical mark MAX, previously registered for "sailboats." This Registration No. 1,034,772 issued on March 2, 1976 with a claimed first use date of January 23, 1975. The owner of this registration is Barnett Boat Co., Inc. of Kenosha, Wisconsin.

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

Because the marks are identical, the issue of likelihood of confusion will be decided based upon whether the Examining Attorney has demonstrated that boat anchors (applicant's goods) and sailboats (registrant's goods) are related to such a degree that consumers would expect boat anchors and sailboats sold under the trademark MAX to emanate from a common source.

The only evidence made of record by the Examining Attorney are stories from the NEXIS database which prove the obvious, namely, that some sailboats have anchors. The Examining Attorney has made of record no evidence showing that the same companies manufacture both boat anchors and sailboats, much less that said companies sell both boat anchors and sailboats under the same trademark. In response, applicant noted that "there is absolutely no similarity between a sailboat and an anchor unless one contends that anything having to do with the marine industry

is similar." (Applicant's response of November 3, 1995 at page 3).

We find that the evidence submitted by the Examining Attorney - which merely demonstrates that some sailboats have anchors - is not sufficient to demonstrate that there is enough of a relationship between sailboats and anchors such that the use of the identical mark on both items is likely to cause confusion. It is common knowledge that boats, like automobiles, have numerous components. If one were to accept the reasoning of the Examining Attorney, then the registration of a particular mark for automobiles would, without any further proof, preclude the registration of the same mark for the numerous components of automobiles, such as batteries, tires, radios, seats and so forth. To cut to the quick, we find that the evidence of the Examining Attorney, which merely establishes that some sailboats have anchors, is simply not sufficient by itself to demonstrate that there would be a likelihood of confusion resulting from the use of MAX on boat anchors and MAX on sailboats.

In contrast to the limited evidence made of record by the Examining Attorney, applicant has made of record a considerable amount of evidence demonstrating that use of the identical mark on boat anchors and sailboats is not likely to result in confusion. Applicant's evidence consists of the declaration of its president as well as the

declarations of the presidents of three distributors of marine equipment. In their declarations, the presidents of the three distributors explain that they were informed of the nature of this proceeding and that their declarations would be used in this proceeding in an effort to secure for applicant a registration of the mark MAX for boat anchors. While the four declarations are somewhat different, they are in agreement on four points. First, they all agree that purchasers of boat anchors and sailboats are very discerning. Second, they agree that purchases of boat anchors are made with great care because boat anchors are safety items. Third, they agree that the purchase of a boat anchor requires time and study because one must make certain that the specifications of a particular anchor are suitable for one's boat. Finally, they all agree that purchasers of boat anchors and sailboats are not likely to believe that if both products bore the mark MAX, that hence both products emanated from a common source.

In addition, applicant's president stated in his declaration that he "conferred with an officer of Barnett Boat Co., Inc., owner of trademark Registration No. 1,034,772 for the mark MAX in the marketing of sailboats and has been advised that if [applicant's] subject application is allowed and published, Barnett Boat Co., Inc. will not

file an opposition to the grant of the registration of MAX by the applicant for use with anchors."¹

Based upon these four declarations and the absence of any evidence to the contrary, we find that the purchasers of boat anchors and sailboats are both discerning and careful, and that furthermore they make inquiries when purchasing anchors to make certain that said anchors are compatible with their boats. Obviously, when purchasers are discerning and careful and make inquiries before purchasing, the chances for likelihood of confusion decline. Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992).

Based upon this particular evidentiary record, we find that the contemporaneous use of MAX on sailboats and MAX on boat anchors is not likely to result in confusion.

One final comment is in order. The three presidents of the marine supply companies stated that purchasers of boat anchors were "very discerning ... particularly [for] boats larger than 20 feet in length for which [applicant's] MAX

¹ While we have considered applicant's president's statement in reaching our decision on this case, his declaration would, obviously, have had greater evidentiary weight had he offered more details about the alleged conference, including, at least, the identity of the "officer" with whom he spoke. Moreover, even had applicant's president offered details about his telephone conference, his declaration would still have lacked the persuasive power of a written consent agreement between applicant and the cited registrant.

anchors are designed." (emphasis added). The Examining Attorney incorrectly gave little or no weight to these three declarations "because there is no evidence of record that applicant's anchors are made for boats larger than 20 feet in length, nor that the registrant's sailboats are less than 20 feet in length." (Examining Attorney's final office action of November 26, 1996 at page 1; see also Examining Attorney's brief of February 27, 1997 at page 4).

In response to the foregoing comments made by the Examining Attorney in her final office action of November 26, 1996, applicant's counsel submitted a paper dated December 11, 1996 in which she amended the description of goods from "boat anchors" to "boat anchors for boats of a least 20 feet in length." In so doing, applicant's counsel correctly noted that the use of the word "particularly" in the three declarations was not limiting in nature, but that "in order to summarily dispose of this technical basis for dismissal of the [three] submitted declarations, the statement of goods has been limited to cover only anchors of the size that are intended for use with boats at least 20 feet in length."

Unfortunately, applicant's paper of December 11, 1996 was not associated with this file until long after the Examining Attorney filed her brief dated February 27, 1997. However, because we have found on this particular

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evidentiary record that there is no likelihood of confusion resulting from the contemporaneous use of MAX on boat anchors per se and MAX on sailboats, we are electing to disregard applicant's amended (and more limited) identification of goods. In so doing, this eliminates the need to remand the file to the Examining Attorney for consideration of whether a likelihood of confusion exists between MAX for sailboats and MAX for boat anchors for boats of at least 20 feet in length. In short, applicant's mark MAX will be passed to publication with the identification of goods being simply "boat anchors."

Decision: The refusal to register is reversed.

J. D. Sams

E. W. Hanak

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