

THIS DISPOSITION IS NOT CITABLE
AS PRECEDENT OF THE TTAB

JAN 16, 98

Paper No. 9
PTH

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Scag Power Equipment, Inc.*

Serial No. 74/648,197

Fred Wiviott of Michael, Best & Friedrich for *Scag Power Equipment, Inc.*

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

Before *Simms*, *Seeherman* and *Hairston*, Administrative Trademark Judges.

Opinion by *Hairston*, Administrative Trademark Judge:

An application has been filed by Scag Power Equipment, Inc. to register the mark TURF RUNNER for "commercial lawn mowers."¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark, when applied to its goods, so

¹ Application Serial No. 74/648,197 filed March 17, 1995; alleging a bona fide intention to use the mark in commerce. The term "TURF" has been disclaimed apart from the mark as shown.

resembles the mark TURF RUNNER which is registered for "spraying machines,"² as to be likely to cause confusion.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.³ We affirm the refusal to register.

At the outset, we note that applicant and registrant's marks are identical. The Board has stated in the past that "[i]f the marks are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion." In re Concordia International Forwarding Corp., 222 USPQ 355, 356 (TTAB 1983).

In the present case, we find that the record supports the Examining Attorney's position that commercial lawn mowers and spraying equipment are related goods. Both goods are lawn equipment. Moreover, the Examining Attorney has made of record a number of registrations which indicate that entities have registered a single mark for lawn mowers and spraying equipment. Although some of the registrations are

² Registration No. 1,904,120 issued July 11, 1995. The term "TURF" has been disclaimed apart from the mark as shown.

³ Applicant submitted as an exhibit to its brief a corporate profile of registrant taken from the LEXIS/NEXIS data base. Applicant relies on this information in asserting that registrant's mark is not famous. However, the exhibit is untimely as provided by Trademark Rule 2.142(a) and, thus, has not been considered. We hasten to add that even if considered, the exhibit is not persuasive of a different result in this case. A mark need not be famous in order to be entitled to protection under Section 2(d) of the Trademark Act. In re Great Lakes Canning, Inc., 227 USPQ 483 (TTAB 1985).

for house marks of companies which market a variety of lawn and agricultural products and other kinds of goods, there are several which serve to suggest that the listed goods are of a type which emanate from a single source. In re Mucky Duck Mustard Co., Inc., 6 USPQ2d 1467 (TTAB 1988). For example, COUNTRY COTTAGE and design has been registered for power operated sprayers for insecticides and lawn mowers; TROY-BILT has been registered for lawn mowers, electric powered sprayers, and gasoline powered sprayers; GOLDEN STAR has been registered for power-operated and push-type lawn mowers and power-operated sprayers for watering plants; JACOBSEN has been registered for powered and riding lawn mowers and sprayers; and VAL-TEST and design has been registered for sprayers and lawn mowers. Further, some of the customers of registrant's spraying equipment (i.e., lawn maintenance companies) would also be customers of applicant's commercial lawn mowers.

We find therefore that commercial lawn mowers and spraying equipment are sufficiently related that if sold under the identical mark, confusion as to origin or sponsorship of the goods is likely to occur.

Applicant contends that the cited mark is weak and entitled to a limited scope of protection because it consists of two highly suggestive words, each of which is frequently used in marks for lawn care products. In support

of its contention, applicant submitted a list of registrations of marks which include TURF or RUNNER. The submission of a mere list of third-party registrations is generally insufficient to make the registrations of record. In re Duofold Inc., 184 USPQ 638 (TTAB 1974). However, the Examining Attorney did not object to the mere listing of the registrations, and therefore, we have considered the registrations. In any event, even if marks which contain TURF and/or RUNNER are considered weak marks, even weak marks are entitled to protection where confusion is likely. Here, applicant's mark is identical to registrant's mark and the goods are related.

As to applicant's remaining argument, even sophisticated purchasers are not immune from source confusion, especially in cases like the present one where related goods are marketed under identical marks.

In view of the foregoing, we conclude that purchasers familiar with registrant's spraying machines sold under the mark TURF RUNNER would be likely to believe, upon encountering the identical mark for commercial lawn mowers, that the goods originated with or were somehow associated with the same source.

Decision: The refusal to register under Section 2(d)
is affirmed.

R. L. Simms

E. J. Seeherman

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

Ser No. 74/648,197