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JAN 7, 98

Paper No. 12
RLS/AKP

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Integrated Health, Inc.*

Serial No. 74/657,225

Thomas T. Chan of Chan Law Group PLC for *Integrated Health, Inc.*

Laura Smith, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney)

Before Simms, Cissel and Walters, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Integrated Health, Inc. (applicant), a California corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark VIVA LIFT for nutritional supplements, namely, vitamins, amino acids and combinations of same.¹ The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC 1052(d), based upon Registration No. 1,821,954, issued

Ser No. 74/657,225

February 15, 1994, covering the mark VIVA SHIELD for vitamins and food supplements, and Registration No. 1,823,566, issued February 22, 1994, covering the mark VIVA FOR LIFE for vitamins and food supplements. Both of these registrations are owned by Viva America Marketing, Inc., a California corporation.

We affirm.

Essentially, it is applicant's position that the registered marks and applicant's mark are dissimilar in sound, appearance and meaning, with the last words in each mark being distinguishable.

[A]ssuming that the highly suggestive VIVA portions of the marks are used to suggest a revival, renewal or other invigoration, the addition of LIFT serves to reinforce the suggestion of the uplifting/invigoration aspect of the mark. VIVA SHIELD connotes an impression of vigorous protection and/or the warding off of an unidentified evil, and thereby creates a commercial impression which is distinguishable from VIVA LIFT...

The meaning of the terms FOR LIFE serve to emphasize that Registrant's product is intended to have a positive effect on the quality of life and/or possibility on longevity.

Applicant's appeal brief, 6. Applicant argues that the element VIVA of the registered marks is "weak" and highly suggestive and that consumers will be able to avoid

¹ Application Serial No. 74/657,225, filed March 31, 1995, based upon applicant's use of the mark in commerce since on or before May 16, 1989.

confusion of the marks when considered in their entireties. In this regard, applicant notes that VIVA connotes "life" and "living."² Applicant has made of record dictionary definitions of this word as well as a third-party registration covering the mark ROYAL VIVA registered for vitamin supplements, as support for its argument that the VIVA element of the mark is weak. Finally, applicant argues that purchasers of vitamins are likely to exercise special care in making their product selections.

The Examining Attorney, on the other hand, argues:

It is the Examining Attorney's position that VIVA is the dominant portion of the marks at issue. It is a foreign word for most of the overwhelmingly English speaking market in the United States. As such, it appears as exotic, or eye-catching, and thus is the dominant feature of the mark. Moreover, it is the Examining Attorney's position that consumers will not ponder over the subtleties of meaning between "for life" and "shield" as opposed to applicant's "lift". They will see the term VIVA as the exotic, dominant part of the mark, followed by a more concrete term with a vaguely positive connotation as applied to the goods at issue and will conclude that the identical goods carrying the VIVA mark originate from the same source.

Another point of similarity between the marks is the identical format. That is, the marks not only all contain the unusual term VIVA, but also that it is always the first element of the marks. The marks all follow the identical

² In this connection, applicant has argued that "viva" means "long live" in both Italian and Spanish.

format, VIVA, followed by matter suggestive of good health.

Examining Attorney's appeal brief, 4.

We agree with the Examining Attorney that one feature of a mark may be accorded more significance in the likelihood-of-confusion analysis, and that VIVA is, obviously, an important element of each of the marks in creating a commercial impression. Upon careful review of this record and the arguments, we conclude that confusion is likely when consumers encounter applicant's mark VIVA LIFT for nutritional supplements including vitamins in the marketplace.³ With respect to essentially identical goods, we believe that purchasers and potential purchasers, who are familiar with registrant's VIVA SHIELD and VIVA FOR LIFE vitamins and food supplements, who then encounter applicant's VIVA LIFT vitamins and amino acids, are likely to believe, because of the similarities of the marks, that

³ While the Examining Attorney has cited only two registered marks against applicant, in the Office action issued October 10, 1996, the Examining Attorney, in support of her argument that VIVA is the dominant part of the registered marks and has not been diluted, notes that the registrant is the owner of other registrations which include the word VIVA, for identical or related goods. Those registered marks include VIVA CONCENTRATE for ingredient component of dietary supplements (Registration No. 1,835,127, issued May 10, 1994); VIVA GUARD for dietary supplements (Registration No. 1,835,126, issued May 10, 1994); VIVA GREEN BARLEY for vitamins and food supplements (Registration No. 1,821,955, issued February 15, 1994); VIVA KIDS for vitamins and food supplements (Registration No. 1,833,092, issued April 26, 1994); and VIVA STAMINA for vitamins (Registration No. 1,723,202, issued October 13, 1992). The Examining Attorney states that these registered marks "are not being cited against the applicant but are merely for informational purposes."

Ser No. 74/657,225

all of these vitamins and supplements come from the same source.

Decision: The refusal of registration is affirmed.

R. L. Simms

R. F. Cissel

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

Ser No. 74/657,225