

Hearing:
August 13, 1997

Paper No. 15
PTH

THIS DECISION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

MAY 26, 1998

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mutoh Industries, Ltd.

Serial No. 74/674,719

Gary D. Krugman of Sughrue, Mion, Zinn, MacPeak & Seas for
Mutoh Industries, Ltd.

Sue Carruthers, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Simms, Hohein and Hairston, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Mutoh Industries, Ltd.
to register the mark set forth below for "water purification
and distillation units for household and office use."¹



¹ Application Serial No. 74/674,719, filed May 8, 1995, alleging
a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the grounds that applicant's mark, if used in connection with the identified goods, so resembles the previously registered mark HI-PURE for "sodium free drinking water," as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs, and both appeared at the oral hearing held before this panel.

Applicant contends that there is no likelihood of confusion because the goods on which it intends to use its mark and the goods in the cited registration are dissimilar and travel in different channels of trade. Further, applicant argues that the word "PURE" is highly suggestive of the registrant's goods, and, therefore, the cited mark is entitled to a narrow scope of protection. In this regard, applicant submitted a dictionary listing for the word "pure."²

The Examining Attorney, however, maintains that confusion is likely because applicant's mark and the cited mark are very similar, and water purification and

² The American Heritage Dictionary (1985) defines "pure" as, inter alia, "free from adulterants or impurities; free from dirt, defilement, or pollution; clean." The listing accompanied applicant's brief. Although the submission is technically untimely, the Board can take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372,

distillation units, on the one hand, and drinking water, on the other hand, are related goods. In connection with this latter factor, the Examining Attorney introduced copies of fifteen third-party registrations which cover water purification and distillation units as well as drinking water. As correctly pointed out by applicant, the registrations are not evidence of the registered marks' actual use in commerce or the impact, if any, of the marks on purchasers in the marketplace. Nonetheless, the evidence is competent to show that a particular mark has been adopted and registered by a single entity for both types of goods involved in this appeal. In re Mucky Duck Mustard Co., Inc., 6 USPQ2d 1467 (TTAB 1988).

Moreover, as the Examining Attorney correctly observes, since neither applicant's application nor the cited registration contains any limitations as to channels of trade, applicant's water purification and distillation units and registrant's drinking water must be presumed to move in all channels of trade normal for these types of goods. Thus, in our likelihood of confusion analysis, we must assume that applicant's water purification and distillation units and registrant's drinking water would be sold in some of the same channels of trade, such as mass merchandisers and discount stores. In short, we find that the goods are

217 USPQ 505 (Fed. Cir. 1983). Accordingly, we have considered

sufficiently related that if sold under the identical or substantially similar marks, confusion is likely.

Turning then to the marks, we agree with the Examining Attorney that they are substantially similar. The literal portions of the marks are identical and the presence of a non-distinctive background design in applicant's mark does very little in the way of distinguishing the mark from the cited mark. Simply stated, the involved marks, when considered in their entirety, are identical in sound and meaning, and differ little in terms of appearance.

Finally, given the meaning of "pure," we are mindful of the suggestive significance of the term, when used in connection with drinking water. Nevertheless, even weak marks are entitled to protection against registration by a subsequent user of a substantially similar mark for related goods.

Under the circumstances, we conclude that consumers familiar with registrant's sodium free drinking water offered under the mark HI-PURE, would be likely to believe, upon encountering applicant's mark HI-PURE and design for water purification and distillation units for household and office use, that the goods originated with or were somehow associated with the same source.

this evidence in reaching our decision.

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To the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must be resolved in favor of the prior registrant and against applicant. In re Shell Oil Co., 922 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

Decision:

Decision: The refusal to register is affirmed

R. L. Simms

G. D. Hohein

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

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