

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

APRIL 23, 98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Pro Natura, Inc.

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Serial No. 74/680,382

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Jay H. Geller for Pro Natura, Inc.

Baldev S. Sarai, Trademark Examining Attorney, Law Office  
105 (Thomas Howell, Managing Attorney)

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Before Simms, Cissel and Hanak, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Pro Natura, Inc. (applicant), a California corporation,  
has appealed from the final refusal of the Trademark  
Examining Attorney to register the mark PRONATURA for  
"dietary and nutritional supplements, preparations for  
treatment of the symptoms of menopause, antacids," in Class  
5.<sup>1</sup> The Examining Attorney has refused registration under  
Section 2(d) of the Act, 15 USC 1052(d), on the basis of  
Registration Number 1,390,496, issued April 22, 1986,

Sections 8 and 15 affidavit filed, for the mark PRO-NATURED for vitamins, minerals and food supplements.<sup>2</sup> Applicant and the Examining Attorney have filed briefs but no oral hearing was requested.

We affirm.

Applicant argues that the respective marks -- PRONATURA and PRO-NATURED -- are different in sound, appearance and meaning. In this regard, applicant argues that its mark has a "European sound," and that its mark is pronounced in a different manner from registrant's, with a short "a" in the second syllable of its mark. With respect to the meaning of the registered mark, applicant argues that it suggests one who is positive in nature, a connotation not found in applicant's mark. Concerning the goods, while applicant admits that some of its Class 5 goods are essentially identical to registrant's, applicant maintains that the other goods in this class (preparations for treatment of the symptoms of menopause, and antacids) are different and that, for these goods, there is no likelihood of confusion and registration should be allowed. Applicant also contends that there have been no instances of actual confusion

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<sup>1</sup> Application Serial Number 74/680,382, filed May 26, 1995, claiming use and use in commerce since April 1994.

<sup>2</sup> Because the Examining Attorney only refused registration with respect to applicant's Class 5 goods, applicant's books and magazines in the field of health and nutrition, in Class 16, and candy, tea and mushroom extract for use in making tea, in Class 30, were divided out into another application pursuant to

despite two years' contemporaneous use. Further, applicant argues that goods such as nutritional supplements, vitamins and food supplements are not purchased on impulse, but are purchased by "sophisticated, knowledgeable consumers looking for a particular product and particular brand." Applicant's brief, 9.

Upon careful consideration of the arguments and evidence of record, we agree with the Examining Attorney that confusion is likely. First, with respect to the goods, registration is to be refused when there is likelihood of confusion of applicant's mark for any of the goods in a particular class. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981). That is to say, registration is refused for the entire class when there is a likelihood of confusion with any of the goods in that class. Here, applicant has admitted that registrant's goods are for all practical purposes identical to some of its Class 5 goods. Moreover, we believe that applicant's antacids and other preparations are commercially related to registrant's vitamins, minerals and food supplements.

With respect to the marks, it is true that the registered mark contains a hyphen and that the marks have different endings. However, both marks begin with the

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applicant's request. A registration covering the mark for those

syllable "PRO" and contain a derivative of the word "NATURE". Both marks suggest that the products on which they are used are natural in a favorable or positive sense. It should also be remembered that the appropriate analysis of the marks is not by way of side-by-side comparison, and that the focus must be on the recollection of the average purchaser, who may retain a general, rather than a specific, impression of the trademarks. Further, there is generally no "correct" pronunciation of a trademark, and applicant's mark may well be pronounced in a manner similar to registrant's -- with a long "a" on the second syllable.

While applicant has argued that its goods are purchased by sophisticated and knowledgeable consumers, there is no evidence of record on this factor. Suffice it to say that vitamins, minerals, and food supplements as well as dietary and nutritional supplements may be of relatively low cost. Where that is the case, purchasers of these types of goods are generally assumed to exercise a lower standard of purchasing care.

If the respective goods of the parties are identical, it has been held that the degree of similarity between the marks need not be as great to support a finding of likelihood of confusion. *Century 21 Real Estate v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed.

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goods has now issued.

Cir. 1992). If there is any doubt with respect to likelihood of confusion, according to precedent, it must be resolved in favor of the prior user and registrant.

Applicant's other arguments are without merit. With respect to the lack of actual confusion, we have no evidence with respect to any actual market overlap of the respective products. In other words, there is no evidence of record with respect to the opportunity for confusion to have arisen. We do note, however, that applicant's use of the mark sought to be registered appears to be in the nature of a house mark used in a secondary manner to the more prominent product mark. Applicant's actual use of the mark sought to be registered may, therefore, have lessened any likelihood of confusion, although in our analysis of the issue of likelihood of confusion we must assume that the mark PRONATURA is the only mark being used to identify and distinguish applicant's goods from those of others.

Decision: The refusal of registration is affirmed.

R. L. Simms

R. F. Cissel

E. W. Hanak  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board

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