

Hearing:
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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 21, 98
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re David Dodart

Serial No. 74/718,351

K. S. Cornaby of Jones, Waldo, Holbrook & McDonough for
David Dodart.

Julia S. Shields, Trademark Examining Attorney, Law Office
109 (Deborah S. Cohn, Managing Attorney).

Before Cissel, Hohein and Hairston, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

David Dodart has filed an application to register the
mark LIFE SCIENCE PRODUCTS, INC. for services which were
subsequently described as "business marketing services for
dietary food supplements."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground

¹ Ser. No. 74/718,351 filed on August 21, 1995, which alleges a
bona fide intention to use the mark in commerce. The words
"PRODUCTS, INC." are disclaimed.

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that applicant's mark, if it were used in connection with the identified services, so resembles the mark LIFE SCIENCE and design, which is registered, as reproduced below,

for "dietary supplements and oral electrolyte solution for veterinary use,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed and an oral hearing was held. We affirm the refusal to register.

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities in the goods and/or services.

Insofar as the goods and services are concerned, the issue to be determined under Section 2(d) of the Act, in cases such as this, is not whether the goods or services in question are likely to be confused, but rather whether there is a likelihood that purchasers or potential purchasers thereof will be misled into the mistaken belief that they emanate from the same source. See, e.g., *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984). It is for this reason that the goods or services need not be identical or competitive in nature in order to support a finding of likelihood of confusion, it being sufficient for the purpose that the goods and services be related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under circumstances that could give rise, because of the similarities between the marks used thereon, to the mistaken belief that they originate from or are in some way associated with the same source. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

In this regard, it has frequently been held that a likelihood of confusion may result from the use by different parties of the same or similar marks for goods, on the one hand, and in connection with services which deal with those

² Registration No. 1,171,901 issued on October 6, 1981; Sections

goods on the other hand. See, e.g., *In re Peebles Inc.*, 23 USPQ2d 1795 (TTAB 1992).

Further, it is well settled that the issue of likelihood of confusion in a proceeding such as this must be determined on the basis of the goods or services specified in the subject application vis-à-vis those set forth in the cited registration. See, e.g., *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F2d. 937, 16 USPQ2d 1783 (Fed. Cir. 1990) and *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

In the present case, applicant's recitation of services reads simply "business marketing services for dietary food supplements," without any restrictions as to type of dietary food supplements or as to channels of trade or classes of purchasers. Thus, we must presume that the dietary food supplements applicant intends to market are for both human and/or veterinary use, they must be considered to travel in all channels of trade which would be normal for such goods, and they must be treated as suitable for sale to all potential purchasers of such goods. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

In addition, the Examining Attorney has introduced evidence that bears on the relationship between applicant's business marketing services for dietary food services and

registrant's dietary supplements for veterinary use. In particular, she made of record excerpts from the NEXIS data base which demonstrate that manufacturers of dietary supplements all market such supplements, and that dietary supplements have been developed which may be used for both humans and animals. We find, therefore, that applicant's business marketing services for dietary food supplements and registrant's dietary supplements for veterinary use are sufficiently related that if, offered under the same or substantially similar marks, confusion is likely.

Turning then to the marks, it is applicant's position that the marks are readily distinguishable because its mark does not include a logo or design, whereas the registrant's mark includes a stylized design of a flask with bubbling fluid. We agree with the Examining Attorney, however, that applicant's mark LIFE SCIENCE PRODUCTS, INC. and registrant's mark LIFE SCIENCE and design are substantially similar in sound, appearance and commercial impression.

In considering the marks, we recognize that the design in the registrant's mark cannot be ignored. However, although we have resolved likelihood of confusion upon consideration of the marks in their entireties, there is nothing improper in giving more weight, for rational reasons, to a particular feature of a mark. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir.

1985). In this case, we have given more weight to the words LIFE SCIENCE in each of the respective marks. We have done so in applicant's mark because applicant has disclaimed exclusive rights to use PRODUCTS, INC., thereby acknowledging the descriptiveness of these words. We have done so in registrant's mark because, in terms of indicating origin or affiliation, it is the words LIFE SCIENCE which are most likely to be impressed upon a customer's memory, and which would be used by prospective purchasers when requesting registrant's goods. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987)

Accordingly, we conclude that purchasers familiar with registrant's mark LIFE SCIENCE and design for dietary supplements for veterinary use would be likely to believe, upon encountering applicant's mark LIFE SCIENCE PRODUCTS, INC. for business marketing services for dietary food supplements, that such goods and services emanate from or are otherwise sponsored by or associated with a common source.

Finally, to the extent that there is any doubt on the issue of likelihood of confusion, it is well established that such doubt must be resolved against the newcomer and in favor of the prior user and registrant. *In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

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

R. F. Cissel

G. D. Hohein

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

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