

Hearing:
March 3, 1998

Paper No. 16
HANAK/md

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **LTG Lufttechnische Gesellschaft mit beschraenkter
Haftung**

Serial No. 74/720,971

David Toren of **Anderson, Kill & Olick** for **LTG
Lufttechnische Gesellschaft mit beschraenkter Haftung.**

Jeffery D. Frazier, Trademark Examining Attorney, Law
Office 104 (**Sidney Moskowitz**, Managing Attorney)

Before **Cissel**, **Hanak** and **Hairston**, Administrative Trademark
Judges.

Opinion by **Hanak**, Administrative Trademark Judge:

LTG Lufttechnische Gesellschaft mit beschränkter
Haftung (applicant) seeks registration of COOL WAVE and
design in the form shown below for "air-conditioning units,
cooling units for room cooling, namely fans and air
conditioners, fan heaters, wherein the air flow is
generated electrically and the heat with hot water,
ventilation units namely ventilating fans and oscillating

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fans for private, commercial or industrial use; oscillating fans for producing pulsating air streams, air humidifying and air dehumidifying units for ventilation units and air conditioning units; ventilating louvers for ventilation ducts, air conditioners, cooling units and heating units." The intent-to-use application was filed on August 25, 1995.

The Examining Attorney refused registration pursuant to Section 2(d) of the Lanham Trademark Act on the basis that applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark COOL WAVE, previously registered in typed capital letters for "combination window and floor fans." Reg. No. 1,631,499.

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs and were present at a hearing held on March 3, 1998.

In any likelihood of confusion analysis, two key considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Considering first the goods, we note that certain of applicant's goods are legally identical to registrant's goods. Applicant's goods include "fans." The term "fans" is broad enough to encompass the specific type of fans set forth in the registration, namely, "combination window and floor fans." Indeed, nowhere in its brief did applicant even discuss its goods or registrant's goods. Applicant never argued that certain of its goods (fans) were not legally identical to registrant's goods.

Turning to a consideration of the marks, we note at the outset that "when marks would appear on virtually identical goods or services, the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). Marks are typically compared in terms of

visual appearance, pronunciation and connotation or meaning.

In terms of pronunciation, the marks are absolutely identical. Obviously, applicant's mark would not be pronounced as "COOL WAVE and design."

Moreover, in terms of connotation or meaning, again the marks are absolutely identical. Both indicate that the products (including fans) will deliver a "cool wave," presumably of air.

Finally, we acknowledge that in terms of appearance, there are some differences between applicant's mark which includes a design and registrant's mark which does not. However, it must be remembered that the cited registration depicts COOL WAVE in typed capital letters. This means that registrant is free to depict its mark COOL WAVE in all normal matters of presentation, including placing the word COOL above the word WAVE (as does applicant) and utilizing lower case block letters for the mark (as does applicant). Phillips Petroleum v. C. J. Webb, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971); INB National Bank v. Metrohost, 22 USPQ2d 1585, 1588 (TTAB 1992). If registrant so depicted its mark, as it is free to do, then registrant's mark and applicant's mark would be somewhat similar in appearance.

In sum, we find that because the marks are absolutely identical in terms of pronunciation and connotation and are at least somewhat similar in terms of appearance, that their use on legally identical goods is likely to result in confusion.

Decision: The refusal to register is affirmed.

R. F. Cissel

E. W. Hanak

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

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