

Paper No. 16
HANAK/MD

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Lancer Orthodontics, Inc.**

Serial No. 75/017,413

Stephen J. Strauss of **Fulwider, Patton, Lee & Utecht** for
Lancer Orthodontics, Inc.

Chris Doninger, Trademark Examining Attorney, Law Office 105
(**Thomas G. Howell**, Managing Attorney)

Before **Seeherman**, **Hanak** and **Hohein**, Administrative Trademark
Judges.

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

Lancer Orthodontics, Inc. (applicant) seeks
registration of the mark IN ADVANCE and design in the form
shown below for "dental abrasives and polishes." The
application was filed on November 6, 1995 with a claimed



first use date of May 5, 1995.

The Examining Attorney has refused registration pursuant to Section 2(d) of the Trademark Act on the basis that applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark ADVANCE, previously registered in typed capital letters for "dental restorative materials." Registration No. 1,963,489.

When the refusal was made final, applicant filed an appeal to this Board. Applicant and the Examining Attorney filed briefs. Applicant has withdrawn its request for an oral hearing.

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, both applicant's goods and registrant's goods are sold to and used by dentists. Moreover, the Examining Attorney has made of record two third-party registrations showing that the same marks have

been registered for both dental abrasives and polishes and dental restorative materials. Nevertheless, as acknowledged by the Examining Attorney, not only are applicant's goods and registrant's goods by no means identical, but in addition, they are not even "directly competitive." (Examining Attorney's brief page 6).

Turning to a consideration of the marks, we find that in terms of visual appearance and connotation there are decided differences. Applicant's mark includes a depiction of a dental instrument. As applied to dental abrasives and polishes, a dental instrument is certainly not an arbitrary design. Nevertheless, the dental instrument in applicant's mark is depicted in a rather prominent fashion, and thus serves, along with the presence of the word IN, to distinguish in terms of visual appearance applicant's mark from registrant's mark. We simply do not share the view of the Examining Attorney that the presence of this prominent design in applicant's mark "would not play a role" in distinguishing applicant's mark from registrant's mark. (Examining Attorney's brief page 4).

In terms of connotation, the marks are also decidedly different. The Examining Attorney has dismissed the presence of the word IN in applicant's mark as "merely a preposition modifying the word that makes the greatest commercial impression in the registrant's mark, ADVANCE."

(Examining Attorney's brief page 3). We disagree. The phrase "in advance" is a common one which has a well understood meaning which is different from the meaning of the word "advance." The phrase "in advance" denotes prior to or in preparation for, a connotation which is reinforced by its use on goods which can be used in preparation for other dental procedures.

On the other hand, registrant's mark ADVANCE, especially as applied to dental restorative materials, has an entirely different meaning which is laudatory in nature. In this regard, we note that the word "advance" is defined as meaning, among other things, "to help or aid in the improvement of," Webster's Third New International Dictionary (1976), and thus suggests a superior product. Accordingly, not only do the meanings of applicant's mark and registrant's mark differ, but in addition, registrant's mark, especially as applied to dental restorative materials, is laudatory in nature and hence is entitled to a narrower scope of protection than an arbitrary mark. In re General Motors Corp., 23 USPQ2d 1465, 1470 (TTAB 1992). While it is true that in terms of pronunciation, there are clear similarities between applicant's mark and registrant's mark, we find that such similarities in pronunciation are simply outweighed by the clear dissimilarities in terms of visual appearance and meaning or connotation.

Finally, it must be remembered that both applicant's goods and registrant's goods are sold to and used by dentists. The Examining Attorney does not take issue with applicant's contention that dentists are sophisticated purchasers. In this regard, we note that it has been stated that "doctors [are] as sophisticated a group as one could imagine." Pfizer Inc. v. Astra Pharmaceutical, 858 F. Supp. 1305, 33 USPQ2d 1545, 1562 (SDNY 1994). Of course, the term "doctors" includes "doctors of dental medicine" and "doctors of dental surgery." It has been noted that with regard to the issue of likelihood of confusion, purchaser "sophistication is important and often dispositive because sophisticated consumers may be expected to exercise greater care." Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992).

We find that applicant's mark and registrant's mark are sufficiently different in terms of visual appearance and connotation or meaning such that their use on related but different dental products would not result in confusion when the purchasers and users of said dental products are decidedly sophisticated and careful in their purchases, as are dentists.

Decision: The refusal to register is reversed.

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E. J. Seeherman

E. W. Hanak

G.D. Hohein

Administrative Trademark
Judges, Trademark Trial
and Appeal Board