

THIS DISPOSITION IS NOT
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Laboratoire Rene Guinot

Serial No. 75/029,201

Jay Geller of Law Offices of Jay Geller for Laboratoire
Rene Guinot

Jodi Lauterbach, Trademark Examining Attorney, Law Office
107 (Thomas Lamone, Managing Attorney)

Before Cissel, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

An application has been filed by Laboratoire Rene
Guinot to register the mark FRAICHEUR DE PEAU for "skin
moisturizing, exfoliating, oil control, softening,
smoothing, conditioning, toning, firming, tightening, and

lifting preparations, and preparations to minimize the appearance of wrinkles."¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of the previously registered mark FRAICHEUR for "perfumes, eau de toilette, cologne, after shave cream, after shave lotion, after shave gel, face and body soap, shaving foam, shaving cream, anti-perspirant, deodorant."²

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm.

It is the Examining Attorney's position that both parties' goods are "skin care preparations"; that the goods are "highly related skin care products which are presumed to travel in the same or similar channels of trade"; and that the dominant feature of both marks is the word FRAICHEUR, to which applicant merely added the descriptive words DE PEAU.

Applicant's position is essentially that the goods are not identical because applicant's goods are "general skin care preparations," while the goods covered in the cited

¹ Ser. No. 75/029,201, filed December 7, 1995. The application is based on a bona fide intent to use the mark in commerce. The application includes a statement that "The mark 'FRAICHEUR DE PEAU' translates from the French language as 'SKIN FRESHNESS.'" Applicant disclaimed the term "peau."

² Reg. No. 1,949,308, issued January 16, 1996. The claimed dates of first use and first use in commerce are April 1, 1993.

registration are "fragrances, after shave, soap, antiperspirant and deodorant," and "none of applicant's products is for fragrance, shaving care, cleansing or preventing odor" (Applicant's brief, p. 6); and that the marks "'freshness' and 'skin freshness'"³ create different commercial impressions" (Applicant's brief, p. 7); and that the word "freshness" is a common, everyday word which is used to describe the qualities and features of numerous consumer products. Applicant also contends that under the doctrine of foreign equivalents, dilution of the mark is established due to the existence on the register of "14 registered marks for skin care products with the word 'fresh'" (Applicant's request for reconsideration, p. 5), and applicant particularly argues two additional registrations which also include the word FRESHNESS in the mark, specifically, HIDDEN FRESHNESS⁴ and FRESHNESS YOU CAN FEEL⁵.

Applicant did not submit copies of any third-party registrations, but rather, applicant listed them in its

³ Applicant's mark is FRAICHEUR DE PEAU, and the cited registered mark is FRAICHEUR.

⁴ Reg. No. 1,751,760, issued February 9, 1993 to William P. Orien for "skin products, namely, antiperspirant, moisturizers, conditioners, lubricants, powders, vitamin enriched creams and lotions."

⁵ Reg. No. 1,801,803, issued November 2, 1993 to Henkel Kommanditgesellschaft Auf Aktien for "toilet soaps, foam baths, shower gels, deodorants for personal use."

request for reconsideration and appeal brief, and requested that the Board take judicial notice of the third-party registrations argued by applicant. Applicant's request is denied because the Board does not take judicial notice of registrations at the Patent and Trademark Office. See *In re Duofold, Inc.*, 184 USPQ 638 (TTAB 1974), and *Cities Service Company v. WMF of America, Inc.*, 199 USPQ 493 (TTAB 1978). See also, TBMP §712.01.

Turning to the involved marks, applicant's mark FRAICHEUR DE PEAU and the registered mark FRAICHEUR are similar in pronunciation and appearance. Specifically, both marks consist of the French word FRAICHEUR, to which applicant has merely added the French words DE PEAU, which translate to "skin" according to applicant, and applicant has disclaimed the word "PEAU." The marks look essentially the same, and for those purchasers familiar with French, the connotation is essentially identical, clearly relating to "freshness."

Applicant's argument that the registered mark FRAICHEUR is a weak mark due to the registration of two particular valid and subsisting marks on the register in the same class which include the English equivalent term

FRESHNESS⁶ is not persuasive. First, as explained earlier, applicant did not properly make any third-party registrations of record in this case. Second, even if applicant had properly made these registrations of record, third-party registrations are generally used to show common or suggestive meanings of terms, but in this case the meaning of the term FRAICHEUR is not in issue. In any event, the meaning of the term in both applicant's mark and the cited registrant's mark is the same, specifically, "freshness," which is a suggestive term as applied to various cosmetic products.⁷

Turning next to the goods, it is well settled that goods need not be identical or even competitive to support a finding of likelihood of confusion, it being sufficient

⁶ Applicant also noted two other registrations in the cosmetic class--Reg. No. 1,013,338, issued June 17, 1975, for FRESHNESS FIRST; and Reg. No., 1,521,444, issued January 24, 1989, for HIT FRAICHEUR. (These registrations are expired and cancelled under Section 8, respectively.) Applicant did not submit copies of these registrations.

⁷ Applicant's argument relating to the doctrine of foreign equivalents is misplaced. Under this doctrine, a foreign word (from a language familiar to an appreciable segment of the United States population) and the English equivalent may be found to be confusingly similar. However, the doctrine of foreign equivalents is not generally invoked if the marks involved are both foreign words, as is the case now before the Board. See TMEP §1207.01(b)(1). Further, it is not proper to take the foreign words in both parties' marks, convert the words into English, and compare the English translations to determine similarity. See Safeway Stores Inc. v. Bel Canto Fancy Foods Ltd., 5 USPQ2d 1980 (TTAB 1987).

that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. See *In re Peebles Inc.*, 23 USPQ2d 1795, 1796 (TTAB 1992). While applicant's various skin preparations vis-a-vis the cited registrant's perfumes, after shave products, soap and deodorants are obviously specifically different products, it is clear that they are related personal grooming products sold through the same channels of trade and purchased by the same purchasers in the same retail outlets.

Also, the Examining Attorney has introduced evidence in the form of a number of third-party registrations which show that several companies have registered their marks for skin preparations such as moisturizers on the one hand, and soaps, colognes, and/or after shave products, on the other hand. See *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, footnote 6 (TTAB 1988). Purchasers, familiar with registrant's toiletries sold under the mark FRAICHEUR, upon seeing applicant's skin preparations such as moisturizers sold under the mark FRAICHEUR DE PEAU, would be likely to

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believe that the products emanated from a single entity or were associated with the same source.

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

R. F. Cissel

P. T. Hairston

B. A. Chapman
Administrative Trademark
Judges, Trademark Trial and
Appeal Board