

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 9, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Armstrong World Industries, Inc.
v.
La Crosse Acoustical Tile, Inc.

Opposition No. 96,081
to application Serial No. 74/425,928
filed on August 13, 1993

Douglas E. Winters for Armstrong World Industries, Inc.
M. Paul Hendrickson for La Crosse Acoustical Tile, Inc.

Before Hanak, Quinn and Hohein, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

La Crosse Acoustical Tile, Inc. (applicant) seeks to register the mark SIGNATURE SERIES for "custom designed acoustical tiles." The application was filed on August 13, 1993 with a claimed first use date of March 31, 1993.

Armstrong World Industries, Inc. (opposer) has opposed this application on the basis that since at least as early as January 1, 1990, opposer has used the mark SIGNATURE

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VINYL for acoustical wall panels and that the contemporaneous use of SIGNATURE SERIES by applicant and SIGNATURE VINYL by opposer would result in confusion.

Applicant filed an answer which denied the pertinent allegations of the notice of opposition.

The record in this case is the testimony deposition with exhibits of Clifford B. Price, an employee of opposer. Applicant has submitted no evidence. Opposer filed a brief. Applicant did not. Neither party requested a hearing.

Through the testimony of Mr. Price, opposer has established that it has made continuous use of its mark SIGNATURE VINYL in connection with acoustical wall panels since at least as early as October 1990, if not earlier. Because applicant has made of record no evidence, applicant's earliest "proven" first use date of its mark SIGNATURE SERIES is the filing date of its application, namely, August 13, 1993. Long John Silver's Inc. v. Lou Scharf Inc., 213 USPQ 263, 268 TTAB (1982). Thus, priority of use rests in favor of opposer. Moreover, even if applicant had proven its claimed first use date of March 31, 1993, priority of use would still rest in favor of opposer.

We now turn to the issue of likelihood of confusion. In any likelihood of confusion analysis, two key considerations are the similarity of the goods and the similarity of the marks. Federated Foods, Inc. v. Fort

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Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the goods of the parties, applicant's chosen description of goods is "custom designed acoustical tiles." While applicant's specimens of use reflect use of the mark SIGNATURE SERIES on custom acoustical ceiling tile, the word "ceiling" does not appear in applicant's description of goods. Thus, applicant's chosen description of goods (custom designed acoustical tiles) is broad enough to encompass tiles which are placed not only on ceilings, but also on walls. Moreover, while opposer has characterized its products as acoustical wall panels, Mr. Price testified that opposer's SIGNATURE VINYL acoustical wall panels "could be considered an acoustical tile." (Price dep. 17). Mr. Price went on to note that "in the trade, tile and panel really are used interchangeably to indicate a board-type product whether it is put on the wall or the ceiling." (Price dep. 17). When shown applicant's description of its goods, Mr. Price testified that applicant's "description of goods clearly covers ... [opposer's SIGNATURE SERIES] product." (Price dep. 17). Thus, based upon the testimony of Mr. Price, and in the absence of any evidence from applicant to the contrary, we find that opposer's actual goods and applicant's chosen description of goods are virtually legally identical.

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Turning to a consideration of the marks, it is important to remember 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).

We find that the dominant portion of both marks is the word SIGNATURE. We note that applicant has disclaimed the exclusive right to SERIES apart from applicant's mark SIGNATURE SERIES in its entirety. Moreover, Mr. Price testified that the VINYL portion of opposer's mark SIGNATURE VINYL merely named the material used in making the particular type of acoustical wall panels. Thus, the SERIES portion of applicant's mark and the VINYL portion of opposer's mark are not source identifiers, but rather are descriptive terms. While it is certainly true that marks must be compared in their entireties, by the same token, it is not improper to give more weight to arbitrary terms and less weight to descriptive terms in making the comparison. In both marks, the term SIGNATURE is the only arbitrary term. Moreover, both marks consist of two words, and in both marks, the first word is SIGNATURE. Hence, we find that when the marks SIGNATURE SERIES and SIGNATURE VINYL are

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used on virtually legally identical goods, there is a likelihood of confusion.

DECISION: The opposition is sustained and applicant is refused registration.

E. W. Hanak

T. J. Quinn

G. D. Hohein
Administration Trademark Judges,
Trademark Trial and Appeal Board