

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 23, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Lever Investments Corporation and Conopco, Inc. d/b/a Lever
Brothers Company

v.

Daniel F. Ponder

Opposition No. 102,455
to application Serial No. 74/719,261
filed on August 23, 1995

Peter M. Mendelson for Lever Investments Corporation and
Conopco, Inc. d/b/a Lever Brothers Company.

Samuel D. Littlepage of Dickinson, Wright, Moon, Van Dusen &
Freeman for Daniel F. Ponder.

Before Simms, Hanak and Hairston, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Applicant's request for reconsideration of the Board's
decision of June 15, 1998 is denied.

The request raises two points. First, while
acknowledging "the policy that the application must stand or
fall as a whole... [in that] if any of the goods in the

application leads to a finding of likelihood of confusion, registration must ordinarily be refused," applicant asks the Board to disregard the holding of Tuxedo Monopoly v. General Mills, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) and reject this general policy. (Request page 2). The Board will not do this. Moreover, because opposers knew that they simply had to prove likelihood of confusion with any one of the three types of goods in applicant's Class 3 application, opposers may have chosen to minimize their litigation costs and limit their proof. To retroactively change the rules (i.e. disregard Tuxedo Monopoly) would be unfair to opposers, and an affront to our primary reviewing Court.

Second, applicant alleges that "the Board's statement that its decision was not contingent on the fame of opposer's [sic] mark rings rather hollow." (Request page 5). The Board finds this accusation to be perplexing. The Board specifically stated that "even absent any showing of notoriety for opposers' SUNLIGHT mark, we would still find that there exists a likelihood of confusion from the contemporaneous use of SUNLIGHT on dishwashing detergents which are also used to wash hands and SUNLITE on skin lotions which, of course, can be used on hands." (Decision page 8). On reflection, we find that there exists not just a likelihood of confusion, but a strong likelihood of confusion.

Applicant concedes the obvious, namely, that the involved marks are "nearly identical." (Request page 1). The fact the marks are virtually identical "weights heavily against applicant." In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). Indeed, the fact that applicant has selected the virtually identical mark long used by opposers "weighs [so] heavily against the applicant" that applicant's proposed use of the mark on "goods ... [which] are not competitive or intrinsically related [to opposers' goods] ... can [still] lead to the assumption that there is a common source." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688-89 (Fed. Cir. 1993).

In this case, the goods are clearly related (hand wash and skin/hand lotion); are sold in the same types of stores; are inexpensive; and are bought by ordinary purchasers exercising nominal care. Under such circumstances, the use of virtually identical marks (SUNLIGHT and SUNLITE) will result in a strong likelihood of confusion, if not certain confusion.

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R. L. Simms

E. W. Hanak

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