

Hearing:  
July 9, 1998

Paper No. 23  
PTH

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Peet Packing Company

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Serial No. 73/664,444

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Allen M. Krass and John Posa of Gifford, Krass, Groh,  
Sprinkle, Patmore, Anderson & Citkowski, P.C. for Peet  
Packing Company.

Jerry L. Price, Senior Trademark Examining Attorney, Law  
Office 101 (R. Ellsworth Williams, Managing Attorney).

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Before Simms, Seeherman and Hairston, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Peet Packing Company has appealed from the refusal of  
the Senior Trademark Examining Attorney to register the  
mark BONANZA in typed capital letters for "hams."<sup>1</sup>  
Registration has been refused pursuant to Section 2(d) of

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<sup>1</sup> Concurrent Use Application Serial No. 73/664,444 filed June 3,  
1987; alleging a date of first use of August 1963 and date of  
first use in commerce of 1972.

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the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with the identified goods, is likely to cause confusion with the following marks, all registered by the same entity for restaurant services:

BONANZA SIRLOIN PIT;<sup>2</sup>

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<sup>2</sup> Registration No. 791,172 issued June 15, 1965; renewed. The word "SIRLOIN" is disclaimed.

<sup>3</sup> Registration No. 917,854 issued August 3, 1971; renewed. The word "SIRLOIN" is disclaimed.

<sup>4</sup> Registration No. 1,022,903 issued October 14, 1975; renewed.

<sup>5</sup> Registration No. 1,022,904 issued October 14, 1975; renewed.

The case has been fully briefed<sup>7</sup> and an oral hearing was held.

We turn first to the question of likelihood of confusion vis-à-vis the registrations for BONANZA in stylized lettering and for BONANZA with background designs since these are the most pertinent of the cited registrations.

Turning then to the marks, they are virtually identical. One of the cited marks is only slightly stylized and the other two have background designs which are not particularly distinctive. Because applicant seeks to register its mark in typed capital letters, it would be free to depict its mark in the same stylized lettering as registrant or even with similar background designs.

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<sup>6</sup> Registration No. 1,481,977 issued March 2, 1988; Sections 8 & 15 affidavit filed.

<sup>7</sup> Applicant submitted with its appeal brief the results of a search of the Internet of businesses with the word "Bonanza" in their names. The Examining Attorney has properly objected to this evidence as being untimely submitted. See Trademark Rule 2.142(d) which provides that the record in the application should be complete prior to the filing of the appeal and that the Board will ordinarily not consider evidence submitted after an appeal is filed. In view thereof, we have given no consideration to this evidence in reaching our decision.

Applicant has attempted to minimize the substantial identity of the marks, pointing to the coexistence of a number of third-party registrations which include the word BONANZA. The Board has, on numerous occasions, stated that third-party registrations are of little probative value in determining likelihood of confusion in the absence of evidence to establish their use in the marketplace. Although they are registered, there is no evidence here that the marks are or have been in use or, if they are or have been used, whether such use was sufficient to enable the marks to have made some impact in the field. A further problem with the third-party registrations here is that most of the registrations cover goods or services far removed from the type of goods and services involved in this appeal. See *In re Melville Corp.*, 18 USPQ2d 1368, 1388-89 (TTAB 1991).

With respect to the goods and services, we note that likelihood of confusion may be found if the goods and services are related in some manner or, because of marketing circumstances, the marks are likely to be encountered by the same persons under conditions that could give rise to the mistaken belief that they are in some way associated with the same source. See *Monsanto Co. v. Enviro-Chem. Corp.*, 199 USPQ 590 (TTAB 1978). In this

case, the Examining Attorney argues that the goods and services are related because ham is often a featured item in restaurants and because restaurants sometimes offer their specialties in packaged form for sale in grocery stores to consumers.

In support of his position that the goods and services are related, the Examining Attorney submitted a number of third-party registrations for marks which show that entities have registered the same mark for restaurant services and ham. For example, the design of an individual preparing food over an oven is registered for restaurant services and hams; the marks ROADHOUSE RIBS and design, COUNTRY GLAZED HAM CO. and design, STICK TO YOUR RIBS and design, and FRIENDLY ICE CREAM are registered for restaurant services and ham; and the design of a man and woman sitting around a table is registered for restaurant services and ham sandwiches. These registrations, while not evidence that the marks shown therein are in use or that the public is familiar with them, have some probative value to the extent that they show that the goods and services involved in this appeal may emanate from the same source under the same mark. See, e.g., *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467 (TTAB 1988).

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Further, the Examining Attorney submitted six registrations which show that ham and ham sandwiches are menu items at restaurants.

Also, we note that our principal reviewing Court and this Board have found a likelihood of confusion in cases involving food or restaurant services and meats. See e.g., *In re H. J. Seiler Co.*, 289 F.2d 674, 129 USPQ 347 (CCPA 1961) [Customers of SEILER'S food catering services held likely to believe that SEILER'S bacon, bologna, dried beef, boneless butts, ham, luncheon roll, meat loaf, pork roll sausage and scrapple in the grocery store comes from the same source]; *In re Appetito Provisions Co., Inc.*, 3 USPQ2d 1553 (TTAB 1987) [Use of APPETITO for Italian sausages is likely to cause confusion with A APPETITO'S and A APPETITO'S INC. and sandwich design for restaurant services]; and *In re Best Western Family Steak House, Inc.*, 222 USPQ 827 (TTAB 1984) [Use of BEEFMASTER for restaurant services is likely to cause confusion with BEEF MASTER for frankfurters and bologna].

In view of the foregoing, we conclude that consumers familiar with registrant's restaurant services offered under the marks BONANZA in stylized lettering and BONANZA with the background designs would be likely to believe, upon encountering applicant's mark BONANZA for hams, that

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the goods and services originated with or were somehow associated with the same source.

To the extent that we have any doubt on the issue of likelihood of confusion, such doubt must be resolved in favor of registrant. In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes, 487 USPQ F.2d 918, 179 USPQ 729 (CCPA 1973).

In view of our decision herein, we need not reach the question of likelihood of confusion vis-à-vis applicant's BONANZA mark and registrant's marks BONANZA SIRLOIN PIT and BONANZA SIRLOIN PIT and design.

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**Decision:** The refusals to register with respect to Registration Nos. 1,022,903, 1,022,904 and 1,481,977 are affirmed.

R. L. Simms

E. J. Seeherman

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

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