

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB OCT. 5, 99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Standard Motor Products, Inc.

Serial No. 74/566,932

Paul M. Denk of for Standard Motor Products, Inc.

Michael C. Mason, Trademark Examining Attorney, Law Office 104
(Sidney I. Moskowitz, Managing Attorney).

Before Cissel, Hohein and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Standard Motor Products, Inc., a New York corporation, has
filed an application for registration of the mark shown below:



At the time of this appeal, there were eighteen separate
classes of goods in the application, as follows:

"Rosin core soldering chemicals and deicing
preparations for automobile locks" in
International Class 1;

"Pumice hand soap" in International Class 3;

"Graphite lubricant, automobile lithium grease, automobile lubricants in stick form, small container oiler, propane torch including propane vessel and torch tip, and propane fuel sold in cylinders" in International Class 4;

"Air freshener, first aid kit for domestic or other non-professional use" in International Class 5;

"Metal hardware, namely, booster springs, clips, cotter pins, couplers, coupling disc, grease fittings, grommet, screws, hooks, peg hooks, rivets, locks, padlocks, drain cock, vacuum connector, tees and fastener; metal taps and dies; baskets of common metals, metal gas cans sold empty, metal containers for beverages, draincock" in International Class 6;

"Throttle return springs, automotive plugs, power operated barrel pumps, power operated brake pump, machine parts, namely, bushings, air guns for discharging air under pressure, carburetor parts, namely, valves and fasteners, power operated grinding wheels, water valves for machines, throttle return springs, automotive spark plugs, vehicle engine drain plugs, components of a power operated weed trimmer, namely, weed cutter lines, machine parts, namely, cut-off wheels, land motor vehicle exhaust system components, namely, exhaust pipe extensions, mufflers, scavenger exhaust pipes, chrome air cleaner for automobile engines, automobile cable, land motor vehicle engine parts, namely, carburetor hoses, metal gasket nuts, automobile hand choke kits consisting primarily of cable and mounting fasteners for manually operating chokes" in International Class 7;

"Manually operated automotive servicing tools, namely, bottle jack, chain saw file, cobalt drills, cylinder head rethreader kit consisting primarily of a tap and fitting for rethreading of bolt holes in cylinder head, drills, gear pullers, grease guns, hacksaws, hammer handle, hand scrapers, ignition files, riveters, brake bleeders, tire buffers, triangular file, utility

knives, wrenches, hand held propane cutting torch kit consisting primarily of a canister of propane and a cutting torch tip, metal bench vises, hand tools, namely, choke repair kits consisting primarily of butterfly valve and mounting fasteners, clutch pivot tools, namely, scrapers and scrapers with a snow brush" in International Class 8;

"Air line pressure gauges, ammeter gauges, antennas, antifreeze testers comprising a tube with float for testing specific gravity of antifreeze, automotive gas gauges, battery tester, CB antennas, electric cigarette lighters for land vehicles, compasses, electrical four-pole connectors, digital v/o meters, electric soldering irons, feeler gauges, fire extinguishers, safety goggles, hard hats, electrical plugs with threaded sockets for emergency lighting, measuring tape, tester for testing electrical circuits, pressure regulators, signal bells, speaker kit consisting primarily of speaker and mounting hardware, speedometer, tachometers, timing light, tire gauges, light signal for indicating vehicle problems, universal speedometer electrical cable" in International Class 9;

"Safety flares, automobile headlights, automotive tail lamp, electric drop light, vehicle defroster fans, two-speed electric fan, vehicle headlights, vehicle fog lights, electric light bulbs, water coolers" in International Class 11;

"Automotive body clip, automotive spindle nut, automotive trim fasteners, battery brackets, automobile door lock knob, radiator hose clamps, and radiator hose couplers; automobile parts, namely, leaf booster spring, locking lug nut, lug nuts, nipples, nuts and bolts, O-rings, peg hooks, rivets, snap caps, snap rings, shock absorber bottle, leaf springs, strut nut, strut nut/washer, U-bolt, door handle, axle shift motors for land motor vehicles, automobile brake pedal pads, automobile clutch pedal pads, land motor vehicle drive belts, vehicle hitch ball, master cylinder cap gasket, land motor vehicle

engine parts, namely, spark plug non-foulers, automobile horns, automobile top post battery protector, automobile battery brackets, land motor vehicle parts, namely, automotive body trim pieces, automotive drum brake bar, automotive steel trap kit consisting primarily of spool of steel tape with apertures, brake line tube unions, adapters, brake lines, fitted car covers, wheeled carts, namely, creepers, C-V quick boot, dust caps for mounting over tire bolts, hand trucks, horn plate buttons, license plate buttons, license plate protective shield, push-pull brake cable, rear view mirrors, seat belt, seat cushions, shift knobs, splash guards, spring stabilizers, throttle cables, tire boots, vehicle tire pumps, tire repair kits consisting primarily of plug means and plug cord with adhesive for repairing punctured tire, tire valves, transmission coolers, turn signal cams, wheels, wheel grips, wheel weights, window vents, vehicle coolant kit consisting primarily of overflow tanks, license plate holders, vehicle window crank, vehicle fuel line hoses, vehicle radiator bug screen, vehicle rear view mirror, vehicle side mirror, vehicle vanity mirror, vehicle defroster hoses, heater hoses, metal license plate frames, land vehicle parts, namely, hydraulic automotive lift support for hatchback doors" in International Class 12;

"Paint brushes" in International Class 16;

"Air duct hoses, air line hoses, asbestos-free gasket material in sheets for use in forming automotive gaskets, rubber patches hose menders, pickup truck cap tape, red lens repair tape, automotive reflector tape, vehicle defroster system hoses, electrical friction tapes, gasket cork material in sheets for use in forming gaskets, non-metal gaskets for application to vehicle, plastic adhesive tape" in International Class 17;

"Radiator bug screen" in International Class 19;

"Cabinets, clothes hanger bar including bar and end fasteners for mounting interiorly of the

vehicle, display racks, non-metal license plate frames" in International Class 20;

"Battery terminal brushes, brooms, buckets, vehicle cleaning cloths, vehicle cleaning brushes, funnels, non-metal gas cans sold empty, plastic nozzles for metal gas cans, mops, plastic pitchers for beverages, polishing bonnets for fitting on polishers, polishing mitts, sponges for household purposes, squeegee sponge with scrubber, steel wool for cleaning, wiping and polishing cloths and discs, pistol grip plastic spray nozzle" in International Class 21;

"Non-metal strapping or tie downs, rope, cotton tarpaulins for use as drop cloth" in International Class 22;

"Gloves" in International Class 25; and

"Vehicle floor mats, truck floor mats, and van floor mats" in International Class 27.¹

The Trademark Examining Attorney issued a final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used on the automotive parts, accessories and equipment listed above, so resembles the registered mark, "CHAMP," as applied to "oil filter cartridges,"² and as applied to "air, oil, and fuel filters and components,"³ as to be likely to cause confusion, or

¹ Serial No. 74/566,982, filed August 29, 1994, alleging use in commerce in connection with all the goods recited above since February 1990.

² Registration No. 808,484, issued on May 17, 1966. The registration sets forth dates of first use of 1948; renewed.

³ Registration No. 963,571, issued on July 10, 1973. The registration sets forth dates of first use of 1948; renewed.

to cause mistake, or to deceive. Both of the cited registrations are owned by Champion Laboratories, Inc.

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing.

Applicant contends that the marks are significantly different; that applicant does not sell air, oil, and fuel filters, so there is no overlap in the goods; that the trademark register demonstrates that the mark "CHAMP" is "popular" because it has been registered by third parties for many different goods and services, including goods in the automotive field; that applicant markets its goods primarily through wholesale channels; that in fifty years of contemporaneous use by applicant⁴ and registrant, there have been no cases of actual confusion; that purchasers of applicant's goods, namely automotive parts retailers, are sophisticated; that registrant has a narrow "product mark" while, for applicant, the mark is a "house mark"; and that applicant has accumulated a substantial amount of goodwill during the past sixty years of using this

⁴ Applicant has changed its mark a number of times during this period, but the mark has always had as a primary component the word "CHAMP." This particular, stylized variation on the mark was introduced in 1990.

mark in the field of automotive parts, accessories and equipment.⁵

By contrast, the Trademark Examining Attorney takes that position that the marks are identical, the goods are closely related, the channels of trade are the same, the claims of an absence of actual confusion are unsupported and are largely irrelevant, and that the goods are impulse items bought without a great deal of care by ordinary purchasers.

In the course of rendering this decision, we have followed the guidance of *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973). This case sets forth all the factors that should be considered, if relevant, in determining likelihood of confusion.

Turning to the marks, we agree with the Trademark Examining Attorney that these marks are substantially, if not virtually, identical as to sound, appearance, and overall commercial impression. While applicant argues that the stylization of the letter "C" and the slight incline in all the letters is "significant," thereby making the marks "reasonably distinct," we find the *de minimis* stylization involved in applicant's mark to be legally insignificant when comparing these two marks. Since the cited registrations show the mark in typed form, this

⁵ *Ibid.*

means that registrant's mark is not limited to any particular format, and could be used in a similar stylization.

Applicant argues that the cited mark is weak because of a variety of third-party registrations for "CHAMP" and "CHAMPION" covering many different classes of goods and services, and that therefore the cited registrations should be accorded a narrow scope of protection. Applicant bases this argument on a 1997 listing from the Trademark Register and soft copies of the third-party registrations that are attached to applicant's appeal brief. Given this timing, applicant failed to comply with the established rule that the evidentiary record in an application must be complete prior to the filing of the notice of appeal.⁶ Accordingly, we have not considered the registrations set forth in this attachment.⁷

⁶ See, 37 CFR 2.142(d); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994).

⁷ In order to make third-party registrations properly of record, soft copies of the registrations or photocopies of the appropriate U.S. Patent and Trademark Office electronic printouts must be submitted (and according to 37 CFR 2.142(d), this must be done prior to the time of the appeal). See *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992).

Even if we were to consider the third-party registrations tardily proffered by applicant, it would not alter our decision herein. Certainly, many of the third-party marks pointed to by applicant are for goods in totally unrelated fields and hence are irrelevant to applicant's contention that the word "CHAMP" is weak in the field of automotive parts, accessories and equipment. Third party registrations are least troublesome when the other marks cover unrelated products.

Furthermore, even properly adduced evidence of subsisting registrations covering related goods is entitled to little weight, because this is not evidence of what happens in the market place.

We also concur with the Trademark Examining Attorney's conclusions that neither the application nor the registrations are in any way restricted as to channels of trade or classes of purchasers for the respective goods. It is therefore presumed that the goods identified in the application and cited registrations encompass all goods of the type described, that the goods move in all normal channels of trade, and that the goods are available to all potential customers of such products. In re Elbaum, 211 USPQ 639 (TTAB 1981). We have no proof that buying such goods involves a deliberative process or that a great deal of care and discrimination would usually be exercised by purchasers in making the decision to buy these parts and accessories. The primary purchasers of applicant's and registrant's automotive parts must be deemed to be members of the general public, who are simply looking for the right automotive part. Thus, the Trademark Examining Attorney contends that purchasers of the array of automotive parts and accessories set forth in the application also would encounter

These registrations do not prove that the marks are actually used by third parties, that they are well promoted, or that they are recognized by consumers exposed to them. See Fort Howard Paper Co. v. Kimberly-Clark Corp., 221 USPQ 732 (TTAB 1984) and In re Hub Distributing Inc., 218 USPQ 284 (TTAB 1983).

These registrations would demonstrate, at best, the fact that other manufacturers and merchants have also selected the words "CHAMP" or "CHAMPION" for marks because these terms are arguably suggestive in some way of goods and/or services as being competitive or superior.

oil filters, air filters and fuel filters in the same retail locations.

Applicant argues the significance of the absence of any actual confusion in spite of both parties having used some form of "CHAMP" in trademarks since at least 1948. However, applicant has submitted no evidence that the marks have ever been used contemporaneously on automotive parts in the same geographical area or evidence of the extent of actual market overlap of the respective products. In other words, there is no evidence of record with respect to the opportunity for confusion to have arisen. Furthermore, during most of this period, applicant's earlier variations of the "CHAMP" mark included a variety of additional words and design features.

The Trademark Examining Attorney argues that the contemporaneous use of the same word "CHAMP" in connection with applicant's automotive parts and accessories and the registrant's automotive filters would be likely to cause confusion because the goods are highly related automotive items that are used together. This relationship does not hinge upon any *per se* rule that all automotive parts are related. Rather, citing a variety of cases from this Board and our principal reviewing Court, the Trademark Examining Attorney contends that likelihood of confusion exists when different parties use the same marks on different types of automotive parts and

accessories. The fact that the goods of the parties may involve different types of automotive items is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source of those goods. See In re Rexel Inc., 223 USPQ 830, 831 (TTAB 1984), and cases cited therein.

The logic for concluding that these goods are related is based upon the fact that the goods in question are all automotive parts, automotive accessories, or automotive equipment that could be purchased through the same channels of trade, including dealers, service stations, automotive accessory and supply stores, or the automotive departments of general merchandisers, by the same classes of purchasers, such as mechanics, dealers, and motorists. In re Jeep Corp., 222 USPQ 333, 334 (TTAB 1984).

Accordingly, based upon the entire record herein, we conclude that this important du Pont factor also favors the position of the Trademark Examining Attorney, but only as to those classes of goods within this application which, like registrant's goods, relate to automotive parts, automotive accessories or automotive equipment. Accordingly, we find that a likelihood of confusion exists as to the goods listed in International Classes 1, 4, 6, 7, 8, 9, 11, 12, 17, 19, 20, 21, and 27 of the application. We find that a likelihood of

confusion does *not* exist as to the goods in International Classes 3,⁸ 5,⁹ 16,¹⁰ 22¹¹ and 25¹² of the application.

Decision: We affirm the refusal to register in part, and reverse in part. Accordingly, applicant's mark will be published for opposition only as to the goods listed in International Classes 3, 5, 16, 22 and 25 of the application.

R. F. Cissel

G. D. Hohein

D. E. Bucher

Administrative Trademark Judges,
Trademark Trial and Appeal Board

⁸ "Pumice hand soap" in International Class 3.

⁹ "Air freshener, first aid kit for domestic or other non-professional use" in International Class 5.

¹⁰ "Paint brushes" in International Class 16.

¹¹ "Non-metal strapping or tie downs, rope, cotton tarpaulins for use as drop cloth" in International Class 22.

¹² "Gloves" in International Class 25.