

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB APRIL 2, 99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Arrow Industries, Inc.

Serial No. 75/058,139

Stephen M. Schaetzel of Jones & Askew for In re Arrow
Industries, Inc.

Gerald C. Seegars, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Seeherman, Wendel and Bucher, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Arrow Industries, Inc. has filed an application to
register the mark HANDLE SACK for plastic trash bags.¹

Registration has been finally refused under Section
2(d) of the Trademark Act on the ground of likelihood of
confusion with the mark HANDLE LINER, which is registered

¹ Ser. No. 75/058,139, filed Feb. 15, 1996, based on a bona fide
intention to use the mark in commerce.

for trash can liners and trash bags.² Registration has also been finally refused on the basis of applicant's refusal to comply with the requirement that a disclaimer be entered of the word SACK. Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

Applicant takes the position that the term SACK, when used in connection with plastic trash bags, is not descriptive, but rather gives the mark HANDLE SACK an incongruous quality which, in turn, serves to eliminate the likelihood of confusion with the registered mark, HANDLE LINER. Applicant argues that a "sack" is a paper article typically associated with groceries or the like, whereas a trash bag or liner is a plastic bag which may be used for many purposes. Thus, in applicant's view, the term "sack," instead of being merely descriptive of its plastic trash bags, creates the distinguishing feature of applicant's mark.

The Examining Attorney, in support of his claim of the descriptiveness of the term, has made of record several excerpts of articles from the Nexis database which refer to trash (or garbage) bags or plastic trash (or garbage) bags as "sacks." For example:

² Reg. No. 1,747,629, issued Jan. 19, 1993. A disclaimer has been entered of the word "Liner."

"...Pat Valdez walked along Sirango Road..., dragging a stuffed plastic garbage sack. 'There was so much trash in those bushes I couldn't believe it,' she said." (Santa Fe New Mexican, May 5, 1996);

"'Mom's throwing out things again,' he tells the children. 'We'd better check the trash sacks.'" (The Dallas Morning News, July 10, 1995);

"They helped pick up several trash sacks full of litter along the creek... ." (The Kansas City Star, Nov. 14, 1996).

In addition, the Examining Attorney has introduced four printouts from the Trademark Office database of registrations in which the term SAK (considered the equivalent of SACK) has been disclaimed, when used as part of a mark for trash bags or plastic trash bags.³

A word is merely descriptive if it immediately conveys information regarding a characteristic, function, purpose or feature of the goods with which it is being used. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1987). We are convinced by the Examining Attorney's evidence that the term "sack" is used interchangeably with "bag" in referring to trash bags, or the smaller sized

³ Reg. No. 1,692,897, issued June 9, 1992, for the mark IRON SAK for trash bags;
Reg. No. 1,689,689, issued May 26, 1992, for the mark SHOP SAK for plastic trash bags;
Reg. No. 1,564,391, issued Nov. 7, 1989, for the mark STRAP SAK for plastic trash bags; and
Reg. No. 1,476,799, issued Feb. 16, 1988, for the mark TUFF SAK for waste basket liners, trash bags, and lawn and leaf bags.

garbage bags. There is no distinction made on the basis of whether the bags are made of paper or plastic.⁴ Applicant has failed to introduce any evidence that might make us believe otherwise. Thus, despite applicant's arguments, we do not see this to be a situation in which the term SACK is less than immediately descriptive of the very essence of the goods on which the mark is being used. We find the requirement for a disclaimer of the merely descriptive term SACK to be proper.

With this in mind, we turn to the refusal under Section 2(d), in view of the registered mark HANDLE LINER for trash bags and trash can liners. As always, we make our determination of the likelihood of confusion based on the relevant du Pont factors.⁵

Here the goods of the parties are closely related, if not identical, and would travel in the same channels of

⁴ It is well settled that the Board may take judicial notice of dictionary definitions. *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852 (TTAB 1981). Thus, we note the following dictionary definitions of "sack":

1.b. a small container made of paper, plastic or other similar material used to contain various kind of merchandise (as foodstuffs). Webster's Third New International Dictionary (1976);

1.a A large bag of strong, coarse material for holding foodstuffs or other objects in bulk.

2. A similar but smaller container, often of paper or plastic. The American Heritage Dictionary of the English Language (1976).

⁵ *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

trade and be encountered by the same purchasers. As pointed out by the Examining Attorney, applicant has made no argument to the contrary.

Looking to the marks, the Examining Attorney argues that the term HANDLE is the dominant feature of each, the remaining term being descriptive of the goods upon which the mark is used. He further argues that, even if the term HANDLE is viewed as suggestive, the marks as a whole are so similar that confusion is likely. Applicant, on the other hand, insists that when the marks are considered in their entirety, there is no substantial likelihood of confusion because of the weakness of the marks and the ability of the public to distinguish between consumer-oriented marks of this nature on the basis of small differences.

Although applicant stresses the weakness of the marks as an additional factor to be taken under consideration, and that this weakness should limit each to a narrow scope of protection, applicant has failed to introduce any evidence in support of this alleged weakness. We have no evidence before us of any use by third-parties of HANDLE marks for similar goods. See *Triumph Machinery Co. v. Kentmaster Manufacturing Co.*, 1 USPQ2d 1826 (TTAB 1987). Furthermore, while, as applicant contends, the "handle" designation would most likely be perceived as a suggestive

reference to the ease with which the user can manipulate the bag, this same suggestive connotation exists for each mark. Applicant still should not be permitted to register a mark very similar to HANDLE LINER for goods which would reasonably be assumed to emanate from registrant. See In re Textron Inc., 180 USPQ 341 (TTAB 1973); OPTOmechanisms, Inc. v. Optoelectronics, Inc., 175 USPQ 246 (TTAB 1972).

Thus, we have no basis for limiting the registered mark to such a narrow scope of protection as to permit registration of a highly similar mark for virtually identical goods. Considering the marks HANDLE LINER and HANDLE SACK in their entireties, we would admit that there are distinctions in the appearance and sound of the marks. But, we find the overall commercial impressions created by the two marks to be virtually identical, i.e., the suggestive term HANDLE plus a descriptor of the goods, LINER or SACK. We believe it highly reasonable for purchasers to assume that HANDLE SACK trash bags emanate from the same source as HANDLE LINER trash can liners or bags. Accordingly, we are convinced that there would be a likelihood of confusion if applicant were to use the mark HANDLE SACK for plastic trash bags, in view of registrant's use of HANDLE LINER for trash can liners and trash bags.

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Decision: The refusal to register under Section 2(d) is affirmed. The requirement for a disclaimer of the term SACK is also affirmed.

E. J. Seeherman

H. R. Wendel

D. E. Bucher
Trademark Administrative Judges,
Trademark Trial and Appeal Board

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