

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Asahi Seiko Co., Ltd.

---

Serial No. 75/087,423

---

**Simor L. Moskowitz** of Jacobson, Price, Holman & Stern, PLLC  
for Asahi Seiko Co., Ltd.

**Cheryl S. Goodman**, Trademark Examining Attorney, Law Office  
102 (Thomas Shaw, Managing Attorney).

---

Before Cissel, Hohein and Chapman, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

Asahi Seiko Co., Ltd. (a corporation of Japan) has  
filed an intent-to-use application to register the mark  
shown below

for "money handling equipment, namely, measuring apparatus  
for determining the authenticity of coins, apparatus for  
analyzing paper currency with electronic pules (sic-

Ser. No. 75/087423

pulses), coin dispensing apparatus, and bill dispensing apparatus, vending machines; stamp dispensing apparatus; vending machines for dispensing cards featuring magnetically encoded data; and electrical mechanical parts therefor."<sup>1</sup>

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if applied to its identified goods, would so resemble the registered mark shown below

for "calculating machines, cash registers and desk top computers and parts therefor,"<sup>2</sup> as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register. In reaching this conclusion, we have considered all of the relevant du Pont<sup>3</sup> factors.

---

<sup>1</sup> Application Serial No. 75/087,423, filed April 10, 1996. The application is based on applicant's alleged bona fide intention to use the mark in commerce.

<sup>2</sup> Registration No. 1,955,916, issued February 13, 1996.

<sup>3</sup> In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1977).

Turning first to a consideration of the respective goods, the Examining Attorney has made of record several third-party registrations, which issued on the basis of use in commerce, to demonstrate that sellers of cash registers and calculators also market vending machines, coin and bill dispensers and money validating machines, by showing that a single entity has registered a single mark for these items.<sup>4</sup>

Third-party registrations, however, are not evidence of commercial use of the marks shown therein, or that the public is familiar with them. Nevertheless, third-party registrations which individually cover a number of

---

<sup>4</sup>Some examples of the third-party registrations submitted by the Examining Attorney include the following: (1) Reg. No. 1,547,188 for "money handling equipment, namely currency counters, fit and unfit note sorters, currency banders, coin counters, coin and note dispensers and currency validators; cash registers; banking transaction automation equipment, namely, financial terminals and teller's machines; paper counters and dispensers and document counters; token counters; automatic vending machines"; (2) Reg. No. 2,044,439 for, inter alia, "...vending machines, counterfeit coin detecting machines, machines for counting and sorting money, cash registers,..."; (3) Reg. No. 1,889,687 for "cash registers; electronic validators for discriminating true money from counterfeit money and for discriminating between various denominations of money; electronic coin counters"; (4) Reg. No. 1,529,332 for, inter alia, "electric and electronic equipment and accessories, namely,... electronic calculators,... cash registers,... vending machines..."; (5) Reg. No. 2,074,607 for "sales transaction devices, namely point of sale terminals, cash registers, vending machines, and personal computers linked to a host computer which houses a substantial portion of the processing hardware and software used by the transaction devices"; and (6) Reg. No. 1,428,114 for, inter alia, "...electronic cash registers; coin operated vending machines...".

different items and which are based on use in commerce have some probative value to the extent they suggest that the listed goods emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, footnote 6 (TTAB 1988).

Moreover, it is well settled that goods need not be identical or even competitive to support a finding of likelihood of confusion; it being sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. See *Monsanto Co. v. Enviro-Chem Corp.*, 199 USPQ 590, 596 (TTAB 1978); and *In re Peebles Inc.*, 23 USPQ2d 1795, 1796 (TTAB 1992). We acknowledge that applicant's goods, identified as various items of money handling equipment, vending equipment, and stamp dispensing apparatus (and parts therefor), and the cited registrant's calculating machines, cash registers and desk top computers (and parts therefor) are obviously specifically different products. However, the Examining Attorney has made a prima facie showing that applicant's specific goods identified as various money

handling machines and the cited registrant's cash registers are related inasmuch as some companies market various items of money handling equipment such as cash registers, machines to determine the authenticity of coins/bills, coin/bill dispensing apparatus, and vending machines; and that each of those companies offers its various products for sale under the same trademark. See *In re Starcraft Corp.*, 18 USPQ2d 1163 (TTAB 1990); and *In re Epic Systems Corp.*, 228 USPQ 213 (TTAB 1985).

Regarding the respective trade channels and purchasers, the Board must determine the issue of likelihood of confusion on the basis of the goods as identified in the application and the registration. See *Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Neither applicant's nor the cited registrant's identification of goods is restricted as to trade channels or purchasers. Thus, the Board must consider that the parties' respective goods could be offered and sold to the same class of purchasers through all normal channels of trade for such goods. See *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994); and *In re Elbaum*, 211 USPQ 639 (TTAB 1981).

The case of *In re Shipp*, 4 USPQ2d 1174 (TTAB 1987), (argued by applicant), is distinguishable from the case at hand. In the Shipp case, the applicant offered laundry and dry cleaning services to the general public, whereas the cited registrant's goods were commercial dry cleaning machine filters, and a variety of dry cleaning preparations offered to dry cleaning establishment owners and operators. In the case now before us, applicant intends to sell, inter alia, various money handling machines and vending machines, and the cited registrant sells, inter alia, cash registers. The record before us is sparse as to exactly who are the purchasers and prospective purchasers of the parties' products, but we presume that some purchasers of money handling machines (e.g., machines to analyze coins/bills), would also need to purchase cash registers (e.g., retail stores, supermarkets).

Turning next to a consideration of the respective marks, it is well established that the addition of a house mark to one of two otherwise similar marks is not generally sufficient to avoid a likelihood of confusion in trade. The reasoning behind this policy is that a company should not be permitted to appropriate a competing company's mark merely by adding its own name or house mark to the competitor's mark. See *In re U.S. Plywood-Champion Papers*,

Inc., 175 USPQ 445 (TTAB 1972); and In re Christian Dior, S.A., 225 USPQ 533 (TTAB 1985). Clearly both parties' respective marks share the word SEIKO, and the fact that applicant's mark also includes its house mark ASAHI, does not necessarily establish that confusion as to source is unlikely. In its application, applicant translated the two words which form its mark by stating that "'asahi' means rising sun or morning sun" and "'seiko' means precision industry." Applicant also provided evidence that the term "seiko" has other meanings, including as a given name, a surname, and it is used as part of the trade name of several Japanese corporations (e.g., the cited registrant's name is Kabushiki Kaisha Hattori Seiko, ta Seiko Corporation; Teraoka Seiko Co., Ltd.; and Fukuda Seiko Co., Ltd.). Regardless of the various meanings or uses of the term "seiko," both parties' marks share the word. See Myrurgia, S.A. v. Comptoir De La Parfumerie S.A. Ancienne Maison Tschanz, 441 F.2d 673, 169 USPQ 587 (CCPA 1971); and Kabushiki Kaisha Hattori Tokeiten v. Scutto, 228 USPQ 461 (TTAB 1985).

Purchasers familiar with registrant's goods sold under the registered mark SEIKO are likely, upon seeing applicant's mark ASAHISEIKO on related goods, to assume that applicant's goods come from the same source as

registrant's goods. The emphasis in determining likelihood of confusion is not on a side-by-side comparison of the marks, but rather must be on the recollection of the average purchaser, who normally retains a general, rather than a specific, impression of the many trademarks encountered; that is, the purchaser's fallibility of memory over a period of time must also be kept in mind. See *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); and *Edison Brothers Stores v. Brutting E.B. Sport-International*, 230 USPQ 530 (TTAB 1986).

To the extent that purchasers notice the differences in the marks, they may believe that applicant's mark is a revised version of registrant's mark, now used on other money handling machines, vending machines and stamp dispensing machines. Thus, we find that the marks are similar.

Finally, any doubt on the question of likelihood of confusion must be resolved against the newcomer as the newcomer has the opportunity of avoiding confusion, and is obligated to do so. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, at 1440 (TTAB 1993).

**Ser. No.** 75/087423

Decision: The refusal to register under Section 2(d)  
is affirmed.

R. F. Cissel

G. D. Hohein

B. A. Chapman  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board