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an Italian registration of the same mark.

The examining attorney refused registration pursuant to Section 2(d) of the Lanham Trademark Act on the basis that applicant's mark, as applied to weaving looms and component parts thereof, is likely to cause confusion with the mark FAMATEX, previously registered in the form show below for "machines for textile finishing." Registration No. 635,151.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Considering first the goods, the Examining Attorney has made of record approximately ten third-party registrations in an effort to show that the same companies market under the same marks both weaving looms and machines for textile finishing. In its brief, applicant makes essentially two comments with regard to this evidence. First, applicant states that "it is not believed that eleven registrations are indicative of what is common in the industry." (Applicant's brief pages 3-4). Given the highly specialized nature of the goods in question, we believe that approximately ten registrations are indeed indicative of what is at least a not uncommon practice in

the industry, namely, for the same companies to market under the same marks both weaving looms and machines for textile finishing. Second, applicant notes that a few of the registrations are somewhat ambiguous in their recitation of goods such that one cannot be certain that they cover both weaving looms and machines for textile finishing. In this regard, we believe that applicant is correct that a few of the third-party registrations made of record are indeed somewhat ambiguous. However, there are at least seven registrations which cover both types of goods. Thus, given the fact that we are dealing with highly specialized machinery where there are a limited number of manufacturers - as contrasted with other industries where there are a large number of manufacturers - we find that the Examining Attorney's evidence is sufficient to establish a not uncommon practice for companies to manufacture and sell under the same marks both weaving looms and machines for textile finishing. In this regard, we note that applicant never elected to put in any evidence to the contrary. For example, applicant made of record no affidavit or declaration the thrust of which was that it was uncommon for companies to manufacture and market under the same marks both weaving looms and machines for textile finishing.

On another point, applicant argues that "the goods in the registration and application are used in two entirely separate phases of the textile manufacturing process which do not necessarily bear any direct relation to one another." (Applicant's brief page 3). At the outset, we note that applicant has conceded that both registrant's goods and applicant's goods are utilized in the "textile manufacturing process." As for applicant's unsubstantiated assertion that the functions performed by registrant's goods and those performed by its goods "do not necessarily bear any direct relation to one another," we simply note that applicant is implicitly acknowledging that they may well bear a direct relation with one another. Indeed, applicant's goods (weaving looms) are used to make the cloth. Registrant's goods are used to finish the cloth. Hence, it appears that there is a clear relationship between these two goods in that the finishing of the raw, woven cloth is a necessary step in order to make it of use to manufacturers of clothing and the like. Again, we note that applicant has made of record absolutely no evidence. If registrant's goods and applicant's goods did indeed bear no direct relationship to one another, we presume that applicant would have made of record at least a simple affidavit to that effect.

In short, we find that applicant's goods (weaving looms) and registrant's goods (machines for textile finishing) are clearly related because (1) the third-person registrations indicate that the same companies manufacture and market both under the same marks, and because (2) both types of products are employed in, to use applicant's words, "the textile manufacturing process."

Turning to the consideration of the marks, we note that marks are typically compared in terms of visual appearance, pronunciation and connotation. It has been held that in appropriate circumstances, similarity as to any one of these three factors may be sufficient to support a finding of likelihood of confusion. Krim-Ko Corp. v. Coca-Cola Co., 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968). We acknowledge applicant's assertion that in terms of visual appearance, there are some clear dissimilarities between its mark and registrant's mark. However, in both marks, the word portions are quite prominent and these words portions are very similar in terms of visual appearance in that they merely differ by the initial letter, with registrant's word being FAMATEX and applicant's word being VAMATEX.

As for pronunciation, obviously applicant's mark would not be pronounced as VAMATEX and design and registrant's

mark would not be pronounced as FAMATEX and design.

Rather, the two marks would be pronounced as VAMATEX and FAMATEX. Thus, in terms of pronunciation the marks are extremely similar. Indeed, unless a consumer was listening for the difference, he or she could easily mistake one mark for the other when spoken.

Finally, in terms of connotation, both marks are either entirely arbitrary, or at most slightly suggestive in that both marks end with the letters TEX, which is reminiscent of the textile industry.

In short, the goods are clearly related, and the marks are extremely similar in terms of pronunciation and lack of connotation, and are at least somewhat similar in terms of visual appearance. Under such circumstances, we normally would find that this would present a clear case of likelihood of confusion. However, applicant has argued, and the Examining Attorney does not seriously dispute this point, that the purchasers of its goods and registrant's goods are sophisticated and that the goods are fairly expensive. (Applicant's brief page 4). It is these factors of purchaser sophistication and expensive goods that cause us to find this case to be a close one. However, when the issue of the likelihood of confusion is close, we are obligated to resolve doubts in favor of the

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registrant and prior user. In re Hyper Shoppes, 837 F.2d
463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

DECISION: The refusal to register is affirmed.

E. J. Seeherman

E. W. Hanak

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and appeal Board

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