

Hearing:
October 27, 1998

Paper No. 14
ejs

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB July 1, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Intralux Australia Pty. Limited**

Serial No. 75/117,414

Cynthia Clarke Weber of Sughrue, Mion, Zinn, MacPeak & Seas
for Intralux Australia Pty. Limited

John S. Yard, Trademark Examining Attorney, Law Office 104
(Sidney Moskowitz, Managing Attorney)

Before Seeherman, Hanak and Wendel, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Intralux Australia Pty. Limited has appealed from the
refusal of the Trademark Examining Attorney to register

INTRALUX as a trademark for the following goods:

Electric lighting fixtures, variable
position, cable-mounted electric light
fixtures; electric lighting systems
composed of fluorescent lamps, compact
discharge lamps, xenon and halogen
incandescent lamps, electronic control
gear, optical reflectors, lampholders,

aluminum extrusions or plastic injection molded components, sold as a unit and parts thereof.¹

Registration has been refused by the Examining Attorney pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark, if used on its identified goods, so resembles the mark ENTRALUX, previously registered by another for "wall mounted electrical lighting fixtures,"² as to be likely to cause confusion or mistake or to deceive.

The case has been fully briefed, and an oral hearing was held before the Board.

We affirm the refusal of registration.

In determining whether there is likelihood of confusion between two marks, we must consider all relevant factors as set forth in **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Two of the most important of these factors are the similarity of the marks, and the similarity of the goods.

Turning first to the goods, the cited registration is for wall mounted electric lighting fixtures while applicant's identification includes, inter alia, electric

¹ Application Serial NO. 75/117,414, filed June 11, 1996, based on a foreign registration (Section 44(e) of the Trademark Act).

² Registration No. 1,419,918, issued December 9, 1986; Section 8 affidavit accepted; Section 15 affidavit received.

lighting fixtures. Applicant's identification, thus, encompasses the identification of the cited registration. Moreover, the goods must be deemed to be sold in the same channels of trade and to the same classes of purchasers.

Applicant does not dispute the closely related, if not identical nature, of its and the registrant's goods. Applicant did not even discuss the goods in its brief or reply brief, and at the oral hearing acknowledged that the goods are at least closely related.

The thrust of applicant's argument relates to the marks themselves. Therefore, we turn to a consideration of the marks, noting that "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines. **Century 21 Real Estate Corp. v. Century Life of America**, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). See also, **In re Lamson Oil Co.**, 6 USPQ2d 1041, 1042 (TTAB 1987), quoting **ECI Division of E-Systems v. Environmental Communications**, 207, USPQ 443, 449 (TTAB 1980), "where as here, the goods of the parties are similar in kind and/or closely related ... the degree of similarity of the marks under which these products are sold need not be as great as in the case of diverse or different goods."

Applicant's mark is INTRALUX and the cited mark is ENTRALUX. It is obvious that the marks differ by only the first letter; the following seven letters are identical. As a result, we find these marks to be very similar in appearance, while phonetically they are virtually identical. Applicant, of course, argues that the differing initial letter distinguishes the marks, but we do not find these arguments persuasive. The short "e" and short "i" sounds with which each mark can be pronounced are so similar that many people would not notice a difference, especially if the marks were not carefully enunciated. Further, a lighting fixture brand may be the subject of an oral recommendation, where the mark is not seen until the time of purchase. For example, one might see a lighting fixture in the home of a friend, inquire as to the brand, and be told, orally, that the mark is ENTRALUX. If the potential purchaser then sees an INTRALUX fixture in a store, he is likely to assume that this is the brand which was recommended.

Moreover, although, as we have indicated, there is a slight difference in the appearances of the marks, the similarities in appearance between ENTRALUX and INTRALUX far outweigh the difference in just the initial letters. When the marks are compared in their entireties, they are

strikingly similar. Thus, we find that the difference in the first letter is not sufficient to distinguish the marks visually. Under actual marketing conditions consumers often do not have the luxury to make side-by-side comparisons between marks, and instead must rely on hazy past recollections. **Dassler KG v. Roller Derby Skate Corp.**, 206 USPQ 255 (TTAB 1980). Thus, a consumer who has previously purchased ENTRALUX lighting fixtures might well, upon encountering INTRALUX lighting fixtures, misremember, and believe that it was the same mark.

Applicant has also argued that the marks are different in connotation. It has made of record a dictionary definition showing that "intra" is a prefix meaning "within--esp. in adjectives formed from adjectives." From this applicant contends that its mark suggests "light within"; as for the cited mark, although "entra" has no meaning, applicant suggests that, because "entrance" also begins with these letters, ENTRALUX suggests "entrance light" or "entrancing light."

Again, we are not persuaded by this argument. Aside from the fact that the prefix "intra" has other definitions--during, between layers of, underneath and intro--INTRALUX is not a recognized word, and does not have a clear meaning. Further, it is unlikely that consumers

will engage in the sort of mental gymnastics posited by applicant, and thereby retain a particular image of ENTRALUX which is different from INTRALUX, and vice versa.

This case is very different from **On-Cor Frozen Foods, Inc. v. Ralston Purina Co.**, 220 YSPQ 567 (TTAB 1983), on which applicant relies. The marks in that case, ON-COR and ENCORE, while phonetically the same, were very different in appearance, and the word ENCORE had a meaning that would be recognized by consumers. In addition, the goods were food for people and food for animals--although somewhat related, those goods were not nearly as similar as the lighting fixtures at issue here.

Applicant also points out that the element "LUX" which is common to both marks is a highly suggestive term for lighting fixtures. In support of this position, applicant made of record a dictionary definition for "lux",³ and listed in its response to the first Office action several third-party registrations for LUX marks.⁴ We agree with applicant that "lux" is at the very least highly suggestive

³ "Lux" is defined as "a unit of illumination equal to the direct illumination on a surface that is everywhere one meter from a uniform point source of one candle: a unit of illumination that is equal to one lumen per square meter."

⁴ Although a mere listing of third-party registrations is not sufficient to make them of record, see **In re Duofold Inc.**, 184 USPQ 638 (TTAB 1974), in this case the Examining Attorney has treated the registrations of record, and we have therefore considered them.

Ser. No. 75/117,414

for lighting fixtures. However, the similarity between applicant's mark and the cited mark is not just in the element "lux"; it is in the overall appearance and pronunciation and commercial impressions of the marks.

Decision: The refusal of registration is affirmed.

E. J. Seeherman

E. W. Hanak

H. R. Wendel
Administrative Trademark Judges
Trademark Trial and Appeal Board