

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      SEPT, 2, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Fabwel, Inc.

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Serial No. 75/132,467

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Terence J. Linn of Van Dyke, Gardner, Linn & Burkhart for  
applicant.

Vivian Micznik First, Trademark Examining Attorney, Law  
Office 104 (Sidney Moskowitz, Managing Attorney).

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Before Cissel, Seeherman and Walters, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Fabwel, Inc. has filed a trademark application to  
register the mark FABWEL for "plastic molding services;  
namely, molding plastic parts."<sup>1</sup>

The Trademark Examining Attorney has finally refused  
registration under Section 2(d) of the Trademark Act, 15  
U.S.C. 1052(d), on the ground that applicant's mark so  
resembles the mark shown below, previously registered for

"metal fabrication services to the order and/or specifications of others,"<sup>2</sup> that, when used on or in connection with applicant's services, it is likely to cause confusion or mistake or to deceive.



Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

In the analysis of likelihood of confusion in this case, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Turning, first, to the marks, it is well established that the proper test for determining likelihood of confusion is whether the overall commercial impression

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<sup>1</sup> Serial No. 75/132,467, in International Class 40, filed July 11, 1996, based on an allegation of use in commerce, alleging dates of first use and first use in commerce as of November 1, 1994.

<sup>2</sup> Registration No. 1,102,331 issued September 12, 1978, to Fabwel Corporation, in International Class 37. [Sections 8 and 15 affidavits

engendered by the marks is the same or similar. Due to the consuming public's fallibility of memory, the emphasis is on the likely recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks. *Spoons Restaurants, Inc. v. Morrison, Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd*. No. 92-1086 (Fed. Cir. June 5, 1992); and *In re Steury Corporation*, 189 USPQ 353 (TTAB 1975). Further, although the marks must be compared in their entireties, there is nothing improper in giving more weight to a particular portion of a mark if it would be remembered and relied upon to identify the goods and/or services. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). If both words and a design comprise the mark, then the words are normally accorded greater weight because the words are likely to make an impression upon purchasers that would be remembered by them and would be used by them to request the goods and/or services. *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); and *Kabushiki Kaisha Hattori Tokeiten v. Scutto*, 228 USPQ 461, 462 (TTAB 1985). See also: *Giant Food, Inc. v. Nation's Food Service, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983).

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accepted and acknowledged, respectively. Registration renewed for a

There is no question that applicant's and registrant's marks consist of the identical word FABWEL. In registrant's mark, the word FABWEL appears in a circle in different-sized letters that conform to the inside of the circle. However, this design element is minimal - the letters appear in an ordinary script and the circle merely frames the word FABWEL. Clearly, FABWEL is the dominant portion of registrant's mark; and applicant's mark is identical thereto. We conclude that the marks herein are substantially similar. There is no evidence that the word FABWEL is a weak mark, either because it is highly suggestive or because there is significant third-party use or registration of the same word for the same, similar or related goods or services.

Turning to the services, it is well established that, as we stated in *In re Concordia International Forwarding Corp.*, 222 USPQ 352, 356 (TTAB 1983), ". . . the greater the degree of similarity in the marks, the lesser the degree of similarity that is required of the products or services on which they are being used in order to support a holding of likelihood of confusion."

The Examining Attorney submitted nine third-party registrations, owned by six different parties, that contain

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period of ten years from September 30, 1998.]

in their identifications of services the fabrication or molding of both plastic and metal; and excerpts from *The Thomas Register of American Manufacturers* showing three entries for different companies that offer both metal and plastic fabricating services. She contends that this evidence establishes that applicant's and registrant's services are sufficiently related that, when nearly identical marks are used in connection with them, confusion is likely.

Applicant contends, on the other hand, that although both services are directed to the industrial market, there is no meaningful relationship between applicant's and registrant's services; that, at most, an insubstantial minority of companies offer both services; and that the services are technically different, requiring different equipment and different technical training for the workers who render each type of service.<sup>3</sup>

As evidence supporting its position, applicant points to its prior registration for the mark FABWEL for fiberglass<sup>4</sup>, which coexists on the register with the cited registration. Additionally, applicant submitted over 100

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<sup>3</sup> Applicant has presented no evidence in this regard.

<sup>4</sup> Registration No. 1,625,980, issued December 4, 1990, in International Class 17. [Affidavits under Sections 8 and 15 accepted and acknowledged, respectively.]

third-party registrations for marks identifying either metal fabrication services or plastic molding services, but not both services. Applicant contends that further evidence of the differences between the services is the fact that plastic molders and metal fabricators are separately classified in the *Thomas Register*; and that the services are in a different International Class in the application than the services in the registration. Finally, applicant argues that the purchasers of both services are primarily businesses, whose agents are knowledgeable and sophisticated with regard to such services.

It is quite true that applicant's plastic molding services and registrant's metal fabrication services are different. However, it is well-settled that the services of an applicant and registrant need not be similar or even competitive in order to support a holding of likelihood of confusion, it being sufficient for the purpose if such services are related in some manner and/or if the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under conditions that would give rise, because of the marks used thereon, to the mistaken belief that they emanate from or are in some way associated with the same source. *See,*

*In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re Kangeroos U.S.A.*, 223 USPQ 1025, 1026-1027 (TTAB 1984), and cases cited therein.

While the number of third-party registrations and *Thomas Register* entries including both plastic molding and metal fabricating services is relatively small, it is sufficient to establish that these services sometimes originate from the same source. We are not convinced otherwise by applicant's arguments to the contrary. We have no evidence regarding the significance of different headings in the *Thomas Register*. Regarding the fact that the services are in different International classes, we note that the classification of goods and services in trademark applications and registrations is for the administrative ease of the PTO and is neither relevant to, nor determinative of, likelihood of confusion. *In re Sailerbrau Franz Sailer*, 23 USPQ2d 1719 (TTAB 1992).

Applicant does not contend that the purchasers of applicant's and registrant's services are different, rather that they are knowledgeable commercial entities. However, we note that knowledgeable business purchasers are not immune from confusion when the marks are as similar as these marks and there is evidence that the services with

which these marks are used do sometimes emanate from the same source. *See, In re General Electric Company*, 180 USPQ 542 (TTAB 1973).

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, FABWEL, and registrant's mark, FABWEL enclosed in a circle, their contemporaneous use in connection with the services involved in this case is likely to cause confusion as to the source or sponsorship of such services.

We draw this conclusion notwithstanding applicant's existing registration for the mark FABWEL for fiberglass. We note that a determination of likelihood of confusion requires application of the law to the particular facts involved in each case. *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Not only do the services in this case differ from the goods identified in applicant's registration, but we do not know what the record was in that case.

Further, to the extent that we have any doubt concerning our conclusion that confusion is likely, we are obligated to resolve such doubt in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed Cir. 1988).

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*Decision:* The refusal under Section 2(d) of the Act  
is affirmed.

R. F. Cissel

E. J. Seeherman

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