

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB                      JULY 27, 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 *Alice and Law Co., Ltd.*

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Serial No. 75/147,474

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*Thomas J. Moore* of *Bacon & Thomas* for *Alice and Law Co., Ltd.*

*Doritt Carroll*, Trademark Examining Attorney, Law Office 106  
(*Mary Sparrow*, Managing Attorney).

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Before *Quinn, Hohein* and *Hairston*, Administrative Trademark  
Judges.

Opinion by *Hohein*, Administrative Trademark Judge:

*Alice and Law Co., Ltd.* has filed an application to register the mark "CODE WASH" for "laundry detergent, namely, laundry balls that release a cleaning composition in washing machines for clothes and fabrics".<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, when applied to its goods, so resembles the

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<sup>1</sup> Ser. No. 75/147,474, filed on August 9, 1996, which alleges a date of first use anywhere of November 24, 1995 and a date of first use in commerce of March 21, 1996. The word "WASH" is disclaimed.

mark "CODE," which is registered for, inter alia, "general purpose and specific product cleaners (liquid, dry and aerosol); dishwashing cleaners and drying agents; laundry detergents; bleaches; softeners and rust removers; toilet bowl and drain cleaners; glass cleaner; oven cleaner; floor cleaners, compounds and finishes; hand soap; silver pre-soak and detarnisher; furniture polish; wax and oil base soap; [and] lime solvents, all for household, office, industrial, commercial and institutional use,"<sup>2</sup> as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Turning first to consideration of the respective goods, applicant contends that its "laundry balls are of a specific nature, [being] different from registrant's laundry detergent"; that "registrant's goods do not include laundry balls"; and that "registrant's goods are not specified for use in washing machines, as are the applicant's goods". Applicant's contentions, however, are legally irrelevant inasmuch as it is well settled that the issue of likelihood of confusion must be determined on the basis of the goods as they are set forth in the involved application and cited registration. See, e.g., CBS Inc.

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<sup>2</sup> Reg. No. 1,575,911, issued on January 9, 1990, which sets forth dates of first use of July 3, 1967; combined affidavit §§8 and 15. In addition to the goods in International Class 3 set forth above, the registration also lists "disinfectant cleaners; sanitizers; bacteriacides [sic]; germicides, fungicides and insecticides, [and] deodorizers, all for household, office, industrial, commercial and institutional use" in International Class 5, claiming dates of first use in connection therewith of July 3, 1967.

v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Thus, where the goods in the application at issue and in the cited registration are broadly described as to their nature and type and, as is the case herein, there are no restrictions in the respective identifications of goods as to their channels of trade or classes of customers, it is presumed in each instance that in scope the application and registration encompass not only all goods of the nature and type described therein, but that the identified goods move in all channels of trade which would be normal for such goods and that they would be purchased by all potential buyers thereof. See, e.g., In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).

In the present case, registrant's goods broadly include "laundry detergents," an item which plainly encompasses all kinds of such products, including applicant's "laundry detergent, namely, laundry balls that release a cleaning composition in washing machines for clothes and fabrics". Moreover, as the Examining Attorney persuasively points out in her brief, the specimens of use show that applicant's laundry balls are indeed a kind of "'laundry detergent,' albeit in a specialized form," and that "applicant has provided no evidence that laundry balls travel in unique channels of trade, or are used by a different category of consumers, than laundry detergent generally." Both products, in short, are detergents used to wash clothes and

fabrics. As such, they would be sold through the same channels of trade, including supermarkets and laundromats, to ordinary consumers. Clearly, if such laundry detergent products were to be sold under the same or substantially similar marks, confusion as to the source or sponsorship thereof would be likely to occur.

Turning, therefore, to consideration of the marks at issue, applicant asserts in particular that its "mark CODE WASH, ... due to the inclusion of the term WASH, conveys a different commercial impression from the registrant's mark CODE."<sup>3</sup> While the respective marks must, of course, be compared in their entirety, it is nevertheless the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." In re National Data Corp., 753 F.3d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, "that a particular feature is descriptive ... with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark ...." 224 USPQ at 751.

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<sup>3</sup> Although applicant also maintains that its mark appears "in a stylized type," the plain block letters utilized therein are virtually indistinguishable from, and create the same overall commercial impression as, ordinary type. Furthermore, as the Examining Attorney correctly points out, because registrant's mark is in a typed format, the registration encompasses all ordinary and reasonable manners of display thereof, including the same plain block letters as utilized by applicant. See *Phillips Petroleum Co. v. C. J. Webb, Inc.*, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971).

Here, as the Examining Attorney properly observes, the term "WASH" in applicant's mark, having been disclaimed, is merely descriptive of applicant's laundry detergent balls. It is thus the term "CODE," which on this record appears to be a wholly arbitrary word when used in connection with laundry detergent products, which serves as the source-signifying component of applicant's "CODE WASH" mark. Such term, obviously, is identical to registrant's "CODE" mark. Considered in their entireties, applicant's "CODE WASH" mark is substantially similar in sound, appearance, connotation and commercial impression to registrant's "CODE" mark.

In consequence thereof, consumers familiar with registrant's mark "CODE" for, inter alia, laundry detergents, would be likely to believe, upon encountering applicant's substantially similar mark "CODE WASH" for "laundry detergent, namely, laundry balls that release a cleaning composition in washing machines for clothes and fabrics," that such products emanate from, or are otherwise sponsored by or affiliated with, the same source. Such consumers, in particular, would be likely to view applicant's "CODE WASH" laundry balls as a new product line from the makers of registrant's "CODE" laundry detergents.

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

T. J. Quinn

G. D. Hohein

**Ser. No.** 75/147,474

P. T. Hairston  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board