

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

9/16/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jamba Juice Company

Serial No. 75/148,351

Susan E. Hollander of Arter & Hadden for Jamba Juice
Company.

Geoffrey Fosdick, Trademark Examining Attorney, Law Office
111 (Craig Taylor, Managing Attorney)

Before Simms, Seeherman and Walters, Administrative
Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Jamba Juice Company (applicant), a California
corporation, successor-in-interest to Juice Club, Inc., has
appealed from the final refusal of the Trademark Examining
Attorney to register the mark ORANGE OASIS ("ORANGE"
disclaimed) for fruit and vegetable juices.¹ The Examining

¹ Application Serial No. 75/148,351, filed August 12, 1996, based
upon allegations of use since September 28, 1995. The assignment
is recorded at Reel 1850 Frame 0105.

Ser. No. 75/148,351

Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 2,043,915, issued March 11, 1997, covering the mark OASIS for non-carbonated fruit juice drinks and Registration No. 273,660, issued August 5, 1930 (third renewal), covering the mark shown below for nonalcoholic, maltless beverages sold as soft drinks.²

Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

It is the Examining Attorney's position that, for a drink which the specimens show is made partly from orange juice, the term "OASIS" in applicant's mark is the dominant origin-indicating feature. The Examining Attorney points out that the term ORANGE is descriptive and has been disclaimed by applicant since it is a taste and ingredient

² The registrant in the '915 registration claimed ownership of the '660 registration. According to information contained in the TRAM system (screen 7947), where goods in an identification are bracketed ([.....]), that means that those goods have been deleted. No consideration will therefore be given to the following listing of goods set forth in the '660 registration: "[and concentrates, compounds, and syrups for making the same]".

indicator with little trademark significance. Further, the Examining Attorney argues that, because there is no limitation in the identifications in the cited registrations and in applicant's application, the Office must presume that the goods listed include all of the goods of the type described and that they may move in all normal channels of trade to all potential purchasers of those goods. Although, as discussed below, applicant asserts that its goods are, in reality, made-to-order fresh juice drinks, the Examining Attorney argues that applicant's description of goods in its application ("fruit and vegetable juices") is broad enough to include pre-packaged or bottled drinks.

Applicant, on the other hand, argues that it operates specialty fruit juice and smoothie stores, and that its goods are fresh vegetable and juice drinks sold in those stores to health-conscious consumers. These drinks are sold in unsealed containers. In view thereof and because applicant does not make or sell bottled soft drinks, it is applicant's position that the respective goods travel in different channels of trade.

With respect to the marks, applicant contends that the marks differ in sight, sound and meaning. In this regard, applicant argues that the term "ORANGE" is the first word

and is the dominant part of its mark. As to meaning, it is applicant's position that applicant's mark brings to mind an orange in the middle of a desert or suggests an orange drink to relieve one's thirst while the registered mark merely suggests a verdant spot in the desert.

Although applicant has argued that its goods are non-competitive with those of registrant and are sold in different channels of trade, as the Examining Attorney has pointed out, we are not at liberty to view applicant's goods in the manner it wants us to. The issue of likelihood of confusion must be resolved not only by comparison of the marks involved "but also on consideration of the goods named in the application and in [opposer's] registration and, in the absence of specific limitations in the application and registration, on consideration of the normal and usual channels of trade and methods of distribution." *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983). See also *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815-1816 (Fed. Cir. 1987) and *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). As the Court explained in the *CBS* case, the definition of goods in an application is important because any registration that issues will carry that description and because a current business practice may change at any

time. Considered in this light, we believe that applicant's fruit and vegetable juices are very similar to registrant's fruit juice drinks and other beverages sold as soft drinks, and could be sold in the same channels of trade to the same class of purchasers. Also, applicant's mark incorporates the entirety of the registered mark and merely adds the descriptive flavor or ingredient "ORANGE." Potential purchasers, aware of registrant's OASIS fruit juice drinks and beverages, who then encounter applicant's ORANGE OASIS fruit (and vegetable) juices, realizing that applicant's goods are made, at least in part, from oranges, are likely to believe that applicant's juices are a new or different drink from registrant.

Decision: The refusal of registration is affirmed.

R. L. Simms

E. J. Seeherman

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