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9/23/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Glasfloss Industries, Inc.**

Serial No. 75/178,365

H. Matthews Garland of **Jenkins & Gilchrist** for **Glasfloss Industries, Inc.**

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

Before **Cissel**, **Hohein** and **Bottorff**, Administrative Trademark Judges.

Opinion by **Cissel**, Administrative Trademark Judge:

On October 8, 1996, applicant applied to register the mark "PURACELL" in on the Principal Register for "air filters," in Class 11. The application was based on applicant's claim that it had used the mark in connection with these goods in interstate commerce since September 24, 1996.

The Examining Attorney refused registration under Section 2(d) of the Act on the ground that applicant's mark, when used on or in connection with the goods set forth in the application, so resembles the mark "PURECEL," which is registered¹ for "air filters," in Class 11, that confusion is likely.

The Examining Attorney also advised applicant that the identification-of-goods clause required clarification. Applicant was directed to amend the clause to specify the field in which the goods are used. The Examining Attorney suggested the wording "for industrial installations."

Applicant adopted the suggestion of the Examining Attorney and amended the application to identify its products as "air filters for industrial installations."

Applicant also responded with argument that confusion is not likely between applicant's mark and the cited registered mark. Applicant argued that the products with which it uses its mark are quite different from the products which are sold under the registered mark. Applicant explained that its filter uses a wet laid fiberglass media in a pleated configuration to capture

¹ Reg. No. 868,398 issued on the Principal Register to Cambridge Filter Corp. on April 22, 1969, and was renewed twenty years later.

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solid particles in an airstream, whereas the filter on which the registered trademark is used "incorporates

activated carbon granules which are used to absorb odorless gasses from the airstream."

Applicant submitted with its response an advertising and specification sheet for one of the filters sold under the registered mark. Applicant contended that this evidence demonstrates that the characteristics of the filters sold by applicant and registrant are substantially different. Further, applicant argued that the purchasers of applicant's filters and registrant's filters are technically knowledgeable, sophisticated buyers who know the products they are buying and are not confused by trademarks which may sound similar.

The Examining Attorney was not persuaded by applicant's arguments, however. In the second Office Action, she made the refusal to register final.

Applicant timely filed a Notice of Appeal. Both applicant and the Examining Attorney filed briefs, but applicant did not request an oral hearing before the Board.

The sole issue before the Board in this appeal is whether confusion is likely. Based on careful consideration of the record and arguments before us, we hold that it is, because the marks are quite similar in pronunciation, appearance and connotation, and the goods

specified in the application are encompassed within the identification-of-goods clause in the cited registration.

Our determination of whether a refusal to register under Section 2(d) the Act is appropriate is based on analysis of all of the probative facts in evidence that are relevant to the factors the Court identified as bearing on the issue of likelihood of confusion in *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, 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 (CCPA 1976).

In the case before us, the marks are extremely similar. Notwithstanding applicant's arguments to the contrary, "PURACELL" and "PURECEL" look alike, are likely to be pronounced in similar ways, and, as applied to air filters, have the same suggestive connotation.

In order for confusion to be found likely, it is not necessary for the marks at issue to be similar in appearance, in sound and in connotation. Similarity in any one of these factors may be sufficient, if the goods are closely related, to find that confusion is likely. In the instant case, however, the marks are similar in each of

these three categories. Plainly, their use in connection with related goods would be likely to cause confusion.

The goods in this case are not just closely related; the broad description of goods in the cited registration must be interpreted to include the products identified in the application, i.e., the "air filters" with which the registered mark is used include the types of air filters which applicant more narrowly describes as "air filters for industrial installations." Confusion is clearly likely when these very similar marks are both used on the same products, air filters for industrial installations.

Applicant's arguments to the contrary are not persuasive. Applicant contends that confusion is not likely because the marks do not look alike; because the marks would not be pronounced in a similar fashion; because the actual goods on which registrant's mark is used are not similar to the products with which applicant actually uses its mark; and because the purchasers of applicant's and registrant's filters are technically knowledgeable, sophisticated purchasers who are unlikely to be confused by the use of these trademarks in connection with these products.

As discussed above, these marks are similar in appearance, sound and connotation. Each consists of two

terms which are suggestive as applied to air filters.

"PUR" is the phonetic equivalent of the word "pure," which connotes the fact that these products purify the air. The second term in each mark is a variant of the word "CELL," which is also suggestive as applied to these goods, in that it suggests the structure of the filters. As applied to air filters, the combination of these two terms in each mark creates the same suggestion of a cell which purifies the air.

The fact that applicant's mark combines these terms with the letter "A," whereas the registered mark uses the letter "E" between the two components and omits the second letter "L" at the end of the combination term does not result in differences that would lead purchasers of these products to distinguish between the two marks. Further contrary to applicant's arguments, this record does not establish that these differences between the marks are not likely to result in one mark being pronounced differently from the other.

Applicant's argument that the actual goods with which its mark is used are different from the products on which the registered mark is actually used is similarly not well taken. In determining whether confusion is likely, the Board must compare the goods as they are identified in the

application and the cited registration, respectively, without limitations or restrictions that are not reflected therein. *Toys "R" Us, Inc., v. Lamps R Us*, 219 USPQ 340 (TTAB 1983). When this principle is applied to the case at hand, as noted above, we must conclude that the broad identification-of-goods clause in the cited registration includes the more narrowly specified products set forth in the application.

Applicant argues that the purchasers of these goods are sophisticated, knowledgeable professionals who would not be confused by these marks on these goods even though they may sound alike when they are pronounced. There is no evidence in this record, however, concerning the sophistication or education levels of the purchasers of these goods. As the Examining Attorney points out, just because purchasers may be sophisticated or knowledgeable in a particular technical field does not necessarily mean that they also possess knowledge or sophistication in the field of trademarks, or that they are immune from source confusion. *Carlisle Chemical Works, Inc., v. Hardman & Holden, Ltd.*, 434 F.2d 1403, 167 USPQ 110 (CCPA 1970).

In summary, we hold that applicant's mark, as used on the air filters specified in the application, so resembles the registered mark for air filters that confusion is

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likely. If we had any doubt on this issue, and we do not, such doubt would necessarily be resolved in favor of the prior user and registrant, and against applicant, who had a duty to select a trademark which is not similar to the mark already in use in the same field. *Burroughs Wellcome Co. v. Warner-Lambert Co.*, 203 USPQ 191 (TTAB 1979).

Accordingly, the refusal to register under Section 2(d) of the Act is affirmed.

R. F. Cissel

G. D. Hohein

C. M. Bottorff
Administrative Trademark Judges
Trademark Trial & Appeal Board

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