

Hearing:  
May 25, 1999

Paper No. 9  
EWH/MM

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB 10/27/99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lange Uhren GmbH

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Serial No. 75/296,012

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Eric P. Schellin of Schellin & Associates Ltd. for Lange  
Uhren GmbH.

Shanna Blaustein, Trademark Examining Attorney, Law Office  
108 (David Shallant, Managing Attorney).

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Before Seeherman, Hanak and Bottorff, Administrative  
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Lange Uhren GmbH (applicant) seeks to register CABARET  
in typed drawing form for "timekeeping instruments, namely,  
clocks, watches, stopwatches, clock parts, including clock  
mechanisms and clock housings; watch bands." The intent-  
to-use application was filed on May 22, 1997.

The Examining Attorney refused registration pursuant  
to Section 2(d) of the Trademark Act on the basis that

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applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark CABARET, previously registered in the form shown below for "retail store services rendered in connection with women's clothing, handbags, jewelry and accessories." Registration number 1,454,734.

In any likelihood of confusion analysis, two key considerations are the similarity of the marks and the similarity of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section

2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." ).

Considering first the marks, we note that they are identical in terms of pronunciation and meaning. Moreover, because applicant seeks to register CABARET in typed drawing form, this means that applicant, should it obtain a registration, would be free to depict CABARET in a combination of upper and lower case letters such that it could be visually similar to registrant's stylized CABARET mark. In short, because the two marks are identical in terms of pronunciation and meaning, and because there is the possibility that they could be quite similar in terms of visual appearance, we find that, overall, the two marks are nearly identical. In this regard, we note that in its brief, applicant never even discusses any dissimilarities in the marks. Applicant merely acknowledges the obvious, namely, that "the mark in both instances is a well known word having a dictionary meaning of 'a large restaurant' in many languages." (Applicant's brief page 1).

The fact that the marks are nearly identical "weighs heavily against applicant." In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir.

1984). Indeed, the fact that an applicant has selected the nearly identical mark of a registrant "weighs [so] heavily against the applicant" that applicant's proposed use of the mark on "goods ... [which] are not competitive or intrinsically related [to registrant's services] ... can [still] lead to the assumption that there is a common source." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688-89 (Fed. Cir. 1993).

Applicant's goods include watches. Registrant's retail store services include women's jewelry. The Examining Attorney has made of record substantial evidence from the NEXIS database showing that it is a common practice for jewelry stores to sell watches. Indeed, even applicant has conceded "that some jewelry stores carry watches." (Applicant's brief page 2).

Thus, we find that there is a clear relationship between at least certain of registrant's services (retail store services featuring women's jewelry) and certain of applicant's goods (watches). Because there is a definite relationship between registrant's services and applicant's goods, and because the two marks are nearly identical, we

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find that there exists a likelihood of confusion.

Decision: The refusal to register is affirmed.

E. J. Seeherman

E. W. Hanak

C. M. Bottorff  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board