

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB     JAN. 7, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Omni Massage Systems, LLC  
v.  
Montgomery Enterprises

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Opposition No. 106,094  
to application Serial No. 75/101,223  
filed on May 9, 1996

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Lynn M. Allingham for Omni Massage Systems, LLC.

A. Ray Osburn for Mallinckrodt & Mallinckrodt for Montgomery  
Enterprises.

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Before Cissel, Hairston and Walters, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Montgomery Enterprises  
to register the mark POLAROLLER for "a non-electric cold  
roller massage device."<sup>1</sup>

Registration has been opposed by Omni Massage Systems,  
LLC under Section 2(d) of the Trademark Act on the ground of  
likelihood of confusion between applicant's mark and

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opposer's previously used mark POLAR ROLLER for a non-electric roller massage device.

Applicant, in its answer, denied the salient allegations of the notice of opposition.

The record consists of the pleadings; the file of the involved application; and the testimony, with exhibits, of opposer's president, Guy York. Applicant neither took testimony nor introduced any other evidence. Neither party filed a brief on the case and no oral hearing was requested.

Opposer's president, Mr. York, testified that opposer manufactures and sells under the mark POLAR ROLLER a non-electric roller massage device. Further, Mr. York stated that opposer's first use of the mark was on April 12, 1996 when it sold one of the devices to a draftsman who also prepared a drawing of the device. According to Mr. York, opposer first used the mark in commerce in May 1996 at an outdoor market in Anchorage, Alaska where some of the customers were from out of state and others were from Canada.

We have no information about applicant's business activities.

With respect to priority, Mr. York's testimony establishes that opposer's first use of the mark POLAR

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<sup>1</sup> Application Serial No. 75/101,223 filed May 9, 1996, alleging dates of first use of April 1996.

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ROLLER on a non-electric roller massage device predates the filing date of applicant's intent-to-use application.

We turn then to the issue of likelihood of confusion. Even on the sparse record before us, it is quite clear that confusion is likely. Applicant intends to use its mark on goods which are encompassed by and thus are identical to opposer's goods. Opposer's and applicant's massage devices would be sold in the same channels of trade to the same classes of purchasers. Consequently, if the goods were to be sold under the same or highly similar marks, confusion as to the source of the products would be likely to occur.

With respect to the marks, applicant's mark POLAROLLER and opposer's mark POLAR ROLLER are highly similar in appearance, the only difference being that applicant has telescoped the letter "R" in the words "POLAR" and "ROLLER." Moreover, the marks are identical in sound and commercial impression.

We find, therefore, that purchasers familiar with opposer's non-electric roller massage device sold under its mark POLAR ROLLER would be likely to believe, upon encountering applicant's mark POLAROLLER for a non-electric cold roller massage device, that the respective products originated with or were somehow associated with the same entity.

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**Decision:** The opposition is sustained and registration to applicant is refused.

R. F. Cissel

P. T. Hairston

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