

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

LKM/gcp

Opposition No. 108,924

Sentry Chemical Company

v.

Central Mfg. Co.<sup>1</sup>

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB MARCH, 00

Before Seeherman, Holtzman and McLeod, Administrative  
Trademark Judges.

By the Board:

An application has been filed by Central Mfg. Co. to register the mark SENTRA for "laundry bleach, laundry detergent, all purpose cleaning preparations, floor polish, furniture polish, chrome polish, scouring liquids, general purpose scouring powder, skin abrasive preparations, skin soap, perfume, cologne, essential oils for personal use, hair lotion, dentifrices, suntan lotion and oil, shaving cream, aftershave lotion, and cosmetics, namely, lipstick, eye shadow, toner, makeup, blush, rouge and lip gloss."<sup>2</sup>

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<sup>1</sup> Substituted as party defendant by assignment from S Industries, Inc. to Central Mfg. Co. prior to the commencement of this proceeding. (Reel No. 1709, Frame No. 0637). See TBMP § 512.

<sup>2</sup> Application Serial No. 75/228,004, filed January 6, 1997, alleging dates of first use of January 1986.

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Registration has been opposed by Sentry Chemical Corporation under Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d), on the ground that applicant's mark, when applied to applicant's goods, so resembles opposer's previously used and registered marks, SENTRY and SENTRY NO. 34, for a full line of all purpose detergent, cleaning and degreasing preparations, including floor and furniture polish<sup>3</sup> as to be likely to cause confusion.

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<sup>3</sup> Registration No. 1,277,641 issued May 15, 1984, for the mark SENTRY for "rust and corrosion preventatives and wood sealers and finishes," in Class 2; "automotive and truck washing compounds; bathroom cleaners; chemical drain cleaners; all purpose cleaners; carpet, rug and upholstery cleaners; hand cleaners; wax strippers and cleaners; engine degreasers; floor defilmers; floor waxes, seals and polishes; furniture and automotive polishes; glasses and window cleaner; granular and liquid enzyme treatment for grease traps in industrial and municipal sewage treatment; hand dishwashing detergents; machine dishwashing detergents; metal cleaners and brighteners; oven cleaners; paint removers; rust removers; safety solvents and degreasers; and steam cleaning compounds," in Class 3; "greases and lubricants; heating oil; gasoline; dust mop treatment preparations; and silicone lubricants and defoamers," in Class 4; and "asphalt and concrete patching and repair compounds; asphalt and concrete seals; and roofing cement and coatings," in Class 19.

Registration No. 1,353,489, issued August 13, 1985, for the mark SENTRY for "boiler and cooling tower chemicals; defoamers; drying agents; ice melting chemicals; liquid fertilizers; moisture dispersants; anti-static sprays; flocculents; chemical fuel additives; soil micronutrients; and soil penetrants all for industrial, municipal and institutional use," in Class 1; and bactericides, disinfectants and germicides for janitorial use and not for swimming pool use; insecticides; mildewcides; weed killers; sewage treatment deodorizers; and deodorizing preparations, all for industrial, municipal and institutional use," in Class 5.

Registration No. 1,229,168, issued March 8, 1983, for the mark SENTRY NO. 34, for "water soluble industrial degreaser," in Class 3.

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

This case now comes up for consideration of the parties' cross-motions for summary judgment on the issue of likelihood of confusion. For purposes of the cross-motions for summary judgment, the parties have stipulated that they are engaged in the sale and promotion of their respective goods through the same channels of trade and to the same general class of purchasers.

Opposer argues that there is no genuine issue of material fact in this case as to any of the relevant factors pertaining to likelihood of confusion. Specifically, opposer contends that its SENTRY house mark and applicant's SENTRA mark are similar, in that (1) opposer's mark differs from applicant's mark by a single letter, (2) each mark is a single six-letter word beginning with the identical five letters SENTR and ending with a vowel, and (3) both marks have two syllables. Opposer concludes therefore that the marks are phonetically and visually similar.

Opposer also argues that since its goods are identical to or closely related to applicant's goods and since the parties have stipulated that their respective goods are found in the same channels of trade and are directed to the same class of purchasers, confusion as to source is likely.

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Finally, opposer contends that since the goods of the respective parties are, in great part, general consumer goods that are subject to frequent replacement, there is no reason to believe that there would be any degree of sophistication or care in selecting the respective goods. To that end, opposer argues that the extent of confusion is substantial.

In support of its motion, opposer submitted photocopies of its pleaded registrations and a copy of the parties' joint statement of undisputed material facts wherein the parties acknowledge that they are engaged in the sale and promotion of their respective goods through the same channels of trade and to the same general class of purchasers.

In opposition to the motion, and in support of its own cross-motion for summary judgment, applicant does not dispute the similarity between the parties' goods or that the parties' goods travel the same channels of trade and are directed toward the same class of purchasers. Rather, applicant contends that because (1) opposer's mark is inherently weak while applicant's mark is a coined or fanciful mark consisting of a term which otherwise has no meaning, (2) the marks are dissimilar in meaning and

connotation,<sup>4</sup> and (3) there have been no instances of actual confusion, there are no genuine issues of material fact on the likelihood of confusion issue and that judgment as a matter of law should be granted in applicant's favor.

In support of its motion, applicant has submitted a computer search report listing third-party registrations and pending applications.

Summary judgment is appropriate when the record shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c). A dispute as to a material fact is genuine only if a reasonable fact finder viewing the entire record could resolve the dispute in the favor of the nonmoving party. See *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992). In deciding a motion for summary judgment, the Board must view the evidence in the light most favorable to the

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<sup>4</sup> Applicant cites *Merriam Webster's Collegiate Dictionary's* 10<sup>th</sup> Edition definition of "sentry" as "a soldier standing guard at a point of passage (as a gate)." While applicant did not submit a photocopy of the aforementioned dictionary entry, since opposer has not contradicted the dictionary definition provided, the Board takes judicial notice of the dictionary definition of "sentry" as provided by applicant.

nonmovant and must draw all reasonable inferences from underlying facts in favor of the nonmovant. *Id.*

We have carefully considered the parties' arguments and evidentiary submissions. For the reasons discussed below, we find that no genuine issues of material fact exist as to the factors bearing on likelihood of confusion, and that opposer is entitled to judgment as a matter of law on its Section 2(d) claim.

In this case, the respective marks of the parties are similar in sound, appearance, and overall commercial impression, with only the last letter differing in each mark. Although the parties' marks may differ in meaning or connotation, and even assuming arguendo that there is some dissimilarity in sound when the two marks are properly pronounced, the marks SENTRY and SENTRA are nevertheless so similar in appearance that, under the evidence submitted in this case, this alone would cause a likelihood of confusion. It is well established that similarity in any one of the elements of sound, appearance, or meaning may be sufficient to indicate likelihood of confusion. *General Foods Corp. v. Wisconsin Bottling, Inc.*, 190 USPQ 43, 45 (TTAB 1976) (TING and TING COLA held confusingly similar to TANG breakfast drink.)

Furthermore, if the goods of the respective parties are closely related, as is the case here, the degree of

similarity between the marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *HRL Associates v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, 14 USPQ2d 1840 (Fed. Cir. 1990); *ECI Division of E. Systems, Inc. v. Environmental Communications, Inc.*, 207 USPQ 443 (TTAB 1980).

Applicant contends, however, that opposer's SENTRY house mark is weak and entitled to a narrow scope of protection. In support of its position, applicant submitted a computerized listing of third-party registrations and pending applications for the mark SENTRY and marks which contain the word SENTRY. Although third-party registrations and applications may not be made of record in this manner at trial, this listing is sufficient in connection with a summary judgment motion.

Upon review of the submitted listing of third-party registrations and pending applications, only one of the third-party registrations concerns goods which are in any way related to opposer's goods. A single relevant third-party registration, however, is not sufficient evidence to raise a genuine issue as to the weakness of opposer's mark.

Applicant also points to the lack of evidence of actual confusion. However, the absence of actual confusion is not sufficient to raise a genuine issue. Applicant has not

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submitted any evidence as to the extent of its use or advertising of its mark such that it would raise a question as to whether there has been an opportunity for confusion to occur. Nevertheless, opposer is not required to prove actual confusion in order to make a prima facie showing of likelihood of confusion. See *Block Drug. Co. v. Den-Mat, Inc.*, 17 USPQ2d 1315 (TTAB 1989); *Airco, Inc. v. Air Equipment Rental Co., Inc.*, 210 USPQ 492 (TTAB 1980).

In short, given the similarities between the parties' marks and the similar, if not identical, nature of the parties' goods, we believe there is no genuine issue of material fact which would require a trial for its resolution. We further believe that opposer has shown that it is entitled to judgment as a matter of law. Accordingly, opposer's motion for summary judgment is granted, applicant's motion for summary judgment is denied, the opposition is sustained, and registration of applicant's mark is refused.

E. J. Seeherman

T. E. Holtzman

L. K. McLeod  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

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