

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

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

O'Connell and Ruhe Interior Cleaning Co., Inc.
v.
Franchise Connection, Inc.

Opposition No. 110,504 to application Serial No. 75/298,616
filed on May 27, 1997

Gail L. Morrissey of Standley & Gilcrest for O'Connell and Ruhe
Interior Cleaning Co., Inc.

Johnny M. Wilson for Franchise Connection, Inc.

Before Cissel, Hairston and Holtzman, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Franchise Connection, Inc. has filed an application to
register the mark:

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for "cleaning of carpets, rugs, drapes, upholstery, leather, mattresses and related household furnishings."¹

Registration has been opposed by O'Connell and Ruhe Interior Cleaning Co., Inc. on the grounds that since prior to the filing date of applicant's application, opposer has used the mark MAGNA-DRY in connection with interior cleaning services including the cleaning of interior carpets, upholstery and draperies; and that applicant's mark, if used in connection with the identified services, is likely to cause confusion, mistake or deception pursuant to Section 2(d) of the Trademark Act.

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

The record includes the parties' pleadings; the file of the opposed application; and the testimony, with exhibits, of opposer's president, Mr. Charles Daniel O'Connell. Applicant neither took testimony nor introduced any other evidence. Only opposer filed a brief. An oral hearing was not requested.

Mr. O'Connell testified that opposer has continuously used the mark MAGNA-DRY in connection with interior cleaning services, including the cleaning of interior carpets, upholstery and draperies, since 1982. Opposer has used the mark through radio advertisements, brochures, newspapers, business telephone directories, trade shows, direct mail, business stationery and

¹ Serial No. 75/298,616, filed on May 27, 1997, which alleges a bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act.

checks, and through sponsoring a sports team. Furthermore, the exhibits to the O'Connell deposition show use of opposer's mark containing the literal portion, MAGNA-DRY, as well as the literal portion with a design identical to that depicted in applicant's proposed mark.

Turning first to the issue of priority of use, opposer has demonstrated through the testimony of Mr. O'Connell and the exhibits thereto that it has used its MAGNA-DRY mark, with and without the design element, prior to the filing date of applicant's intent-to-use application.² In view thereof, opposer has priority of use over applicant.

Once the priority of use issue has been resolved, the only remaining issue for the Board to decide is likelihood of confusion between the respective marks when used in connection with the services. *Joseph & Feiss Co. v. Joseph Kanner Hat Co.*, 337 F.2d 1014, 143 USPQ 297 (C.C.P.A. 1964).

Our determination of this issue is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). The factors deemed pertinent to this proceeding now before us are discussed below.

² It is noted that the earliest date applicant may rely on in this proceeding for priority purposes is May 27, 1997, the filing date accorded application Serial No. 75/298,616.

With respect to the services, the parties' marks will be used in connection with identical services, namely, the cleaning of carpets, upholstery and draperies, in addition to other highly similar household interior cleaning services. Inasmuch as the services to be rendered are identical, we must also presume that the respective services will be encountered in the same trade channels by the same classes of consumers. Consequently, if the services were to be offered under the same or highly similar marks, confusion as to the source of the services would be likely to occur.

In comparing the respective marks, applicant's mark, MAGNA-DRY and design, is nearly identical to opposer's mark, MAGNA-DRY.³ If a mark is a combination of both a word and a design, greater weight is often accorded to the word, which would be used by purchasers in requesting the services. *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987). The dominant portion of applicant's mark is "MAGNA-DRY" which is identical to opposer's mark. The marks have the same connotation and create the same commercial impression.

In view thereof, we conclude that customers familiar with opposer's interior cleaning services offered under the mark MAGNA-DRY would be likely to believe, upon encountering

³ Although the opposer has pleaded that its mark is "MAGNA-DRY," without a design, as noted previously the exhibits attached to the O'Connell testimony show that opposer has also used the mark with a design element identical to that contained in applicant's proposed mark.

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applicant's mark, MAGNA-DRY and design, for cleaning of carpets, rugs, drapes, upholstery, leather, mattresses and related household furnishings, that the respective services originated with the same source.

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

R. F. Cissel

P. T. Hairston

T. E. Holtzman
Administrative Trademark Judges,
Trademark Trial and Appeal Board