

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB MARCH 17, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Gold Kist Inc.

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Serial No. 75/033,189

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Arthur Schwartz and Janice W. Housey of Foley & Lardner for  
Gold Kist Inc.

Darlene D. Bullock, Trademark Examining Attorney, Law  
Office 111 (Craig Taylor, Managing Attorney)

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Before Seeherman, Quinn and McLeod, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Gold Kist Inc. has appealed from the refusal of the  
Trademark Examining Attorney to register BLAZING WINGS,  
with the word "Wings" disclaimed, as a trademark for  
chicken wings.<sup>1</sup> Registration has been refused pursuant to  
Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on

the ground that applicant's mark so resembles the marks BLAZIN' REDFISH, "Redfish" disclaimed, for frozen fish<sup>2</sup> and BLAZIN' BUFFALO SHRIMP, "Buffalo shrimp" disclaimed, for frozen breaded shrimp,<sup>3</sup> both registered by the same entity, that, as used on applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

The appeal has been fully briefed, but an oral hearing was not requested.

We affirm the refusals of registration.

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E.I. du Pont 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 Food, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the goods, as applicant points out, there are clear differences between frozen fish and frozen breaded shrimp, on the one hand, and chicken wings, on the

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<sup>1</sup> Application Serial No. 75/033,189, filed December 15, 1995, asserting first use and first use in commerce on October 20, 1993.

<sup>2</sup> Registration No. 1,687,266, issued May 12, 1992; Section 8 affidavit accepted; Section 15 affidavit received.

<sup>3</sup> Registration No. 2,016,319, issued November 12, 1996.

other. However, it is well established that it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channel of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. **In re International Telephone & Telegraph Corp.**, 197 USPQ 910, 911 (TTAB 1978).

Applicant's goods are identified simply as "chicken wings," and therefore this identification would encompass frozen as well as fresh chicken wings. In fact, the specimens submitted with applicant's application show that its products are frozen. Thus, applicant's chicken wings and the registrant's frozen fish and frozen breaded shrimp would be sold in the same section of supermarkets and grocery stores, as they would both be displayed in the freezer cases.

The Examining Attorney has also made of record third-party registrations showing that various entities have

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registered their marks both for goods of the type listed in applicant's application and goods of the type listed in the two cited registrations. See, for example, Registration No. 1,735,055 for, inter alia, fish, seafood and chicken; Registration No. 1,663,534 for, inter alia, poultry, chicken, seafood, frozen fish; and Registration No. 1,719,547 for fish, chicken and seafood. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See **In re Albert Trostel & Sons Co.**, 29 USPQ2d 1783 (TTAB 1993).

In addition, the chicken wings and shrimp can be served as appetizers, as shown by third party Registration No. 2,018,859 for "prepared food appetizers, namely deep fried onions, chicken wings, shrimp, French fried potatoes, and soup" (emphasis added). Further, we note that the specimens for applicant's chicken wings show that applicant's product is a "Buffalo style wing"; because of the similar preparation, customers may well believe that the producer of Buffalo-style shrimp would also make Buffalo-style chicken wings.

This brings us to a consideration of the marks. Applicant argues that the words BLAZIN' and BLAZING are

laudatory, and that the remainder of the marks is the portion "that has significance to consumers and will be recalled by consumers when asking for the goods." Brief, p. 6.

For obvious reasons, we cannot agree with applicant that the generic portion of a mark will have the greater source-identifying significance to consumers. Rather, in all three marks, it is the word BLAZIN' or BLAZING that identifies the source of the respective REDFISH, BUFFALO SHRIMP and WINGS. This word does have a suggestive significance (not laudatorily descriptive significance, as applicant implies), in that it indicates that the goods generically identified in the marks are spicy hot. In this connection, we note the NEXIS evidence submitted by applicant in which the term "blazing" is used, including:

...diners who expect Thai food to be  
blazing hot may be disappointed.  
"Tulsa World," May 22, 1998

Customers line up outside not only to  
consume blazing dishes such as shrimp  
voodoo, but to make 'em even hotter  
with a choice of more than 1,000 types  
of hot sauce...  
"Chicago Sun-Times," May 2, 1997

And we adored the blazing hot shrimp, a  
circle of spicy crustaceans surrounding  
a mound of cucumber salsa.  
"Newsday," May 17, 1996

One restaurant in town describes its most blazing chicken wings as "stupid hot."  
"Wisconsin State Journal,"  
September 13, 1992

Although the word BLAZING/BLAZIN' in applicant's and the registrant's marks has a suggestive significance, it has the same connotation in each mark. Further, applicant's mark is similar to the cited marks in structure, in that all three begin with the same word, BLAZING/BLAZIN', followed by a generic term for the goods to which each mark is applied. That is, the only real difference between the marks is in the generic term used in each. As a result, consumers are likely to believe that all of these "BLAZIN'" products emanate from the same source.

We recognize that applicant's mark uses the word BLAZING, while the cited marks drop the final "G" and replace it with an apostrophe. Applicant makes much of this distinction, pointing out that the "ZING" in its mark rhymes with the following word "WINGS," and that BLAZIN' as used in the cited marks "conveys a very Southern, or maybe even 'redneck' impression." Brief, p. 5.

We are not persuaded by this argument. We do not believe that the presence or absence of the final letter in the word BLAZING/BLAZIN' is likely to be noticed or

analyzed by consumers in the manner suggested by applicant. The goods at issue are relatively inexpensive items, purchased by members of the general public in the course of a shopping trip. Thus, the consumers are not sophisticated, nor are these items purchased with a great deal of care. In these circumstances, consumers are unlikely to notice whether the final "G" is BLAZING is present, or has been replaced by an apostrophe or, if they do notice, they are unlikely to attribute any source-identifying significance to its presence or absence.

Applicant has also argued that the word BLAZE and its derivatives are diluted terms for food items and, thus, that consumers are accustomed to distinguishing among various BLAZE marks. In support of this position, applicant relies on certain third-party registrations,<sup>4</sup> listings taken from a PhoneDisk search, and excerpts from the publication Brands and Their Companies.

The third-party registrations are not evidence that the marks shown therein are in commercial use, or that the

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<sup>4</sup> During the course of prosecution applicant submitted various search reports taken from private data bases. The Examining Attorney, in Office actions, objected to these submissions, pointing out that registrations could not be made of record in this manner. With its request for reconsideration applicant submitted certified copies of third-party registrations. These are the only registrations which were properly made of record, and the only registrations which we have considered.

public is familiar with them. **In re Albert Trostel & Sons Co.**, supra. Thus, these registrations are not evidence that the term BLAZING is a diluted term. Third-party registrations may be used, in the manner of dictionary definitions, to show that a term has been adopted in a particular industry because it has a certain significance with respect to those goods. The registrations which applicant has submitted do not indicate that BLAZING has a single significance, since the marks BLAZING HEARTH and BLAZING SUN connote a fire, while BLAZE BBQ may indicate a cooking fire or merely a surname. There is also some ambiguity as to the connotation of BLAZE in CAJUN BLAZE for hamburger sandwiches, and BLAZIN' in BLAZIN' BULL for beef products. Although these third-party registrations do not indicate a specific meaning for BLAZING in connection with food products, we accept, in view of the NEXIS excerpts, that the connotation of BLAZING/BLAZIN' in applicant's and the registrant's marks is spicy hot. However, as we stated above, BLAZING/BLAZIN' has the same suggestive connotation in applicant's and the registrant's marks, and the addition of the generic terms in each of the marks is not sufficient to distinguish the marks so as to avoid the likelihood of confusion.

As for the listings in Brands and Their Companies, the names "Blazer," "Blazin' Bull," "Blazin'Saddle," "Blazin' Saddles," "Blazing Star" and "Blazing Sun" have very different connotations from the spicy hot connotation that BLAZING/BLAZIN' has in applicant's and the registrant's marks. Accordingly, these listings are not probative on the question of whether the public regards BLAZING/BLAZIN' as a weak or diluted term.

With respect to the PhoneDisc listings, it is noted that many list the word "Blaze" rather than BLAZING or BLAZIN'. Because "Blaze" has a different meaning than "Blazing"/Blazin'" in the context of applicant's and registrant's goods ("Blaze" having the connotation of a fire, while "Blazing/Blazin'", as we said before, suggests spicy hot), the listings for Blaze or Blaze-X companies are, again, not probative to show that BLAZING/BLAZIN' is a weak or diluted term. Most of the listings for "Blazing" companies do not appear on their face to be for companies engaged in the food business, e.g., Blazing Beds Tanning Centers, Blazing Comics, Blazing Contractors and Blazing Graphics. There are only a few listings which might possibly be food companies, i.e., Blazing Bagels, Blazing Blenders Juice Bar, Blazing Burgers, Blazing Chile Bros, and Blazing Ribs. We cannot conclude from these few

listings (which show trade name use, rather than use of these names as trademarks for goods), that the public is aware of the use of the use of BLAZING/BLAZIN' (in the sense of spicy hot) in marks for food products.

The present situation is distinguishable from that in **In re Broadway Chicken Inc.**, 38 USPQ2d 1559 (TTAB 1996), on which applicant relies. In Broadway Chicken, the marks involved were both for restaurant services, while here both applicant's mark and the cited marks are used on goods. At most, applicant's evidence of use of "BLAZING/BLAZIN'" is use as a service mark, not as a trademark. The degree of such evidence in the present case is also significantly less than in Broadway Chicken. In that case, there was overwhelming usage of trade name or service mark use of "Broadway" marks: listings of more than 500 entities in the Dun & Bradstreet database providing restaurant, bar or related services under a trade name containing the term BROADWAY; at least 80 telephone directory listings for names which were clearly eating places; and more than 575 entities from the American Business Directory whose names contain the term BROADWAY and which offer restaurant services or related services or goods. In the present case, on the other hand, applicant has presented evidence

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of perhaps ten listings of company names which appear to be engaged in the food business.

The Board also pointed out in Broadway Chicken that the word BROADWAY had a clearly geographic significance. As noted above, although applicant has stated that BLAZING'BLAZIN' is laudatory, we find that as used in applicant's and the registrant's marks it is suggestive and not descriptive.

Decision: The refusals to register on the basis of Registration Nos. 1,687,266 and 2,016,319 are affirmed.

E. J. Seeherman

T. J. Quinn

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