

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 5/11/00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Boston Scientific Technology, Inc.**

Serial No. 75/091,596

Wayne A. Sivertson of **Nawrocki Rooney & Sivertson** for
Boston Scientific Technology, Inc.

Joyce A. Ward, Trademark Examining Attorney, Law Office 105
(**Thomas G. Howell**, Managing Attorney).

Before **Hairston**, **Chapman** and **Holtzman**, Administrative
Trademark Judges.

Opinion by **Hairston**, Administrative Trademark Judge:

An application has been filed by Boston Scientific
Technology, Inc. to register the mark VECTOR TTS for goods
which were subsequently identified as "endoscopic balloon
dilation catheters."¹

Registration has been finally refused under Section

¹ Ser. No. 75/091,596 filed on April 19, 1996, which alleges a
bona fide intention to use the mark in commerce. The term "TTS"
is disclaimed apart from the mark as shown.

2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the mark VECTOR, which is registered for "medical devices, namely infusion pumps and drug reservoirs and accessories therefor, namely tubing, catheters and intravenous pole clamps,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Turning first to a consideration of the marks, we note that applicant does not dispute that its mark VECTOR TTS is substantially similar to the registered mark VECTOR.

We focus our attention then, as have applicant and the Examining Attorney, on the respective goods. It is applicant's position that there is no likelihood of confusion because endoscopic balloon dilation catheters and the catheters in the cited registration are used in different, and highly specialized, medical applications.

In particular, applicant states:

Medical catheters have varying characteristics—some being merely commodity items, while others are highly specialized. That is, some medical catheters are merely tubes used to carry fluids from one location to another, while others have

² Registration No. 1,959,702 issued March 5, 1996.

exacting design parameters that must be satisfied. In the instant case, the catheters are accessories for infusion pumps and drug reservoirs on the one hand, and devices for endoscopic dilation, on the other hand. Each have distinct requirements and are likely to be used (and purchased) by different individuals. Certainly, a purchaser or user of a catheter for use as an accessory to an infusion pump or drug reservoir would not confuse an endoscopic balloon dilation catheter for the infusion pump/drug delivery accessory catheter. (Applicant's response dated November 21, 1997)

Further, applicant argues that both the purchasers and users of the involved goods are highly informed and would not be confused as to the source of the goods.

It is well settled that goods need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the respective goods are related in some manner, and/or that the circumstances surrounding the marketing of the goods are such that they would or could be encountered by the same persons in situations that could, because of the similarities of the marks used therewith, give rise to the mistaken belief that they originate from or are in some way associated with the same producer. See *Monsanto v. Enviro-Chem Corp.*, 199 USPQ 590, 595-96 (TTAB 1978), and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

The Examining Attorney, in support of her position that endoscopic balloon dilation catheters on the one hand, and catheters used as accessories to infusion pumps and drug reservoirs on the other hand, are related, has made of record eleven third-party registrations. Several of these registrations show that entities have registered a single mark for catheters, without limitation as to type or application, and which could presumably include all types of catheters. The other registrations show that entities have registered a single mark for several different kinds of catheters (e.g., one registration covers diagnostic catheters, interventional catheters and drug delivery catheters). Such registrations, while not evidence that the marks shown therein are in use or that the public is familiar with them, have some probative value to the extent that they show that the goods involved in this appeal are of a kind which may emanate from a single source under the same mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993), and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 (TTAB 1988).

For us, the third-party registrations are sufficient to establish that endoscopic balloon dilation catheters and catheters used as accessories to infusion pumps and drug reservoirs are related products, which if sold under

substantially similar marks, would result in a likelihood of confusion as to source.

In reaching our decision, we recognize that because the goods involved in this appeal are used in medical applications, they are purchased not by the general public, but rather by sophisticated purchasers. Be that as it may, even sophisticated purchasers are not immune to source confusion, especially in cases like the present one where related goods would be marketed under substantially similar marks. See e.g., *In re Tee-Pak, Inc.*, 164 USPQ 88 (TTAB 1969) [Likelihood of confusion between substantially identical marks HOSPAC for hospital equipment, including catheters, and HOS-PAK for sterilization tubing, although the purchasers of the goods may be discriminating].

Accordingly, we conclude that purchasers familiar with registrant's mark VECTOR for catheters used as accessories to infusion pumps and drug reservoirs, would be likely to believe, upon encountering applicant's mark VECTOR TTS for endoscopic balloon dilation catheters, that such goods emanate from or are otherwise associated with a common source.

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Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.

P. T. Hairston

B. A. Chapman

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

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