

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 22, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bissell Inc.

Serial No. 75/103,676

Joel E. Bair of Fishman, Grauer & McGarry for Bissell Inc.

Peter Cataldo, Trademark Examining Attorney, Law Office 103
(Michael Szoke, Managing Attorney)

Before Seeherman, Hohein and Holtzman, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Bissell Inc. has appealed from the refusal of the
Trademark Examining Attorney to register STEAM MATE as a
trademark for "electrical cleaning devices, namely, carpet
and upholstery cleaning extractors and vacuum cleaners."¹

¹ Application Serial No. 75/103,676, filed May 13, 1996, based on an asserted bona fide intention to use the mark in commerce. We note that in its response to the first Office action and in its brief applicant states that "in Applicant's mark, the word 'steam' is used in its common ordinary meaning, which is descriptive and disclaimed." Response filed May 19, 1997.

Registration has been finally 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 listed below, and previously registered by the same entity, that, if used on applicant's identified goods, it would be likely to cause confusion or mistake or to deceive:

Mark	Goods/Services
STEAMATIC	Carpet and rug cleaning service ²
STEAMATIC	Portable machine for steam cleaning carpets, rugs, upholstery, and coverings ³
(CARPET CLEANING disclaimed; drawing lined for red and	Steam cleaning rugs and carpets ⁴

Perhaps because this statement was made in the context of comparing the marks, rather than by being set forth in a separate paragraph, the disclaimer was not entered as part of the examination of the application. However, because an applicant may disclaim any part of its mark without the agreement of the Examining Attorney, there is no need to remand the application to the Examining Attorney at this time. See **In re MCI Communications Corp.**, 21 USPQ2d 1534 (Comm'r Pats. 1991).

Accordingly, the Board has arranged for entry of the disclaimer.

² Registration No. 876,236, issued September 2, 1969; Section 8 affidavit accepted; Section 15 affidavit received; renewed.

³ Registration No. 878,142, issued October 7, 1969; Section 8 affidavit accepted; Section 15 affidavit received; renewed.

⁴ Registration No. 922,584, issued October 19, 1971; Section 8 affidavit accepted; Section 15 affidavit received; renewed.

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(TOTAL CLEANING SERVICE disclaimed)	Cleaning of rugs, carpets, furniture and drapes in residential and commercial establishments and restoration of structure and/or contents damaged by fire, water and other catastrophes both indoors and outdoors ⁵
(THE TOTAL CLEANING SERVICE disclaimed)	Machines for cleaning rugs, carpets, furniture, and drapes ⁶
	Performing catastrophe (fire, smoke, water damage, explosion, and other such similar events) cleaning and restoration services to both structure (interior and exterior) and contents; interior environmental services (for contents and structures), namely the cleaning of air ducts and coils, rugs, furniture, drapes, and surfaces; and the cleaning, maintenance, remodeling and construction of both the interior and exterior of residential, commercial and industrial establishments; and the cleaning and restoration of

⁵ Registration No. 1,257,115, issued November 8, 1983; Section 8 affidavit accepted; Section 15 affidavit received.

⁶ Registration No. 1,283,047, issued June 26, 1984; Section 8 affidavit accepted; Section 15 affidavit received.

(TOTAL CLEANING AND RESTORATION disclaimed)	the interior of transportation vehicles ⁷
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Applicant and the Examining Attorney have fully briefed the appeal.⁸ Applicant had originally requested an oral hearing, but subsequently withdrew that request. Accordingly, an oral hearing was not held.

Applicant has acknowledged, and we concur, that its goods and the goods and services identified in the cited registrations are similar or related. In fact, applicant's carpet and upholstery cleaning extractors may encompass the portable machines for steam cleaning carpet and upholstery identified in Registration No. 878,142 for STEAMATIC, while the "machines for cleaning rugs, carpets, furniture and drapes" identified in Registration No. 1,283,047 for

⁷ Registration No. 1,904,640, issued July 11, 1995.

⁸ With his brief the Examining Attorney has objected to third-party registrations and applications which applicant had referenced in its response to the first Office action, asserting that they had not been properly made of record. The Examining Attorney is correct that merely providing a listing of applications and registrations, apparently taken from a private company's data base, is not the appropriate way to make such registrations of record. See **In re Hub Distributing, Inc.**, 218 USPQ 284 (TTAB 1983). However, because the Examining Attorney did not raise an objection to the listing at a point when applicant could have cured the defect, the Examining Attorney has waived his right to make such an objection now. We should add, however, that the listing does not indicate the serial number of the applications, and we therefore cannot determine whether or not registrations have issued for them. In this respect, the listing does not prove the existence of third-party registrations for STEAM MASTERS or STEAMEX, and evidence only the fact that certain applications were filed.

STEAMATIC THE TOTAL CLEANING SERVICE and design encompasses applicant's identified goods.

Turning to a consideration of the marks, applicant has acknowledged, and again we concur, that STEAMATIC is the dominant element in the four cited design marks. However, applicant argues that its mark creates a different commercial impression from the registrant's marks, and that the only element common to both applicant's mark and the registrant's marks is the term "steam," which is descriptive of the goods and services.

We agree with applicant that confusion is unlikely. Although both marks begin with the term "steam," this word is clearly descriptive of applicant's goods and the registrant's goods and services. The dictionary meaning of this word shows its descriptive connotation with respect to the involved goods and services, and this descriptive significance is further established by the identifications of two of the cited registrations, which refer to a machine for steam cleaning carpets, etc. (Reg. No. 878,142) and the service of steam cleaning rugs and carpets (Reg. No. 922,584), emphasis added. In addition, the third-party registrations which are of record show that STEAM has been adopted by those who sell carpet cleaners or who offer carpet cleaning services to convey the dictionary meaning

of this term.⁹ As a result, the inclusion in applicant's mark and registrant's marks of this term alone is an insufficient basis on which to predicate a holding of likelihood of confusion. See **Tektronix, Inc. v. Daktronics, Inc.**, 187 USPQ 588 (TTAB 1975).

Thus, although applicant's mark and registrant's STEAMATIC marks are similar in appearance, much of that similarity is due to the inclusion in the marks of the descriptive term "steam." In view of applicant's assertions that consumers do not purchase cleaning machines or order carpet cleaning services on impulse, and that machines of this type cost in the range of \$100, the similarity in appearance is not of paramount importance in assessing likelihood of confusion in this case.

The marks are different in pronunciation with, again, the only syllable in common being the term "steam." The endings of the marks, MATIC and MATE, would typically be pronounced differently.

Moreover, as applicant points out, the marks have very different connotations, with applicant's mark STEAM MATE

⁹ The third-party registrations include, inter alia, STEAM BROTHERS for professional carpet cleaning services; STEAM WAY for industrial steam and vacuum cleaners and for carpet cleaning services; STEAM JET and design for steam cleaning machine; STEAMTEAM for electric carpet cleaners; and MR. STEAM for hand operated steam carpet cleaner.

signifying a helper or aid, while the registrant's mark STEAMATIC may suggest something that automatically provides steam. The difference in connotation is further emphasized in the case of the registrant's word-and-design marks, since the globe design has a very different significance from a helper or mate.

When the factors set forth in **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), on which we have evidence, namely, the differences in pronunciation and connotation of the marks, the descriptiveness of the common element "steam," and the care with which the goods and services are purchased, are considered, we find that these factors outweigh the similarities in appearance of the marks and the identical and/or closely related nature of the goods and services. Accordingly, we find that applicant's use of its mark for its identified goods is not likely to cause confusion with registrant's use of the marks which are the subjects of the cited registrations. We should add, however, that our decision is based on the record herein. We note that some of the cited registrations issued in as early as 1969. We have no information as to the extent of the registrant's use or advertising of its marks, so that the factor of the possible fame of registrant's marks is not before us.

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Thus, in an inter partes proceeding, on a different record,
a different result might be reached.

Decision: The refusals of registration are reversed.

E. J. Seeherman

G. D. Hohein

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