

Hearing:
August 17, 1999

Paper No. 17
EWH/MM

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 8, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sabre Corporation

Serial No. 75/119,406

Charles P. Bacall of Verrill & Dana for Sabre Corporation.

Tom Wellington, Trademark Examining Attorney, Law Office
112 (Janice Olear, Managing Attorney).

Before Hanak, Quinn and McLeod, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Sabre Corporation (applicant) seeks to register SABRE
for "boats, namely sailboats." The application was filed
on June 14, 1996 with a claimed first use date of November
1967.

The Examining Attorney refused registration pursuant
to Section 2(d) of the Trademark Act on the basis that
applicant's mark, as used in connection with sailboats, is

Ser No. 75/119,406

likely to cause confusion with the mark SABRE and design (shown below), previously registered for "marine engines and parts thereof." Registration number 1,210,269. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs and were present at a hearing held on August 17, 1999.

In any likelihood of confusion analysis, two key considerations are the similarities of the marks and the similarities of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d)

goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Marks are compared in terms of visual appearance, pronunciation and meaning. In terms of pronunciation, the two marks are identical. Both would be pronounced as simply SABRE. The registered mark certainly would not be pronounced as SABRE and design.

In terms of meaning, the two marks are likewise identical. A "sabre" is defined as a type of sword. Moreover, as applied to sailboats and marine engines, the word "sabre" is entirely arbitrary.

Finally, in terms of visual appearance, the marks are extremely similar in that the word portion of applicant's mark is identical to the registered mark, even to the point that both marks utilize the less preferred spelling of the word "saber," namely, "sabre." See Webster's New World Dictionary (2d ed. 1970). The presence of a sabre in the registered mark does little to distinguish it from applicant's mark in that a picture of a sabre is essentially the equivalent of applicant's mark (SABRE). Finally, a simple geometric shape around the registered mark (essentially a rectangle) also does little to distinguish it from applicant's mark.

In sum, we find that the two marks are nearly identical given the fact that they are identical in terms of pronunciation and meaning, and the fact that they are extremely similar in terms of visual appearance.

Turning to a consideration of the goods, two propositions must be kept in mind. First, because the marks are nearly identical, applicant's goods need not be closely related to registrant's goods in order for there to be a likelihood of confusion. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). Indeed, "even when goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). While the marks in question here are not absolutely identical, they are nearly identical. Therefore, if there is a viable relationship between applicant's goods and registrant's goods, a likelihood of confusion exists.

Second, in comparing applicant's goods to registrant's goods, we must compare the goods as "recited in applicant's application vis-à-vis the goods ... recited in [the cited] registration, rather than what the evidence shows the

goods ... to be." Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987).

As recited in the application, applicant's goods are "boats, namely sailboats." This includes sailboats of all types including very small and relatively inexpensive sailboats which would be purchased by novices just taking up the sport of sailing. As recited in the registration, the goods are "marine engines and parts thereof." This would include very small marine engines such as a two horsepower outboard motor. Such a motor could be used in conjunction with a very small sailboat to provide auxiliary power.

Thus, applicant's lengthy arguments about the significant size of its actual sailboats; the high cost of its actual sailboats; the sophisticated purchasers who buy applicant's actual sailboats; and the great care exercised by purchasers in buying applicant's actual sailboats are, for the purposes of this proceeding, irrelevant. Even if we assume for the sake of argument that the use of the marks SABRE on applicant's actual sailboats would not result in any confusion with the use of the registered mark SABRE and design on marine engines, nevertheless, there would be a likelihood of confusion when both marks are used in conjunction with, respectively, small, relatively

inexpensive sailboats purchased by beginners and small outboard motors to be used with such small sailboats. In this regard, we note that the Examining Attorney has made of record evidence, not challenged by applicant, demonstrating that the same stores sell both sailboats and motors to provide auxiliary power for sailboats. Indeed, applicant has acknowledged that, even in actuality, its own much larger sailboats incorporate marine engines to provide auxiliary power.

Throughout this proceeding, applicant has simply not adhered to the guidelines set forth in Canadian Imperial Bank. This is best evidenced by the very first two sentences appearing on page 3 of applicant's opening brief under the heading "Argument": "The Examiner's conclusions regarding potential consumer confusion between appellant's mark and the previously registered mark are contradicted by the differences between the actual marks and products involved, the high-level of sophistication among appellant's customers, the expensive nature of the products and the different distribution channels employed by the parties. The Examiner ignored the twenty-seven year history of concurrent use of marks by the two parties with no evidence of consumer confusion." (emphasis added).

With regard to the absence of actual confusion, two comments deserve mention. First, it may well be true that in actuality there is no likelihood of confusion given the actual nature of applicant's very large and very expensive sailboats. However, as previously noted, our analysis must be based upon the goods as described in the application and the cited registration. Second, we note that the cited mark is owned by a company located in England. Nowhere in the record is there any evidence showing the extent of sales of SABRE and design marine engines by registrant in the United States. Thus, it may well be that the chances for actual confusion to have occurred have been extremely minimal over this 27 year period.

In sum, we firmly believe that were a novice sailor to go into a boat store and see a small sailboat bearing the mark SABRE and a small outboard engine bearing the mark SABRE and design, he or she would most likely believe that the two products emanated from a common source, or at a

Ser No. 75/119,406

minimum, that there was some affiliation between the sources of the two products.

Decision: The refusal to register is affirmed.

E. W. Hanak

T. J. Quinn

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