

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 1/13/00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Motor City Sunroofs, Inc.**

Serial No. 75/176,395

Andrew R. Basile of Young & Basile, P.C. for Motor City Sunroofs,
Inc.

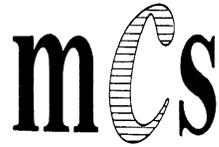
Jason Turner, Trademark Examining Attorney, Law Office 108 (David
Shallant, Managing Attorney).

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

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Motor City Sunroofs, Inc.
to register the mark shown below for "wholesale distributorship
of sunroofs."¹

¹ Application Serial No. 75/176,395; filed October 3, 1996; alleging a
date of first use on February 1, 1996 and first use in commerce on July
8, 1996. The application contains a statement that the drawing is
lined for the color blue.



The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the previously registered mark MCS for "pneumatic tires" as to be likely to cause confusion.²

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

In any likelihood of confusion analysis, two key considerations are the similarity of the marks and the similarity of the goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976), and *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999).

The Examining Attorney contends that the marks are highly similar and that a likelihood of confusion can exist between distributorship services for the goods on one hand and "for goods

² Registration No. 1,155,497; issued May 26, 1981; Sections 8 and 15 affidavits filed.

related to the goods used in the service" on the other. The Examining Attorney maintains that applicant's services and registrant's goods are offered in the same channels of trade, directed to the same customers, such as retailers and dealers, and that sunroofs and tires are related as structural and/or component parts of vehicles. In support of his position, the Examining Attorney has submitted copies of six registrations to demonstrate that a single entity may offer both tires and sunroofs under the same mark. In addition, the Examining Attorney points to a number of cases holding that the use of similar marks on various types of automotive parts is likely to cause confusion.

Applicant does not dispute the similarity of the marks. Applicant argues instead that there is no likelihood of confusion because registrant's goods and the goods distributed by applicant move in different channels of trade and are "so different" that relevant purchasers would not assume that they emanate from the same source. Applicant challenges the probative value of the Examining Attorney's third-party registrations, pointing out that the registrations are not based on use in commerce.

The marks in this case are quite similar, applicant's mark differing only to the extent that it is displayed in a slightly stylized form.

The question, then, is whether applicant's services and registrant's goods are sufficiently related and/or whether the circumstances surrounding the marketing of the goods and services are such that purchasers encountering them would, in view of the similarity of the marks, mistakenly believe that the goods and services emanate from the same source. See *Monsanto Co. v. Enviro-Chem Corp.*, 199 USPQ 590 (TTAB 1978) and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). Even if the marks are identical, if these conditions do not exist, we have held that confusion is not likely. See *In re Unilever Limited*, 222 USPQ 981 (TTAB 1984) and *In re Fesco, Inc.*, 219 USPQ 437 (TTAB 1983).

In this case, the channels of trade for these respective goods and services may, to some extent, be the same. It must be presumed that the registrant's tires are offered to all potential customers, including the dealers, retailers or even vehicle manufacturers that comprise at least some of applicant's customers. It is also true that likelihood of confusion may result from the use by different parties of the same or similar marks in connection with goods, on the one hand, and services which deal with or are related to those goods, on the other. See *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988) and *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983).

The problem in the case before us is that despite any overlap in general trade channels, we have no evidence to show that sunroofs and tires are related goods, or that purchasers who come in contact with those goods would expect the same companies which manufacture tires to sell sunroofs. The fact that particular products are sold in a common industry through the same channels of trade to the same class of purchasers does not, in and of itself, establish that such products are related. See *Canada Dry Corporation v. American Home Products Corporation*, 175 USPQ 557 (CCPA, 1972); *Chase Brass and Copper Co., Inc. v. Special Springs, Inc.*, 199 USPQ 243 (TTAB 1978); and *Autoc, Inc. v. Walco Systems, Inc.*, 195 USPQ 11 (TTAB 1977).

The Examining Attorney has attempted to demonstrate the relatedness of these goods by his submission of six third-party registrations showing that a number of entities have registered their marks for both tires and sunroofs. This is the only evidence of record and it is not persuasive. All six registrations issued under the provisions of Section 44(e) of the Trademark Act solely on the basis of ownership of foreign registrations. Without any use in commerce, these registrations have little, if any, probative value and are not useful to our analysis. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

We note the line of cases holding that the use of similar marks on various automotive parts and accessories is likely to cause confusion. However, there is nothing in these cases which mandates a finding that any and all car parts and accessories, regardless of their nature or type are, per se, related goods. Cf. *In re Quadram Corporation*, 228 USPQ 863 (TTAB 1985); *Interstate Brands Corporation v. Celestial Seasonings, Inc.*, 576 F.2d 926, 198 USPQ 151 (CCPA 1978) and cases cited therein; *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977); and *Autac Incorporated v. Walco Systems, Inc.*, supra. Moreover, there is at least one Board decision holding that identical marks used on certain automotive components is not likely to cause confusion. See *Chase Brass and Copper Co., Inc. v. Special Springs, Inc.*, supra.

Thus, aside from the fact that tires and sunroofs may both be broadly characterized as automotive parts, the Examining Attorney has failed to submit proof that these particular goods are related such that customers are likely to assume a common source. Without such proof, we have no basis on which to conclude that purchasers would believe that a manufacturer of tires would also be engaged in the sale of sunroofs.

Finally, the potential customers that these goods and services have in common, namely dealers, retailers, and manufacturers, are relatively informed and sophisticated and as

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such, would be expected to exercise greater care in making purchasing decisions. See *Electronic Design & Sales v. Electronic Data Systems*, 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992).

In view of the foregoing, we find that although the marks in this case are very similar, the record does not show that the respective goods and services are related or marketed under circumstances which would give rise to the mistaken belief that the goods and services emanate from a single source.

Decision: The refusal to register is reversed.

R. F. Cissel

P. T. Hairston

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