

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 14, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **The Ferry Cap & Set Screw Co.**

Serial No. 75/193,373

Kenneth L. Mitchell of Woodling, Krost and Rust
for **The Ferry Cap & Set Screw Co.**

Andrew P. Baxley, Trademark Examining Attorney, Law Office
114 (**Mary Frances Bruce**, Managing Attorney)

Before Seeherman, Bucher and Rogers, Administrative
Trademark Judges.

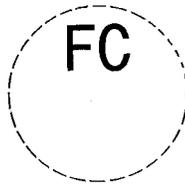
Opinion by **Rogers**, Administrative Trademark Judge:

The Ferry Cap & Set Screw Co. has filed an application to register the mark FC for "metal fasteners, namely, cap screws, set screws, bolts and studs."¹ The application includes a claim of ownership of a prior registration for the mark F-C for "cap screws, set screws, bolts and studs."²

¹ Serial No. 75/193,373, in International Class 6, filed November 5, 1996, based on use in commerce, alleging dates of first use and first use in commerce "on or about April 14, 1991."

² Registration No. 770,214, in International Class 6, issued May 26, 1964; affidavits under Section 8 and 15 of the Trademark Act

The Trademark Examining Attorney made final a refusal of registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark, when used on its identified goods, will create a likelihood of confusion with the registered marks shown below when used for the goods listed with each.



- Registration No. 1,932,844, issued November 7, 1995, to FUCHS Schraubenwerk GmbH, for "stud bolts and small round head bolts made of metal," in International Class 6. Description of mark states "The broken lines on the drawing are not part of the mark but represent the head of the a [sic] bolt, and is depicted on the drawing only to show the position of the mark of [sic] the goods."



- Registration No. 2,027,059, issued December 31, 1996, to Fabsco Corp., for "steel foundation rods, steel anchor bolts and steel fasteners, namely, hex bolts and heads therefor," in International Class 6. Description of mark states "The mark consists of a representation of a

accepted and acknowledged, respectively; and renewal for a 20-year period accepted as of January 22, 1985.

capital letter 'F' with a lower case letter 'C' in the middle of the letter 'F'."

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See **In re E.I. du Pont de Nemours and Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the analysis of likelihood of confusion presented by this case, key considerations are the similarities of the marks and the relatedness of the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

In view of the respective identifications of goods, the Examining Attorney has argued that there is a presumption that the goods of applicant and the two registrants overlap. Applicant has not contested the argument in any way and we agree with the Examining Attorney's conclusion. We are left, then, to compare the involved marks.³

³ Applicant attempted to amend its application to claim, under Section 2(f) of the Trademark Act, that its mark has acquired

The Examining Attorney argues that we must, in comparing the involved marks, consider the possibility that applicant's mark, which is set forth in the application in typed form, can be used in any form of stylization, including the forms used for the marks in each of the cited registrations. In contrast, applicant argues that the Examining Attorney erred by making such a comparison and, instead, ought to have compared the registered marks with the version of applicant's mark in actual use, as shown by applicant's specimens.

The Examining Attorney made the correct comparison. "[T]he question whether confusion is or is not likely because of the styling of the letters in which applicant's mark ... is actually used ... is irrelevant to the issue before us. [Applicant] seeks to register its mark without any special form of lettering or associated design. Therefore, a necessary premise in our evaluation of the registrability of applicant's mark is that the mark ... may be displayed in any form or style of lettering, or in any color, including

distinctiveness because of applicant's ownership of its prior registration for a similar mark for the same goods set forth in the current application. The Examining Attorney, however, refused the amendment as inappropriate because the current mark is distinctive, and because it is irrelevant to the Section 2(d) analysis. The question of acquired distinctiveness is not before us on appeal and we agree that the issue is, in any event, irrelevant to the Section 2(d) analysis.

the identical form, style or color used by [each registrant]..." **Sunnen Products Co. v. Sunex International Inc.** 1 USPQ2d 1744, 1747 (TTAB 1987), citing **Kimberly-Clark Corp. v. H. Douglas Enterprises**, 774 F.2d 1144, 227 USPQ 541, 543 (Fed. Cir. 1985).

In regard to the mark in cited registration no. 1,932,844, we note that it is set forth in plain, block letters and placed near the top of the head of the fastener. Clearly, applicant could choose to position its FC mark in the same place on its fasteners and, in fact, one of applicant's specimens of use shows such placement. Accordingly, applicant's mark, in one form of actual use, and the mark in this cited registration are virtually identical in appearance; they would, if pronounced, be pronounced the same; and they present the same commercial impression.

In regard to the mark in registration no. 2,027,059, we note that the letter F is substantially larger than the letter C and the letters are presented in overlapping or interlocking form. In contrast, not one of the three specimens evidencing use of applicant's mark presents the letters in an overlapping or interlocking form; but each varies somewhat from the other in presentation. Thus, it is clear that applicant has not restricted its use of the

FC mark to one particular form of presentation. Under the circumstances, we must consider the possibility that applicant may choose to present its letter mark "in any form or style of lettering", including an interlocking or overlapping form similar to that employed by the cited registrant.

The cited registrant presents this mark in a visually distinctive manner, so that it might, in the abstract, be viewed as an FC mark, or an FE mark, or some combination thereof. However, registrant intends it to be perceived as an FC mark, having described it in the registration as such, and it is the norm for the commercial use of company initials to put the mark to use in such a manner that it will be associated with what it is intended to convey. See **B.V.D. Licensing Corp. v. Body Action Design Inc.**, 6 USPQ2d 1719, 1721 (Fed. Cir. 1988).

In sum, though the visual presentation of applicant's mark, by the three specimens we have been provided, is different from that of the mark in this second cited registration, we are compelled to consider that applicant might actually use its mark in a style more akin to the registrant's. If spoken, these marks would be pronounced the same. Finally, applicant has presented no evidence

which would allow us to conclude that the marks have different connotations or commercial impressions.

We agree with the Examining Attorney's conclusion that, based on the correct comparison of the three relevant marks⁴, and in view of the presumptive overlap in the goods, channels of trade and consumers, there is a likelihood of confusion among consumers.

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

D. E. Bucher

G. F. Rogers

Administrative Trademark
Judges, Trademark Trial
and Appeal Board

⁴ Though the Examining Attorney engaged in some comparison of the marks in the cited registrations and applicant's previously registered mark, that comparison is not relevant to our analysis. We are only concerned with a comparison of the mark in applicant's involved application and the marks in the two cited registrations.