

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MAY 18, 00
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Por-Shun, Inc.**

Serial No. 75/249,830

Michael J. Bevilacqua and Barbara A. Barakat of **Hale and Dorr LLP**
for **Por-Shun, Inc.**

Linda M. Dwyer, Trademark Examining Attorney, Law Office 101
(**Jerry Price**, Managing Attorney).

Before **Hohein, Chapman** and **McLeod**, Administrative Trademark
Judges.

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

Por-Shun, Inc. has filed an application to register the
mark "NEW ENGLAND NATURALS" for "natural cream cheeses and
natural blended cream cheeses."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that

¹ Ser. No. 75/249,830, filed on March 3, 1997, based upon an allegation of a bona fide intention to use the mark in commerce. Subsequently, on October 7, 1997, applicant filed an amendment to allege use which claims dates of first use of April 7, 1997. Thereafter, in response to a refusal to register under Section 2(e)(2) of the Trademark Act, 15 U.S.C. §1052(e)(2), on the ground that the mark is primarily geographically descriptive of its goods, applicant amended the application from the Principal Register to the Supplemental Register, thereby overcoming such refusal.

applicant's mark, when applied to its goods, so resembles the mark "THE NEW ENGLAND CHEESE COMPANY," which is registered for "cheese,"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.

As a preliminary matter, we observe that the goods of applicant and registrant are identical in part and are otherwise closely related cheese products since registrant's goods, which are broadly identified simply as "cheese," plainly encompass applicant's cream cheeses and blended cream cheeses. Applicant, we note, does not contend otherwise and it is clear that, if such identical and otherwise closely related goods were to be marketed under the same or substantially similar marks, confusion as to the source or sponsorship thereof would be likely to occur.

Applicant contends, however, that confusion is not likely because, when considered in their entirety, the respective marks are "unitary terms" which "do not look alike, sound alike or have similar connotations, despite their common inclusion of the term 'NEW ENGLAND'." While applicant concedes that the additional elements in the respective marks "may possess some degree of suggestive or descriptive significance, applicant

² Reg. No. 2,051,665, issued on the Supplemental Register on April 8, 1997, which sets forth a date of first use anywhere of November 1995 and a date of first use in commerce of July 25, 1996. The words "CHEESE COMPANY" are disclaimed.

maintains that such fact "does not, however, mean that their [contribution to the] appearances, sounds and connotations may be disregarded in determining whether or not a likelihood of confusion exists between the marks" According to applicant, "[b]ecause of the differences in appearance, sound and connotation, the overall commercial impressions created by the marks 'NEW ENGLAND NATURALS' and 'THE NEW ENGLAND CHEESE COMPANY' are, in fact, highly distinctive" and, therefore, are not likely to be confused "as indicators of source." In addition, applicant insists that because registrant's mark combines a geographically descriptive term with one which is generic for a source of cheese products, such a "formulation is an extremely weak mark which, by definition, is only entitled to a narrow scope of protection."

We agree, however, with the Examining Attorney that, when considered in their entirety, "[t]he combination of the term NEW ENGLAND with either the term NATURALS or the term CHEESE COMPANY fails to create a unique or incongruous meaning separate from the geographically descriptive meaning" of the respective marks. In particular, we concur with the Examining Attorney that, notwithstanding the differences in appearance, sound and meaning of the descriptive terms "NATURALS" and "CHEESE COMPANY," such terms do not serve to distinguish the respective marks since "[t]he [overall] commercial impressions of the respective marks are simply and only that the goods are from New England, with one indicating that the goods are made from natural ingredients and the other indicating that the goods are cheeses." Given such substantial similarity, we agree with the Examining Attorney

that, when encountering the marks "NEW ENGLAND NATURALS" for natural cream cheeses and natural blended cream cheeses and "THE NEW ENGLAND CHEESE COMPANY" for the same kinds of cheese, "[t]he average consumer is likely to view the Applicant's goods as a 'natural' variety of the Registrant's goods."

Finally, although the respective marks are weak, in the sense that applicant's mark combines the geographically descriptive term "NEW ENGLAND" with a term which is descriptive of a natural style of cream cheese and blended cream cheese while registrant's mark similarly combines the same geographically descriptive term with a designation which is generic for a source of such cheese products, it is settled that even a weak mark, as exemplified by its registration on the Supplemental Register, is entitled to protection against the registration of a similar mark for the identical and/or closely related goods. See, e.g., In re Clorox Co., 578 F.2d 305, 198 USPQ 337, 340-41 (CCPA 1978).

We accordingly conclude that purchasers and potential customers, who are familiar or acquainted with registrant's mark "THE NEW ENGLAND CHEESE COMPANY" for cheese, would be likely to believe, upon encountering applicant's substantially similar mark "NEW ENGLAND NATURALS" for natural cream cheeses and natural blended cream cheeses, that such identical and closely related goods emanate from, or are sponsored by or affiliated with, the same source. In particular, as noted above, even consumers who notice the differences in the respective marks would still be likely to regard applicant's "NEW ENGLAND NATURALS" cream cheeses as a new or extended line of cheese products from the same source

Ser. No. 75/249,830

as "THE NEW ENGLAND CHEESE COMPANY" cheeses offered by
registrant.

Decision: The refusal under Section 2(d) is affirmed.

G. D. Hohein

B. A. Chapman

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