

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 16, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pfeiffer Pharmaceuticals, Inc.

Serial No. 75/258,373

David B. Kirschstein of Kirschstein, Ottinger, Israel &
Schiffmiller, P.C. for Pfeiffer Pharmaceuticals, Inc.

Jennifer Stiver Chicoski, Trademark Examining Attorney, Law
Office 115 (Tomas Vlcek, Managing Attorney).

Before Simms, Cissel and Seeherman, Administrative
Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Pfeiffer Pharmaceuticals, Inc. (applicant),
a Georgia corporation, has appealed from the final refusal
of the Trademark Examining Attorney to register the mark
CARDICARE for aspirin.¹ The Examining Attorney has refused
registration under Section 2(d) of the Act, 15 USC §1052(d)
on the basis of Registration No. 1,432,677, issued March

¹ Application Serial No. 75/258,373, filed March 17, 1997, based
upon allegations of use and use in commerce since January 9,
1997.

17, 1987, for the mark CARDIO-CARE for vitamins and dietary food supplements.² Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

We affirm.

The Examining Attorney argues that the marks CARDICARE and CARDIO-CARE are similar in sound, appearance and commercial impression or meaning, both having a prefix signifying "cardiovascular" or "heart," and both containing the suffix "CARE." Both marks suggest that the goods with which they are used are intended to care for or help heart patients, according to the Examining Attorney.

With respect to the goods, the Examining Attorney argues that vitamins and food supplements as well as aspirin are over-the-counter preparations sold in drugstores, medicine/health aisles of grocery stores, health food stores and on Web pages of online distributors of health care products, and are likely to be encountered by the same class of consumers. The Examining Attorney argues that the goods of applicant and registrant could both be taken as part of a daily regimen by cardiac patients or others. The Examining Attorney has also submitted 15 current third-party registrations of marks for both aspirin, on the one hand, and vitamins and dietary

² Section 8 affidavit accepted, Section 15 affidavit filed.

supplements, on the other. The Examining Attorney argues that these registrations suggest that these goods are of a type which may come from the same source. If there is any doubt, the Examining Attorney asks us to resolve that doubt in favor of the registrant.

Applicant, on the other hand, maintains that the respective marks are suggestive of being helpful to persons with heart conditions, and that the registered mark is not entitled to a broad scope of protection. Concerning the goods, applicant maintains that registrant's vitamins and food supplements are different products designed to improve a person's general health and would be sold in different sections of a drugstore than applicant's aspirin. Also, applicant points out that aspirin may be taken for a number of medical reasons including pain relief. Applicant argues that the fact that both aspirin and vitamins or food supplements may be taken as part of a daily regimen does not mean that these goods are so similar for there to be a likelihood of confusion. That is, it is applicant's position that cardiac patients may take a variety of products for cardiac as well as general health and that this fact alone does not mean that these goods are sufficiently related. Applicant argues that purchasers of these goods are also reasonably careful about their

purchasing decisions. With respect to the third-party registrations, applicant maintains that some appear to include "housemarks" listing other goods as well as aspirin and vitamins and dietary supplements. Applicant maintains that while confusion may be "perhaps possible," it is not likely.³

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that confusion is likely. The marks are substantially identical in sound, appearance and suggestive meaning. Also, the third-party registrations covering marks for aspirin and vitamins as well as dietary supplements suggest that consumers may be aware that goods such as aspirin and vitamins and food supplements may come from the same source. In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 (TTAB 1988). Because of the similarities of the marks, a consumer, familiar with registrant's CARDIO-CARE vitamins and food supplements, who then encounters applicant's CARDICARE aspirin, is likely to believe that all these goods come from the same source.

³ Applicant has correctly objected to the Examining Attorney's citation of "digest" Board decisions. Suffice it to say that the Board has held that such citation as precedent is disregarded. General Mills Inc. v. Health Valley Foods, 24 USPQ2d 1270, 1275 n.9 (TTAB 1992).

Ser. No. 75/258,373

Decision: The refusal of registration is affirmed.

R. L. Simms

R. F. Cissel

E. J. Seeherman
Administrative Trademark
Judges, Trademark Trial and
Appeal Board