

THIS DISPOSITION IS NOT CITABLE
AS PRECEDENT OF THE TTAB MARCH 1, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Stahlbush Island Farms, Inc.*

Serial No. 75/270,695

Ben C. Fetherston, Jr. for Stahlbush Island Farms, Inc.

Darlene D. Bullock, Trademark Examining Attorney, Law
Office 101 (Jerry Price, Managing Attorney)

Before Seeherman, Chapman and Wendel, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Stahlbush Island Farms, Inc. has appealed the refusal
of the Trademark Examining Attorney to register STAHLBUSH
ISLAND FARMS, INC. and design, as shown below, for
"agricultural products, namely, frozen fruit and vegetables

Ser. No. 75/270,695

and cooked fruit and vegetable purees."¹ The word INC. has been disclaimed.

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark ISLAND FARM (FARM disclaimed), shown below, and registered for canned asparagus and peas that, if applicant's mark were to be used on its identified goods, it would be likely to cause confusion or mistake or to deceive.

Both applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

We reverse the refusal of registration.

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the

¹ Application Serial No. 75/270,695, filed April 8, 1997, based on an asserted bona fide intention to use the mark in commerce.

factors set forth in **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. **Federated Food, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the goods, we find that applicant's frozen fruit and vegetables and cooked fruit and vegetable purees are related to the canned peas and asparagus identified in the cited registration. The frozen vegetables and cooked vegetable purees identified in applicant's application may include peas and asparagus. Consumers encountering these vegetables in frozen and canned form might well think, if they were sold under the same or a confusingly similar mark, that the same source was processing the vegetables in both ways. Moreover, there is nothing inherent in the preparation of cooked vegetable purees that would prevent them from being sold in canned form. Thus, we find that applicant's goods are related to the goods identified in the cited registration.

The marks, though, present sufficiently differently commercial impressions such that, even when used with related goods, there is no likelihood of confusion. We disagree with the Examining Attorney's assessment that

Ser. No. 75/270,695

ISLAND FARMS is the dominant portion of applicant's mark. Rather, we think consumers would view STAHLBUSH, which is the first word of the mark, and is depicted separate from and larger than the other wording, as the dominant part of the mark. This word, as well as the significant stylized design element, give applicant's mark a very different appearance from that of the cited mark. The marks are also different in pronunciation, since the first word of applicant's mark is STAHLBUSH, a word not present in the registered mark. Moreover, contrary to the Examining Attorney's position, applicant has not merely added the term STAHLBUSH to the registrant's mark. As stated above, applicant's mark also contains a significant design element and, because of the total manner in which it is depicted, the impression conveyed by applicant's mark does not bring to mind the cited mark, but conveys an entirely different impression.

When compared in their entireties, we find that the marks are different, and as a result we find that confusion is not likely.

Decision: The refusal of registration is reversed.

E. J. Seeherman

Ser. No. 75/270,695

B. A. Chapman

H. R. Wendel
Administrative Trademark Judges
Trademark Trial and Appeal Board