

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 9

7/18/00

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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In re **Lakeland Peat Moss, Ltd.**  
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Serial No. 75/**283,239**  
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**Ben C. Fetherston, Jr** for **Lakeland Peat Moss, Ltd.**

**Caroline Woods**, Trademark Examining Attorney, Law Office  
110 (**Chris A.F. Pedersen**, Managing Attorney)  
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Before **Hanak, Hairston and Chapman**, Administrative  
Trademark Judges.

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

Lakeland Peat Moss, Ltd. (applicant) seeks to register  
GARDENER'S GOLD for "potting soil and soil conditioners for  
agricultural, domestic and horticultural use." The  
application was filed on April 29, 1997 with a claimed  
first use date of December 31, 1995.

Citing Section 2(d) of the Trademark Act, the  
Examining Attorney refused registration on the basis that

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applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark GARDEN GOLD, previously registered for "fertilizer." Registration No. 1,143,019 issued December 16, 1980.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.")

Considering first the goods, the evidence demonstrates that potting soil and soil conditioners (applicant's goods) are clearly related to fertilizer (registrant's goods). In this regard, the Examining Attorney has made of record over 15 third-party registrations showing that various companies have registered the same marks for, on the one hand, potting soil and/or soil conditioners, and, on the other hand, fertilizer. Moreover, it is common knowledge that

gardeners will often use all three types of products (potting soil, soil conditioners, and fertilizers) together in an effort to enhance their gardens. Indeed, applicant's own brochures for its own GARDENER'S GOLD product states that one of the benefits of this product is that it helps plants store fertilizer.

Applicant never disputed that potting soil, soil conditioners and fertilizers are purchased by the same individuals (gardeners) and are used in conjunction with one another. Rather, applicant merely argues that its products are not directly competitive with registrant's fertilizer. (Applicant's brief page 1). While this is true, nevertheless, we find that potting soil and soil conditioners, on the one hand, and fertilizers, on the other hand, are closely related goods. Moreover, applicant's potting soil and soil conditioners are specifically intended for, among other uses, domestic use. Because registrant's identification of goods lists simply "fertilizer," this means registrant's fertilizer encompasses fertilizer for domestic use. Thus, the purchasers of applicant's goods and registrant's goods include ordinary, non-professional gardeners who are certainly not sophisticated with regard to potting soil, soil conditioners and fertilizers. In addition,

applicant's own brochure makes it clear that applicant's products are sold in very small sizes for use in "small flower beds" and "small lawns." Hence, both applicant's products and registrant's fertilizer can be purchased in very small quantities at minimal prices. Ordinary purchasers exercise even less care when they are dealing with small purchases as opposed to more expensive items such as automobiles.

Turning to a consideration of the marks, we find that they are very similar in terms of visual appearance, pronunciation and connotation. At page 1 of its brief, applicant alleges that "the Examining Attorney improperly ignores the disclaimed portion of each of the marks [GARDENER'S and GARDEN], and emphasizes that both marks use the same primary term 'Gold'." To be perfectly clear, we make our comparison of the marks by considering applicant's mark in its entirety vis-a-vis registrant's mark in its entirety. In so doing, we find that the first words of both marks are extremely similar. Both first words consist of or contain the root word "garden." The differences in visual appearance and pronunciation between "garden" and "gardener's" are minimal. Moreover, when the two marks are viewed in their entireties, these visual and oral similarities are only increased when one takes in

consideration that both marks consist of two words, with the second word being identical (gold).

In terms of connotation, it should be noted that the word "garden" is not only a noun, but in addition, it is a verb defined as "to make, work in or take care of a garden." Webster's New World Dictionary (2<sup>nd</sup> ed. 1970). Of course, a gardener is one who takes care of a garden. Thus, the two marks are extremely similar in terms of connotation.

In sum, given the fact that the marks are very similar in terms of visual appearance, pronunciation and connotation, and the additional fact that the two marks are used on closely related products which can be inexpensive and can be purchased by ordinary consumers, we find that the contemporaneous use of the two marks is likely to cause confusion.

Decision: The refusal to register is affirmed.

E. W. Hanak

P. T. Hairston

B. A. Chapman  
Administrative Trademark Judges  
Trademark Trial and Appeal Board