

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 8/21/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Mighty Enterprises, Inc.**

Serial No. 75/287,766

Bill W. Lew for **Mighty Enterprises, Inc.**

Vivian M. First, Trademark Examining Attorney, Law Office
104 (**Sidney Moskowitz**, Managing Attorney).

Before **Hanak**, **Hairston** and **Holtzman**, Administrative
Trademark Judges.

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

Mighty Enterprises, Inc. has appealed from the refusal of the Trademark Examining Attorney to register the mark ACURA SEIKI for goods which were subsequently identified by amendment as "computer numerical control (cnc) machines, namely cnc vertical machine centers, cnc horizontal machine

centers, cnc lathes, cnc mills; [and] metal working machines, namely lathes, grinders and mills."¹

Registration has been finally refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the registered mark AKIRA-SEIKI for "machine tools, namely, computerized numerical control machining centers and turning centers,"² as to be likely to cause confusion.

Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods.

Turning first to the goods, there is no dispute that the goods of applicant and registrant are identical. As

¹ Serial No. 75/287,766 filed April 35, 1997, alleging dates of first use of February 1, 1994. The word SEIKI is disclaimed apart from the mark as shown, and the application states: The meaning of the words "ACURA SEIKI" in English is ACURA: accuracy and SEIKI: mechanical.

² Registration No. 2,058,333 issued April 29, 1997, claiming a first use date of September 1, 1981. The registration states: The English translation of "AKIRA" in the mark is "brightness" and the English translation of "SEIKI" in the mark is "precision machine tool".

such, they are presumed to travel in the same channels of trade to the same classes of purchasers. Our principal reviewing court, The Court of Appeals for the Federal Circuit, has stated that, "When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likelihood of confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Turning then to the marks, it is applicant's position that the marks ACURA SEIKI and AKIRA-SEIKI are not similar because they are spelled differently and have different meanings.

When the goods are identical or closely related, it has been held that: "Concerning the question of the similarity of the marks, it is well established that similarity in any one of the elements of sound, appearance or meaning is sufficient to indicate likelihood of confusion." *General Foods Corp. v. Wisconsin Bottling, Inc.*, 190 USPQ 43, 45 (TTAB 1976). See also *In re Mack*, 197 USPQ 755 (TTAB 1977) ["It is also well settled that similarity in any one of the elements of sound, appearance or meaning is sufficient to indicate likelihood of confusion."] In this case, applicant's mark ACURA SEIKI

and registrant's mark AKIRA-SEIKI are highly similar in sound or pronunciation as well as appearance. The hyphen in the registrant's mark does little to distinguish the marks and the marks otherwise differ by only two letters (CU and KI). Because ACURA SEIKI and AKIRA-SEIKI have similar prefixes, the identical suffix, and the same number of syllables, the marks are extremely similar when spoken. Given the fallibility of memory and that consumers often retain only a general rather than specific recall of marks to which they are exposed, the similarities in the marks are such that, as applied to the identical goods herein, confusion as to the origin or sponsorship of the goods is likely to occur.

Two additional arguments made by applicant require comment.

Applicant maintains that its mark should be registered because its date of first use is earlier than the date of first use alleged by registrant in the cited registration. As pointed out by the Examining Attorney, priority is not a consideration in an ex parte appeal. The cited registration is entitled to certain presumptions under Section 7(c) of the Trademark Act, and matters which constitute a collateral attack on the cited registration are not considered in an ex parte appeal. If applicant

believed it had superior rights by virtue of its prior use of ACURA SEIKI, its remedy, as noted by the Examining Attorney, was a petition to cancel the cited registration.

Finally, applicant asserts that it and the registrant have used their marks concurrently without any evidence of actual confusion, and that this shows that confusion is not likely to occur. We are not persuaded by this argument. Applicant has not provided any evidence as to the extent of its use, such that we can determine whether there has been an opportunity for confusion to occur.

Decision: The refusal to register is affirmed.

E. W. Hanak

P. T. Hairston

T. E. Holtzman
Administrative Trademark Judges
Trademark Trial and Appeal Board