

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

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Amway Corporation

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Serial No. 75/334,733

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Terence J. Linn of Van Dyke, Gardner, Linn & Burkhart, LLP  
for Amway Corporation.

Teresa A. Lee, Trademark Examining Attorney, Law Office 111  
(Craig Taylor, Managing Attorney)

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Before Walters, Chapman and Wendel, Administrative  
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Applicant has filed an application to register the  
mark BANANA BOUNTY for "breakfast cereal."<sup>1</sup>

The Examining Attorney has finally refused  
registration under 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,

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<sup>1</sup> Application Serial No. 75/334,733, filed August 1, 1997. The application is based on applicant's claimed date of first use and first use in commerce of February 1996. Applicant disclaimed the term "banana."

GOLDEN BOUNTY for "breakfast cereal," as to be likely to cause confusion, mistake or deception.<sup>2</sup>

Applicant appealed, and briefs have been filed. Applicant did not request an oral hearing.

It is obvious that the goods are identical, as are the channels of trade and the purchasers.

This case turns on a consideration of the similarity or dissimilarity of the marks. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). It is well settled that marks are considered in their entirety, even if one feature may have more significance than another. It is the impression created by the marks as a whole that is important. See *Opryland USA Inc. v. The Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992). See also, 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §23:41 (4th ed. 2000).

In the case before us, when considered in their entirety, we find that applicant's mark BANANA BOUNTY presents a different commercial impression from that of the cited registrant's mark GOLDEN BOUNTY, in relation to the

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<sup>2</sup> Registration No. 2,100,172, issued September 23, 1997. The claimed date of first use is August 15, 1996.

involved goods. Specifically, applicant's mark connotes "bounty" in the sense of a generous or large portion of fruit (bananas) included in the breakfast cereal. Moreover, this meaning or commercial impression of applicant's mark is augmented inasmuch as the record shows that applicant owns Registration No. 2,107,010 issued October 21, 1997, for the mark CRANBERRY APPLE BOUNTY for "breakfast cereal," with a disclaimer of the words "cranberry apple." The cited mark, on the other hand, connotes "bounty" in the sense of an abundant yield from a grain harvest.<sup>3</sup>

Applicant submitted with its brief photocopies of eight third-party registrations which consist of or include the word BOUNTY.<sup>4</sup> We agree with the Examining Attorney that these third-party registrations are not persuasive of applicant's position in this case. This is because third-

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<sup>3</sup> Applicant submitted Merriam-Webster's Collegiate Dictionary (10th ed.) definitions of the term "bounty" as follows: "1. something that is given generously 2. liberality in giving: generosity 3. yield esp. of a crop...."

<sup>4</sup> Normally materials filed for the first time with the brief are untimely and cannot be considered. However, we note that in its brief (footnotes 1 and 2, as well as in the "certificate of mailing" page) applicant refers to a request for suspension of the appeal and remand to the Examining Attorney. There is no request to suspend and/or to remand of record herein. In any event, the Examining Attorney objected to the untimely evidence and further argued that even if considered, she is not persuaded thereby. Thus, even though the application was not formally remanded to the Examining Attorney, her position is clear, and the Board has considered the third-party registrations for whatever, if any, probative value they have.

party registrations are of little weight in determining likelihood of confusion as they are not evidence of use of the marks shown therein and they are not proof that consumers are familiar with them so as to be accustomed to the existence of similar marks in the marketplace.

Moreover, none of the third-party registrations are for breakfast cereal; rather they are for items such as candy, seafood, stews and wine. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

Based on the ex-parte record before us, when the marks are considered in their entireties as the purchasing public views them, we find that the sound, appearance, and commercial impressions created by the two involved marks are dissimilar.

Decision: The refusal to register under Section 2(d) is reversed.

C. E. Walters

B. A. Chapman

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