

**THIS DISPOSITION  
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Paper No. 13  
JQ

9/20/00

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Amerope Enterprises, Inc.**

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Serial No. 75/339,270

Richard M. Saccocio for applicant.

Patricia A. Horrall, Trademark Examining Attorney, Law  
Office 106 (Mary Sparrow, Managing Attorney).

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Before Simms, Quinn and Bucher, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Amerope Enterprises,  
Inc. to register the mark SAF-T-LITE for "laminated leaded  
glass panels or panes."<sup>1</sup>

The Trademark Examining Attorney has refused  
registration under Section 2(d) on the ground that  
applicant's mark, when applied to applicant's goods, so  
resembles the previously registered mark SAFTI-LITE for

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<sup>1</sup> Application Serial No. 75/339,270, filed August 11, 1997,  
alleging a bona fide intention to use the mark in commerce.

"fire and safety rated glass"<sup>2</sup> as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.<sup>3</sup> An oral hearing was not requested.

Applicant does not seriously dispute the similarity of the marks. Rather, applicant focuses its arguments on the differences between its goods and those of registrant. More specifically, applicant contends that notwithstanding that glass is a common aspect of the products, leaded glass panels or panes are not at all similar to safety rated fire glass. Applicant asserts that its goods shield against radiation whereas registrant's goods function to withstand the effects of fire. Further, applicant contends that the goods move in different and unique channels of trade, and that the goods are bought by different classes of purchasers. According to applicant, its glass is directed to medical professionals while registrant's glass is directed to architects and engineers. Moreover, applicant states that these classes of purchasers are sophisticated. Applicant also points to the existence of four third-party

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<sup>2</sup> Registration No. 2,089,494, issued August 19, 1997.

<sup>3</sup> Applicant raises, for the first time in its brief, an amendment to the identification of goods which, in applicant's view, would moot the likelihood of confusion refusal. The proposed amendment cannot be considered at this late juncture.

registrations of marks similar to those involved herein.<sup>4</sup>

In connection with its arguments, applicant submitted informational literature which shows that its lead glass is used to shield medical personnel from radiation.

The Examining Attorney maintains that the marks are phonetic equivalents and that the goods are closely related.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. 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 Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We first turn to the marks. As the Examining Attorney has pointed out, the marks SAFTI-LITE and SAF-T-LITE are phonetic equivalents. The marks are identical in sound, and are very similar in appearance. And, although the

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<sup>4</sup> Applicant listed the registrations in a response to an Office action. Generally, merely listing third-party registrations is insufficient to make them of record. In re Duofold Inc., 184 USPQ 638, 640 (TTAB 1974). In the present case, however, the Examining Attorney treated this evidence as if it had been properly introduced. Accordingly, we have considered the evidence in reaching our decision.

marks are suggestive, the marks convey the same meaning, that is, that the glass is for safety purposes and is light in weight.

Insofar as the goods are concerned, the issue to be determined here is not whether the goods in question are likely to be confused, but rather whether there is a likelihood that purchasers or potential purchasers thereof will be misled into the mistaken belief that they emanate from the same source. In considering the goods, we start with the premise that they need not be identical or even competitive to support a holding of likelihood of confusion. It is sufficient that the goods are so related or that conditions surrounding their marketing are such that they are encountered by the same persons who, because of the relatedness of the goods and the similarities between the marks, would believe mistakenly that the goods originate from or are in some way associated with the same producer. *Hercules Inc. v. National Starch and Chemical Corp.*, 223 USPQ 1244, 1247 (TTAB 1984).

In comparing applicant's goods to registrant's goods, we must compare the goods as "recited in applicant's application vis-à-vis the goods...recited in [the cited] registration, rather than what the evidence shows the goods...to be." *Canadian Imperial Bank of Commerce v.*

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Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987).

As recited in the registration, registrant's goods include "safety rated glass." This identification is broad enough to cover safety glass of all types (not just fire safety glass), including the type of safety lead glass sold by applicant. Further, although applicant has highlighted differences in trade channels and classes of purchasers, there are no limitations bearing on these in either the cited registration or the application. In addition, the substantial similarity between the marks and the relatedness of the goods outweighs any sophistication of purchasers. In sum, the goods are similar for purposes of our likelihood of confusion analysis.

The four third-party registrations do not dictate a different result. The registrations are of little probative value on the specific question of likelihood of confusion presented in this case given that the registrations cover goods far different from the ones of applicant and registrant, not to mention the fact that there is no evidence that the listed marks are in use.

Lastly, to the extent that any of the points argued by applicant cast doubt on our ultimate conclusion on the issue of likelihood of confusion, we resolve that doubt, as

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we must, in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); and In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

We conclude that purchasers familiar with registrant's fire and safety rated glass sold under the mark SAFTI-LITE would be likely to believe, upon encountering applicant's mark SAF-T-LITE for laminated leaded glass panels or panes, that the goods originated with or were somehow associated with or sponsored by the same entity.

Decision: The refusal to register is affirmed.

R. L. Simms

T. J. Quinn

D. E. Bucher  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board

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