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Paper No. 9
Bottorff

11/22/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Marillat Industries, Inc.**

Serial No. 75/401,092

Leon E. Redman of **Masco Corporation** for **Marillat Industries, Inc.**

Vanessa J. Cooper, Trademark Examining Attorney, Law Office 113 (**Meryl Hershkowitz**, Managing Attorney)

Before **Simms, Bottorff and Holtzman**, Administrative Trademark Judges.

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

Applicant seeks registration of the mark NORTHPORT, in typed form, for goods identified as "cabinetry, namely kitchen and bath cabinets and cabinet doors."¹ The Trademark Examining Attorney has refused registration on the ground that applicant's mark, as applied to applicant's goods, so resembles the mark SOUTHPORT, which is registered

¹ Serial No. 75/401,092, filed December 5, 1997. The application is based on intent-to-use under Trademark Act Section 1(b).

(in typed form) for "kitchen cabinets and bathroom vanities,"² as to be likely to cause confusion, to cause mistake, or to deceive. See Trademark Act Section 2(d).

When the refusal was made final, applicant filed this appeal. Applicant and the Trademark Examining Attorney filed main briefs. Applicant did not file a reply brief, nor did applicant request an oral hearing. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We find that applicant's goods, as identified in the application, are identical to the goods identified in the cited registration. Moreover, in view of the legal identity of the goods and the absence of any limitations in

² Registration No. 2,181,432, issued August 11, 1998.

applicant's and registrant's respective identifications of goods, we find that the trade channels and classes of customers for applicant's and registrant's respective goods are identical.

Applicant argues that these goods are expensive and that they are not purchased on impulse. However, there is no evidence in the record as to these factors, and we therefore have no basis for according significant weight to them in our likelihood of confusion analysis.

We turn next to the issue of whether applicant's mark and registrant's mark, when compared in their entireties in terms of appearance, sound and connotation, are similar or dissimilar in their overall commercial impressions. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, because applicant's goods are legally identical to registrant's goods, the degree of similarity

between the marks that is required to support a finding of likelihood of confusion is less than would be required if the respective goods were more disparate. See *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 9874, 23 USPQ2d 1698 (Fed. Cir. 1992).

In terms of appearance and sound, applicant's and registrant's marks obviously are similar to the extent that they both include the word PORT, albeit dissimilar to the extent that applicant's mark includes the term NORTH while registrant's mark includes the term SOUTH. However, in their entireties, the marks look and sound similar in that they are two-syllable compound words which end in the suffix PORT.

We also find that the marks are quite similar in terms of their connotations and overall commercial impressions, in that they both would be perceived as fanciful or arbitrary geographic place names composed of the name of a cardinal direction (NORTH, SOUTH) combined with the suffix PORT. Applicant argues that the Trademark Examining Attorney has improperly dissected the marks by placing undue emphasis on the word PORT while giving insufficient weight to the obvious dissimilarity between the antonymic terms NORTH and SOUTH. However, we believe it is applicant who is improperly dissecting the marks.

The comparison to be made is not between NORTH and SOUTH, as applicant argues, but between NORTHPORT and SOUTHPORT. The record does not support applicant's argument that the suffix PORT is a weak or widely-used term as applied to these goods, and we find that it should be accorded significant weight in our comparison of the marks. The marks both connote or suggest a "port" town, a connotation which, on this record, is arbitrary as applied to the goods involved herein. This similarity in connotation suffices to outweigh any dissimilarity between the marks which arises from the differences between NORTH and SOUTH, per se. *Cf. Downtowner Corp. v. Uptowner Inns, Inc.*, 178 USPQ 105 (TTAB 1973).

In sum, we find that applicant's mark is sufficiently similar to registrant's mark that confusion is likely to result from the contemporaneous use of the two marks on the identical goods involved herein. To the extent that any doubt exists as to this conclusion, such doubt must be resolved in favor of the prior registrant and against

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applicant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463,
6 USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusal to register is affirmed.

R. L. Simms

C. M. Bottorff

T. E. Holtzman

Administrative Trademark Judges
Trademark Trial and Appeal Board