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Paper No. 10  
RLS/DLW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re IMX Pharmaceuticals, Inc.

Serial No. 75/568,957

Myron Amer of Myron Amer, P.C. for IMX Pharmaceuticals, Inc.

Glenn Mayerschoff, Trademark Examining Attorney, Law Office  
107 (Thomas Lamone, Managing Attorney)

Before Simms, Cissel and Hanak, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

IMX Pharmaceuticals, Inc. (applicant), a Utah corporation, has appealed from the final refusal to register the mark TOTAL BODY CARE for hand and body cleansing lotion and cream.<sup>1</sup> The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC § 1052(d), on the basis of two registrations. These are

<sup>1</sup> Application Serial No. 75/568,957, filed October 13, 1998, based upon applicant's bona fide intention to use the mark in commerce. During the course of this proceeding, applicant submitted an amendment to place its application on the Supplemental Register, along with an amendment to allege use asserting use in commerce since June 10, 1999.

for the mark BODY CARE for skin lotion for the body,<sup>2</sup> and for the mark TOTAL CARE for cleaning products, namely, toilet bowl cleaners, general purpose cleaners and hand soaps.<sup>3</sup> Applicant and the Examining Attorney submitted briefs but no oral hearing was requested.

The Registered Mark BODY CARE

With respect to the registration covering the mark BODY CARE, the Examining Attorney argues that applicant's mark TOTAL BODY CARE differs only by the addition of the descriptive word TOTAL and that this word does not sufficiently distinguish the two marks. The Examining Attorney also argues that registrant's skin lotion for the body and applicant's body cleansing lotion and cream are virtually identical products.

Applicant argues, on the other hand, that while applicant's goods may be used on the hands, registrant's goods are lotions for the body excluding the hands and the face.

For the reasons expressed by the Examining Attorney, we affirm this refusal. Applicant's body cleansing lotion

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<sup>2</sup> Supplemental Registration No. 761,141, issued December 3, 1963, renewed.

<sup>3</sup> Registration No. 2,238,434, issued April 13, 1999. That registration also issued for goods in a different class--spray chemical air fresheners and general purpose hard surface disinfectants. However, the Examining Attorney did not refuse

and registrant's skin lotion for the body are virtually identical products, and we believe that purchasers, aware of registrant's BODY CARE lotion, who then encounter applicant's TOTAL BODY CARE virtually identical body cleansing lotion, are likely to believe that applicant's product is another product put out by the makers of registrant's BODY CARE body lotion. We also note that these goods are relatively inexpensive and that less care, therefore, may be exercised in their purchase.

The TOTAL CARE Registration

With respect to the registered mark TOTAL CARE, the Examining Attorney maintains that the word "BODY" in applicant's mark is not sufficient to avoid confusion, and that these marks are similar in sound, appearance and meaning. With respect to the goods, the Examining Attorney argues that, as identified, there is no limitation as to the type of registrant's "hand soaps" or the channels of trade or classes of purchasers of those goods.

Accordingly, the Examining Attorney argues that we must presume that registrant's hand soaps encompass all types of soaps and that they move in all channels of trade to all normal classes of purchasers. The Examining Attorney

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registration on the basis of the registered mark with respect to these goods.

argues that registrant's hand soaps and applicant's body cleansing lotion are complementary products since both may be used to clean the hands. According to the Examining Attorney, consumers familiar with registrant's TOTAL CARE hand soaps are likely to assume that applicant's TOTAL BODY CARE hand and body cleansing lotion and cream all come from the same source.

Applicant argues that registrant's hand soaps are likely to be a janitorial product or a product used in public restrooms and not a household product. Moreover, applicant maintains that registrant's hand soap is likely to be dispensed in liquid form rather than as bar soap. Applicant argues, therefore, that registrant's goods are likely to travel in a different channel of trade from applicant's lotions and creams.

With respect to the goods, we cannot agree with applicant that registrant's hand soaps are necessarily a janitorial product most likely to be sold in public restrooms. The description of goods in the registration is not so limited, and registrant's hand soap as well as the other items, such as toilet bowl cleaners and general purpose cleaners, may well be household products sold to the ordinary consumer. Accordingly, we believe that registrant's hand soaps and applicant's hand and body

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cleansing lotion and cream are closely related, complementary products that, if sold under sufficiently similar marks, would be attributed to the same source.

With respect to the marks, however, we believe that the differences in sound, appearance and, especially, meaning, make confusion unlikely. In this regard, aside from the obvious differences in sound and appearance, registrant's mark TOTAL CARE signifies complete or total care in general, whereas applicant's mark TOTAL BODY CARE obviously signifies complete or total care for the body. These differences, while not great, are sufficient in our judgment to preclude likelihood of confusion.

Decision: The refusal with respect to Registration No. 761,141 is affirmed; the refusal with respect to Registration No. 2,238,434 is reversed.