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Paper No. 15
EJS

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Antica Pasteria S.p.A.

Serial No. 75/231,061

Michael Schwarz of The Ruchelman Law Firm for Antica
Pasteria S.p.A.

Linda M. King, Trademark Examining Attorney, Law Office 101
(Jerry Price, Managing Attorney).

Before Seeherman, Hohein and Chapman, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Antica Pasteria S.p.A. has appealed from the final refusal of the Trademark Examining Attorney to register the mark ANTICA PASTERIA and design, shown below, for "pasta, flour, processed cereals, breads, biscuits, cakes and pastry."¹ The English translation of the Italian word "antica" is "old."

¹ Application Serial No. 75/231,0061, filed January 24, 1997, and asserting a bona fide intention to use the mark in commerce.

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground of likelihood of confusion with the mark ANTICO PASTIFICIO and design, reproduced below, which is registered for "pasta." The registered mark includes a disclaimer of the word PASTIFICIO and the statement that "antico pastificio" may be translated as "old pasta factory." It is the Examining Attorney's position that applicant's mark so resembles the mark ANTICO PASTIFICIO and design that, if used on applicant's identified goods, it would be likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed appeal briefs. An oral hearing was not requested.

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E. I. du Pont de Nemours & Co.**,

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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).

The goods in the cited registration are pasta, and pasta is one of the items listed in applicant's identification of goods. The goods, then, are in part identical and, as such, are deemed to be sold in the same channels of trade and to the same classes of purchasers. Such purchasers, in the case of these common consumer products, would include the public at large.

We turn then to a consideration of the marks, keeping in mind that "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." **Century 21 Real Estate Corp. v. Century Life of America**, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

We find that both marks convey very similar commercial impressions. Both begin with the virtually identical word ANTICA/ANTICO. As applicant acknowledges, this is the same word, which translates as "old," and the final letter "A" or "O" merely reflects whether the word is modifying a

feminine or masculine noun. Thus, those consumers who are familiar with Italian will view the words as the same, while those who do not understand Italian are unlikely to notice the difference in the final letter, particularly because of the type styles used in these special form drawings. The second word of each mark begins with the letters "PAST" and, for those not familiar with Italian, both PASTERIA and PASTIFICIO, when used in connection with pasta, will suggest PASTA. Although the endings of the words are different, these differences are overridden by the strong similarities in the marks as a whole. The design elements, too, although not accorded as much weight as the words, reinforce the similarities between the marks because they both depict sheaves of wheat.

Thus, although differences between the marks may be seen when they are viewed side by side, under actual marketing conditions purchasers ordinarily do not have the opportunity for such careful scrutiny. Thus, the focus must be on the general recollection produced by a purchaser's encounter with applicant's mark and the mental impression and mental comparison with opposer's mark. See **Dassler KG v. Roller Derby Skate Corporation**, 206 USPQ 255 (TTAB 1980).

Applicant and the Examining Attorney have discussed at some length the meaning of the word PASTERIA, with the Examining Attorney contending that it means a place where pasta is served, while applicant asserts that it has no generally accepted meaning. The record shows that applicant is correct that the word "pasteria" is not listed in any English or Italian dictionaries. However, the Nexis evidence submitted by the Examining Attorney shows that "pasteria" has been used in a number of articles appearing in newspapers in the United States to refer to a restaurant serving, inter alia, pasta.² These articles indicate that the authors expect the public to understand "pasteria" to mean a pasta restaurant, and also indicate that the public has been exposed to this meaning of the word.

The fact that some customers who understand Italian will know that PASTIFICIO means pasta factory, or that others will understand PASTERIA to mean a pasta restaurant, does not have a strong impact on our finding of likelihood of confusion. For those who are unaware of these meanings,

² See, for example: "Don't think for a moment that this is your average neighborhood pasteria. Despite its commonplace nomenclature, Pasta Pasta is a romantic candlelit hideaway..." "Newsday," December 20, 1996; "...Pasta Pasta Pasta an eat-in, take-out pasteria in North Cherry Creek." "Denver Rocky Mountain News," June 7, 1995; and "Pappardelle are wide, flat noodles, and the recommended meat sauce is a delicate veal ragu that I'd say rivals that of most accomplished pasterias." "Los Angeles Times," April 8, 1994.

both words will simply look like highly similar terms based on the word PASTA. For those who are aware of one or both of the meanings, they are likely to view the marks, because of the other similarities in the marks, as variations of each other. That is, consumers who are familiar with the ANTICO PASTIFICIO and design mark used on pasta are likely to assume, upon encountering the ANTICA PASTERIA and design mark on pasta, that the latter mark is a variant of the former, and that both products emanate from the same source. It must also be remembered that pasta is a low cost item, and therefore purchasers are not likely to examine carefully the trademarks to check for slight differences between them, or to undertake a great deal of analysis as to whether any slight differences indicate different sources of the goods. They are far more likely to assume, given the overall similarities between the marks, that the products they identify emanate from the same source.

Applicant also argues that the words ANTICO/ANTICA are weak, and that PASTIFICIO is descriptive. In support of this argument, applicant has submitted copies of third-party registrations which include the word ANTICA.³ We note

³ These registrations, made of record with applicant's response to the first Office action, were taken from a private search

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that six of these registrations have been cancelled, and several are for goods other than food products. Applicant has also pointed out that the word PASTIFICIO in the cited registration has been disclaimed. However, even if we accept that the cited mark is weak, and therefore entitled to a more limited scope of protection, that protection still extends to prevent the registration for identical goods of a mark which contains not only the term ANTICA, but is followed by a word very similar in appearance to PASTIFICIO, and is used with a design that also includes wheat sheaves.

Decision: The refusal of registration is affirmed.

service's records, and therefore normally would not be acceptable as evidence of such registrations. However, because the Examining Attorney did not object to them, we have deemed them to have been stipulated into the record.