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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Paper No. 10
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Sherwin-Williams Automotive Finishes Corp.**

Serial No. 75/**342,774**

Robert E. McDonald of **The Sherwin-Williams Company** for
Sherwin-Williams Automotive Finishes Corp.

Julia Hardy Cofield, Trademark Examining Attorney, Law
Office **115** (**Tomas Vlcek**, Managing Attorney).

Before **Simms**, **Hairston** and **Chapman**, Administrative
Trademark Judges.

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

An application has been filed by Sherwin-Williams
Automotive Finishes Corp. to register the mark KLEAR-KUT
for "clear and pigmented coatings in the nature of paint
for use by professional autobody painters in the automotive
refinish industry."¹

¹ Application Serial No. 75/342,774 filed August 18, 1997,
alleging dates of first use of May 30, 1997.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the previously registered mark CLEAR-CUT and design as shown below,

for "abrasive particles for use in stripping unwanted coatings, materials, and the like from the surfaces of substrates in such industries as the aircraft, automotive, and electronics industries,"² as to be likely to cause confusion. When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods.

Turning first to the goods, although the involved goods are different, the issue to be determined here is not whether the goods are likely to be confused but rather whether there is a likelihood that the relevant purchasers

² Registration No. 1,620,724 issued November 6, 1990; Section 8 affidavit accepted and Renewal application filed.

will be misled into the belief that the goods emanate from the same source. Thus, goods need not be identical or even competitive in nature to support a finding of likelihood of confusion. It is sufficient for the purpose that the goods are related in some way and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under circumstances that could give rise, because of the marks used thereon, to the mistaken belief that they originate from or are in some way associated with the same producer. *Chemical New York Corp. v. Conmar Form Systems, Inc.*, 1 USPQ2d 1139, 1143 (TTAB 1986).

In this case, we find that there is a relationship between the goods. As noted by the Examining Attorney, paint strippers are often used to remove old or existing paint from a surface before new paint is applied. Thus, an autobody paint specialist, in the process of refinishing a vehicle, may use a stripper in addition to paint. We find it likely that customers of registrant's strippers for use in the automotive industry would also be customers of paint for automotive refinishing. Under the circumstances, applicant's goods and registrant's goods are sufficiently related that, if marketed under identical or similar marks, confusion as to source or sponsorship is likely to occur.

We have reached this finding without giving much weight to the third-party registrations submitted by the Examining Attorney in her attempt to show a relationship between the goods. The reason being that in all but one case, the registrations cover paints and strippers designed for use in the home or in an industry other than the automotive industry. Thus, such registrations are not particularly probative of whether paints and strippers used in the automotive industry are related goods.

Considering next the marks, we find that they are identical in sound and highly similar in appearance and commercial impression. The fact that applicant's mark is spelled with the letter "K" at the beginning of each word rather than the letter "C" is of virtually no consequence.

We note that applicant has made of record four third-party registrations for marks consisting of either "CLEAR CUT" or "KLEAR KUT" for various products such as insertable saw bits, fish for human consumption, an electrosurgical handpiece, and metal working compounds. None of these registrations, however, covers goods of the type involved in this appeal or items which are even arguably related thereto. The third-party registrations, therefore, do not establish that the cited mark is weak and thus entitled to only a limited scope of protection.

Finally, we have not overlooked the fact that applicant's goods are specifically targeted to professional painters in the automotive refinish industry. Be that as it may, even discriminating purchasers are not immune to source confusion, especially in cases like the present one where closely related goods are marketed under substantially similar marks.

In sum, we conclude that purchasers familiar with registrant's stylized CLEAR-CUT mark for abrasive particles for use in stripping unwanted coatings, materials, and the like from the surfaces of substrates in such industries as the aircraft, automotive, and electronic industries, would be likely to believe, upon encountering applicant's KLEAR-KUT mark for clear and pigmented coatings in the nature of paint for use by professional autobody painters in the automotive refinish industry, that such goods emanate from or are otherwise associated with or sponsored by the same source.

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.