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THE TTAB

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PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Sprayform Holdings Limited**

Serial No. 75/**397,226**

Daniel H. Bliss of **Bliss McGlynn P.C.** for **Sprayform Holdings Limited.**

Marc J. Leipzig, Trademark Examining Attorney, Law Office 115 (**Tomas V. Vlcek**, Managing Attorney).

Before **Cissel**, **Hairston** and **Walters**, Administrative Trademark Judges.

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

Sprayform Holdings Limited has applied to register the mark STD SPRAYFORM for the following goods:

Chemicals, namely, inorganic salts, oxides, metals and alloys for use in metallurgy; chemicals for use in the manufacture of tools and dies and in the manufacture of refractory bodies; chemical reagents for scientific research use; surface treatment materials and mold release compounds for use in the manufacture of tools and dies; brazing and soldering fluxes; salts for use in the manufacture of tools and dies in class 1;

Metal cable wire, metal brazing rods and/or metal welding rods, metal tubing and metal castings in class 6;

Dies for use with machines and machine tools, machines and machine tools including such dies, molding machines, and parts and fittings therefor, molds for molding plastic articles in class 7;

Plastics in bars, blocks, and sheets for general industrial use, synthetic unprocessed thermosetting resins for general industrial use, cast plastic bodies for use in the manufacture of tools and dies in class 17; and

Shaped refractory articles in class 19.¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark SPRAYFORM, previously registered for "sprayable refractories,"² that, if used in connection with applicant's identified goods, it is likely to cause confusion, mistake or deception.

Applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

It is applicant's position that when the respective marks are considered in their entireties, they are distinguishable in sound, appearance and commercial

¹ Serial No. 75/397,226, filed November 28, 1977, which alleges a bona fide intention to use the mark in commerce, and under Section 44(d), based on a United Kingdom application.

² Registration No. 2,088,080 issued August 12, 1997.

impression. In particular, applicant argues that the STD portion of its mark STD SPRAYFORM cannot be ignored, and that, "if given fair weight with the term SPRAYFORM, any confusion with the mark SPRAYFORM becomes less likely." (Applicant's brief, p. 4). Further, applicant maintains that its chemicals, metal goods, machinery, plastics and shaped refractory articles are different from registrant's sprayable refractories; that the respective goods would not be confused; and that they would not travel in the same channels of trade.

In determining whether there is a likelihood of confusion between two marks, we must consider all relevant factors as set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis under Section 2(d) of the Trademark Act, two of the most important factors are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Turning first to a consideration of the marks, applicant has incorporated the entirety of registrant's mark SPRAYFORM and added the letters STD. While the addition of STD in applicant's mark creates obvious

differences in the marks, we view the differences as insufficient to avoid a likelihood of confusion with registrant's mark. The marks, when considered in their entireties, engender substantially similar commercial impressions. Given the fallibility of human memory and that purchasers often retain only a general rather than specific recall of marks to which they are exposed, the similarities in the marks are such that, if applied to related goods, confusion as to the origin or sponsorship of the goods is likely to occur.

Turning then to the goods, the inquiry is not whether purchasers would confuse applicant's identified goods and registrant's sprayable refractories, but whether these kinds of goods might be assumed to emanate from a single source. It is not necessary that goods be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient for the purpose that the goods are related in some manner 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).

We consider first the most pertinent of applicant's goods, namely, "shaped refractory articles" in class 19 and registrant's "sprayable refractories." The Examining Attorney, in support of his position that applicant's shaped refractory articles and registrant's sprayable refractories are related products, submitted entries from two on-line dictionaries. The first entry is taken from the Illustrated Glass Dictionary wherein the term "refractories" is defined as "[m]aterials capable of withstanding extremely high temperatures and thus used in furnaces for industries such as glass and steel where raw materials have to be heated to a molten form." The second entry is taken from the Academic Press Dictionary of Science and Technology wherein the term "refractory" is defined as:

Materials. Describing a material that has a softening point and a very high melting point.

Also, the Examining Attorney introduced excerpts from the Thomas Register (1997) listing manufacturers under the heading "Refractories & Refractory Materials."

We find that the Examining Attorney has made a prima facie case that applicant's shaped refractory articles and

registrant's sprayable refractories are related products. We are able to determine from the dictionary definitions that shaped refractory articles and sprayable refractories are both designed for the same purpose, namely to withstand extremely high temperatures. In the absence of any convincing evidence to the contrary, we think it reasonable to assume that some of the companies to which applicant's shaped refractory articles will be offered would also be customers for registrant's sprayable refractories. Moreover, the Thomas Register listings indicate that shaped refractory articles are offered by many of the same companies which offer general refractories or other types of refractories and refractory materials. Although applicant argues that these goods would not travel in the same channels of trade, applicant has offered no evidence in support of its position.

In view of the foregoing, we find that applicant's shaped refractory articles and registrant's sprayable refractories are sufficiently commercially related that confusion is likely in view of the substantial similarity in the marks herein.

We note applicant's point that the goods are of a specialized nature. However, even careful purchasers are not immune from source confusion.

We turn then to a consideration of the chemicals, metal goods, machines, and plastics in classes 1, 6, 7, and 17, respectively, in applicant's application and registrant's sprayable refractories. In support of his position that these goods are related, the Examining Attorney introduced copies of third-party registrations which cover refractory materials and products, on the one hand, and various goods in classes 1, 6, 7, and 17, on the other hand. Third-party registrations which cover the goods in an applicant's application and the goods in a cited registration and which are based on use in commerce have some probative value to the extent that they serve to suggest that the listed goods are of a type which may emanate from a single source. In this case, however, only two of the third-party registrations cover any of the specific goods in classes 1, 6, 7, or 17 in applicant's application and those are certain of the chemicals in class 1. In other words, in all but two of the third-party registrations, the goods covered in classes 1, 6, 7, and 17 are different from any of the goods in classes 1, 6, 7, and 17 in applicant's application. Moreover, there is a problem even with the two third-party registrations which appear to support the Examining Attorney's position with respect to the class 1 goods. That is, each of these

registrations issued under Section 44 of the Trademark Act without any use in commerce, and thus their probative value is very limited.

In short, we are not persuaded on this record that the goods in classes 1, 6, 7, and 17 in applicant's application and registrant's sprayable refractories are commercially related products, so that even though the marks of applicant and registrant are similar, confusion would not be likely.

Decision: The refusal to register the mark for the goods in class 19 is affirmed. The refusal to register the mark for the goods in classes 1, 6, 7, and 17 is reversed.