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**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB**

Paper No. 11
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Maurice Sporting Goods, Inc.

Serial No. 75/530,656

Harold V. Stotland of Seyfarth, Shaw, Fairweather & Geraldson for applicant.

Katherine Stoides, Trademark Examining Attorney, Law Office 109 (Ronald Sussman, Managing Attorney).

Before Cissel, Walters and Holtzman, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Maurice Sporting Goods, Inc. has filed a trademark application to register the mark CRESCENT ARCHERY for "arrowheads."¹ The application includes a disclaimer of the word ARCHERY apart from the mark as a whole.

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the previously registered mark CRESCENT, both in

¹ Serial No. 75/530,656, in International Class 28, filed August 4, 1998, based on an allegation of a bona fide intention to use the mark in commerce.

Serial No. 75/530,656

typed format² and in the stylized script shown below,³ for arrowhead blades, hunting knife blades and hobby blades,⁴ that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.



Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We reverse 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*

² Registration No. 1,767,181, issued April 27, 1993, to Crescent Manufacturing Company. [Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

³ Registration No. 1,742,755, issued December 29, 1992, to Crescent Manufacturing Company. [Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

⁴ The cited registrations include the following goods considered not pertinent by the Examining Attorney: industrial and utility cutting blades, in International Class 7; medical blades, in International Class 10; and single edge blades, leather cutting blades, automotive gasket cutting blades, rubber cutting blades, twine cutting blades, paper slitting blades, hook blades, food processing blades, plexiglass scoring blades, textile cutting blades, adhesive tape cutting blades, roofing blades, potato

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 Section 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); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The Examining Attorney contends that applicant's mark is "highly similar" to the registered marks. Regarding the goods, the Examining Attorney contends that that both applicant's and registrant's goods are used by hunters; that arrowhead blades, hunting blades and hobby blades are all complementary products, *i.e.*, a hunter "is likely to use hunting blades and/or hobby blades in addition to his bow and arrow (for which he must purchase arrowheads)"; that arrowheads are comprised necessarily of arrowhead blades; and that consumers familiar with applicant's arrowheads will mistakenly assume that registrant's arrowhead blades are specifically manufactured for use therewith. Regarding the channels of trade, the Examining Attorney states that applicant's and registrant's goods "will be offered for sale in all normal channels of trade, including stores featuring

slicing blades, utility knife blades, pill cutting blades,

hunting-related goods, sporting goods section of department stores, and mail order catalogs featuring hunting-related goods and accessories."

Applicant contends that there is no likelihood of confusion because applicant's and registrant's goods are sold to different customers through different channels of trade. Applicant states that its arrowheads "are sold at retail to consumers who want to replace their arrowheads, while the registrant's arrowhead blades are sold to manufacturers of arrowheads ... arrowhead manufacturers buy registrant's blades and assemble them into arrowheads." Applicant concedes there may be uncommon isolated incidences where arrowhead blades may be found at retail.

Considering, first, the marks, the question is whether applicant's mark and the registered marks, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. 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 impressions that confusion as to the source of the goods or services 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

linoleum cutting blades, in International Class 8.

specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

The term CRESCENT is clearly the dominant portion of applicant's mark, CRESCENT ARCHERY. Not only is it the first word in the mark, but there is no question that the additional word ARCHERY is merely descriptive in connection with arrowheads. The dominant portion of applicant's mark is identical to both of registrant's CRESCENT marks. The stylization of the word in Registration No. 1,742,755 is minimal and the initial "C" is shaped like a crescent moon, which merely reinforces the word portion of the mark. Thus, not only are applicant's mark and registrant's marks similar in terms of sight, sound and connotation, they have substantially similar overall commercial impressions.

Turning to consider the goods involved in this case, we note that neither the Examining Attorney nor applicant has submitted any evidence in support of their respective positions regarding the goods. Both the Examining Attorney

and applicant have made unsupported statements about the nature of the purchasers, the relatedness of goods and the channels of trade for the respective goods. However, it is the Examining Attorney's burden to establish a prima facie case in support of her refusal to register on the ground of likelihood of confusion. Thus, we find that the Examining Attorney has not established any facts regarding the nature or relatedness of the goods, or the nature of the purchasers and channels of trade of the respective goods.

Therefore, despite the substantial similarity in the commercial impressions of applicant's mark, CRESCENT ARCHERY, and registrant's CRESCENT marks, due to the total lack of evidence regarding the goods involved in this case, we conclude that the Examining Attorney has not established that the contemporaneous use of the marks herein is likely to cause confusion as to the source or sponsorship of such goods.

Decision: The refusal under Section 2(d) of the Act is reversed.