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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 9  
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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In re The Golden Griddle Corporation  
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Serial No. 75/551,031  
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**Linda Urbanik Johnson and Mark I. Feldman** of Piper Marbury Rudnick & Wolfe for The Golden Griddle Corporation.  
Hellen M. Johnson, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

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Before **Simms, Cissel** and Wendel, Administrative Trademark Judges.

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

On September 11, 1998, applicant filed the above-referenced application to register the mark shown below

on the Principal Register for "restaurant services including sit-down and take-out restaurant services," in Class 42. The basis for the application was applicant's

assertion that it possessed a bona fide intention to use the mark in commerce in connection with these services.

The Examining Attorney refused registration under Section 2(d) of the Lanham Act on the ground that if applicant's mark were used in connection with the services set forth in the application, it would so resemble the mark "GOLDEN GRIDDLE," which is registered<sup>1</sup> for "table syrup," in Class 30, that confusion would be likely. In addition to the refusal to register, the Examining Attorney also required a disclaimer of the exclusive right to use the term "FAMILY RESTAURANTS" apart from the mark as shown and required an amendment to the recitation of services to change the indefinite word "including" to "namely."

Applicant submitted the required disclaimer and amendment to the recitation of services and also provided arguments with respect to the refusal to register. In support of these arguments, applicant submitted copies of two registrations on the Principal Register, both of which are owned by the same entity. One is for the mark "BEOCO GOLDEN GRIDDLE FRY" and design, for "vegetable-based shortening for institutional use" (Reg. No. 1,349,786); the

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<sup>1</sup> Reg. No. 939,986, and issued to CPC International Inc., a Delaware corporation, on August 1, 1972; combined affidavit under Sections 8 and 15; renewed.

other is for the mark "GOLDEN GRIDDLE FRY" and design for the same goods (Reg. No. 1,807,740).

The Examining Attorney was not persuaded by applicant's evidence or arguments, and the refusal to register was made final in the second Office Action. Along with the final refusal to register, the Examining Attorney made of record excerpts from nine articles retrieved from the Nexis® database of publications in which the terms "family restaurants" and "syrup" appeared in close proximity to each other. She contended that these articles confirm the fact that the average consumer could expect to encounter syrup as a condiment at a family restaurant.

Additionally, the Examining Attorney made of record evidence retrieved from applicant's own website which shows that applicant's menus offer customers pancakes, and that applicant has a promotional program called "Pancake Tuesdays" in which applicant features pancakes. In fact, the materials used to promote "Pancake Tuesdays" show a photograph of a stack of pancakes covered with syrup.

Also submitted in support of the refusal to register were a group of copies of third-party registrations wherein both "syrup" and "restaurant services" are listed as the goods and services with which the particular registered

marks are used. One of these registrations issued under Section 44 of the Act, but the other four are based on claims of use in commerce.

Applicant timely filed a Notice of Appeal, but did not request an oral hearing before the Board. Both applicant and the Examining Attorney filed briefs.

The only issue on appeal is whether applicant's mark, "GOLDEN GRIDDLE FAMILY RESTAURANTS" and design for the restaurant services specified in the application is likely to cause confusion with the mark "GOLDEN GRIDDLE," which is registered for table syrup. Based on careful consideration of the record in this application and the relevant case law on this issue, we hold that the refusal to register under Section 2(d) of the Lanham Act is well taken.

In *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), the predecessor to our primary reviewing court listed the factors which must be considered to determine whether or not confusion is likely. Principal among these factors are the similarity of the marks in appearance, pronunciation, connotation and commercial impression, as well as the commercial relationship between the goods and/or services.

In the instant case, confusion is likely because the marks, when considered in their entireties, create similar

commercial impressions, and the goods specified in the cited registration are complementary to and provided in conjunction with the services specified in the application.

As this Board has noted with regularity in cases involving the issue of likelihood of confusion, while the marks at issue are to be compared in their entireties, it is nonetheless reasonable, when a mark consists of different elements, both words and designs, for example, to accord more source-identifying significance to the dominant portion or portions of such mark. In re National Data Corp., 735 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In the instant case, while we have not disregarded the curved line design or the descriptive, disclaimed term "FAMILY RESTAURANTS," the term "GOLDEN GRIDDLE" is plainly the dominant portion of applicant's mark. This term is underlined and shown in letters much larger than the letters in which "FAMILY RESTAURANTS" is presented. It is the term "GOLDEN GRIDDLE" which would be used in referring to applicant's restaurants, and that term is what consumers are most likely to remember from applicant's mark. The identical term, "GOLDEN GRIDDLE" is the registered mark in its entirety. Plainly, if these two marks were to be used in connection with commercially related goods and/or services, confusion would be likely.

Applicant's argument that the two registrations for marks incorporating "GOLDEN GRIDDLE FRY" for institutional shortening mandate a finding that confusion is not likely in the case at hand is not well taken. To begin with, in those two registrations, both the marks and the goods, as well as the channels of trade through which they move, are different from those which are involved in the case before us. Moreover, the existence of these third-party registrations does not establish weakness in the cited registered mark, nor is it a persuasive argument that confusion with the registered mark for table syrup is as likely with respect to those marks as it is with respect to applicant's mark. Such registrations are not evidence that the marks therein are in use, or that the consuming public is familiar with their use and promotion such that small differences in such marks are the basis for distinguishing among them in the marketplace. Moreover, this Board is not privy to the evidence or the reasoning that led to those registrations, nor are we bound by either in the case at hand. As we have stated many times, each case must be determined on its own record and merits based on its own evidence. In re Central Sprinkler Co., 49 USPQ2d 1194, 1197 (TTAB 1998).

The third-party registrations made of record by the Examining Attorney, however, do demonstrate that the ordinary consumers who are the prospective purchasers of both restaurant services and table syrup have a basis upon which to assume that the same source which is responsible for restaurant services rendered under a particular mark is also responsible for syrup sold under the same mark. In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993). The excerpted articles from the Nexis® database and the information from applicant's website simply confirm the fact that family restaurants serve food items, such as pancakes, upon which people pour syrup.

Applicant argues that the Board's decision in In re Golden Griddle Pancake House Ltd., 17 USPQ2d 1074 (TTAB 1990) is strong support for the conclusion that confusion is not likely in the case at hand. We agree with the Examining Attorney, however, that that decision supports the refusal to register. In that case we found that there was a connection between the applicant's restaurant services, which featured pancakes, and syrup, the product in the cited registration, which is the same registration cited as a bar in the instant case. The mark in that case, "GOLDEN GRIDDLE PANCAKE HOUSE," when used in connection with restaurant services, was found likely to cause

confusion with the mark "GOLDEN GRIDDLE" for table syrup. The reasoning was that because the "PANCAKE HOUSE" terminology in the applicant's mark described the featured food of the applicant's restaurant and syrup is a complementary item with respect to pancakes, a similar mark used on both the goods and services would be likely to cause customers to make the erroneous assumption that both emanated from the same source. We reached a similar conclusion in *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999), wherein we affirmed the refusal to register "AZTECA MEXICAN RESTAURANT" for restaurant services under Section 2(d) of the Act based on a prior registration of the mark "AZTECA" for "partially prepared Mexican foods, namely, tortillas," because the mark sought to be registered indicated that the restaurant served the product for which the cited mark was registered.

Applicant argues, however, that in the instant case, the mark applicant seeks to register does not in any way indicate that pancakes or other items on which syrup may be used are featured or emphasized foods served by applicant at its restaurant, so that there would be no basis for anyone to assume that syrup sold under a similar mark emanates from the source of applicant's restaurant services.

As noted above, however, the evidence in this case indicates to the contrary. It shows not only that applicant features pancakes as part of its restaurant services, but also that third-party restaurant businesses have registered their marks for both restaurant services and for syrup. Contrary to applicant's contention, nothing in applicant's mark itself is inconsistent with restaurant services which include serving foods with which syrup may be used. The terms "GRIDDLE" and "FAMILY RESTAURANTS" suggest what the evidence shows to be the case: just as pancake houses serve pancakes, so do family restaurants, and applicant's family restaurant services do in fact feature pancakes, with which the product in the cited registration, syrup, is used. If these similar marks were to be used in connection with such goods and services, confusion would plainly be likely.

Although not argued by the Examining Attorney, the concept of reverse confusion would appear to be applicable to the instant case. People who are aware of applicant's mark in connection with restaurant services who then encounter the registered mark on table syrup in a grocery store are likely to assume that the syrup comes from or is licensed by the restaurant.

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For the reasons set forth above, the refusal to register under Section 2(d) the Lanham Act is affirmed.

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