

06/11/01

**THIS DISPOSITION
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Paper No. 9
EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Aqua Glass Corporation

Serial No. 75/602,643

Edgar A. Zarins for Aqua Glass Corporation

Edd Vasquez, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney)

Before Simms, Hanak and Bottorff, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Aqua Glass Corporation (applicant) seeks to register in
typed drawing form TUSCANY for "whirlpool bath." The
intent-to-use application was filed on December 10, 1998.

The Examining Attorney has refused registration
pursuant to Section 2(d) of the Trademark Act on the basis
that applicant's mark TUSCANY, as applied to whirlpool
baths, is likely to cause confusion with the identical mark
TUSCANY, previously registered in typed drawing form for
"faucets." Registration No. 1,849,191.

When the refusal to register was made final, applicant
appealed to this Board. Applicant and Examining Attorney

Ser. No. 75/602,643

filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The 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.").

Considering first the marks, they are identical. Thus, the first Dupont "factor weighs heavily against applicant" because the two word marks are identical. In re Martin's Famous Pastry Shoppe Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Turning to a consideration of applicant's goods and registrant's goods, we note that because the marks are identical, their contemporaneous use can lead to the assumption that there is a common course "even when [the] goods or services are not competitive or intrinsically related." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

However, in this case we find that applicant's goods

Ser. No. 75/602,643

and registrant's goods are closely related. In this regard, we note that the Examining Attorney has made of record ten third-party registrations demonstrating that the same marks have been registered for both whirlpool baths and faucets.

Applicant has conceded that all whirlpool baths must have faucets. (Applicant's brief page 3). Moreover, applicant has conceded that the same stores will sell both faucets and whirlpool baths. (Applicant's brief page 3).

Thus, we find that whirlpool baths and faucets are closely related goods, and that the use of the identical arbitrary mark TUSCANY on both types of goods would lead to a likelihood of confusion.

Without providing any evidentiary support, applicant argues that confusion is not likely because whirlpool baths are expensive and faucets are relatively inexpensive and because no whirlpool bath is sold or installed with a faucet. (Applicant's brief pages 2-3). To begin with, we find that applicant's latter argument is not plausible. An individual buying a new home or renovating an old home could well contract with a builder or plumber to install an entire whirlpool bath system, including, among other things, the very essential faucet portion of the system. If this

Ser. No. 75/602,643

individual were to see the mark TUSCANY on the faucet and the same mark TUSCANY on the ceramic portion of the whirlpool bath, he or she would naturally assume that both items came from a common source. Moreover, even if a homeowner simply requested that a plumber install only the whirlpool bath per se, if this whirlpool bath bore the mark TUSCANY, that homeowner, when shopping for faucets, would naturally assume that a TUSCANY faucet emanated from the same source as the TUSCANY whirlpool bath.

Decision: The refusal to register is sustained.