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Paper No. 12
RLS/JMP

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re U.S. Lock Corp.

Serial No. 75/717,463

Myron Amer of Myron Amer, P.C. for U.S. Lock Corp.

Richard R. Alves, Jr., Trademark Examining Attorney, Law
Office 104 (Sidney I. Moskowitz, Managing Attorney)

Before Simms, Walters and Rogers, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

U.S. Lock Corp. (applicant), a New York corporation,
has appealed from the final refusal of the Trademark
Examining Attorney to register the mark SECURITY PRO for
metal mechanical locks.¹ The Examining Attorney has refused
registration under Section 2(d) of the Act, 15 U.S.C.
§1052(d), on basis of the Registration No. 2,128,252,
issued January 13, 1998, for the mark SECURITY PRO

¹ Application Serial No. 75/717,463, filed June 1, 1999, based
upon allegations of a bona fide intention to use the mark in
commerce. Pursuant to request, applicant submitted a disclaimer
of the word "SECURITY."

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("SECURITY" disclaimed) for security alarm systems, namely, phone programmable hardware or wireless central processing units and associated radio receivers, hardwire security modules, digitized communicators, annunciation drivers and energy conservation modules. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

The Examining Attorney argues that the respective marks are identical and that applicant's metal locks are closely related to registrant's security alarm systems. The Examining Attorney argues that mechanical locks are often used with security systems and that the same companies make both of these goods. In support of this argument, the Examining Attorney has submitted a number of use-based third-party registrations covering both electronic security systems (and alarms) on the one hand and metal locks on the other. The Examining Attorney also notes that in one of the registrations the security systems incorporate metal locks. The Examining Attorney has also relied upon the following excerpts obtained from the Nexis computer search system from domestic newspapers and magazines:

Harrow, a privately held company based in Grand Rapids, Mich., has annual sales of about \$155

million, Ingersoll-Rand said. Harrow makes doors, locks, bath fixtures and electronic security systems such as hand-geometry scanners.

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Finley also sells security systems and noisemakers that scream, beep and buzz; locks, pepper sprays, stun guns and whistles; and safety products such as carbon dioxide monitors, oven knob covers, auto harnesses for pets and an inflatable safety man.

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Yale Security Inc., with worldwide headquarters in Monroe, manufactures and markets padlocks, door-locking products, door-closing devices, electronic locking systems, and other security systems and devices.

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Applicant, on the other hand, argues that the marks, albeit identical, are laudatorily suggestive. Applicant maintains that the goods are different and that a person looking to buy a metal lock would not buy a security alarm system. Applicant argues that security alarm systems use electronic parts rather than mechanical parts found in applicant's metal locks. Electronics and mechanics are different trades, and it is unlikely that security systems and metal locks, which are competitive products, would be perceived as coming from the same source, applicant argues. Applicant argues that retailers selling electronic equipment are not likely to sell mechanical locks and that

hardware stores selling locks are not likely to stock electronic alarm systems.

Upon careful consideration of the arguments of the attorneys and this record, we agree with the Examining Attorney that confusion is likely.

The determination of likelihood of confusion is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the issue. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood-of-confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

With respect to the goods, it is not necessary that the goods be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient that the circumstances surrounding their marketing be such that they would be likely to be encountered by the same persons under circumstances that would give rise, because of the marks used in connection therewith, to the mistaken belief that the goods originate from or are in some way associated with the same source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565,

223 USPQ 1289 (Fed. Cir. 1984) and *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

First, with respect to the marks, while they may be considered somewhat suggestive, they are identical. And, as the Examining Attorney has contended, the respective goods need not be so closely related in order support a finding of likelihood of confusion where the marks are identical.

Second, concerning the goods, while there is no question but that applicant's metal locks and registrant's electronic security systems are different products, the evidence of record supports the Examining Attorney's argument that the same companies may manufacture and sell both types of goods. Customers are likely, therefore, to have become accustomed to seeing both locks and security systems coming from the same source. Accordingly, we believe that purchasers, aware of registrant's SECURITY PRO electronic security systems who then encounter applicant's metal locks offered under the same mark are likely to believe that these goods come from the same source or are sponsored or endorsed by the same entity. If there is doubt about this issue, in accordance with precedent, that doubt must be resolved in favor of the prior user and registrant.

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Decision: The refusal of registration is affirmed.

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