

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

5/14/02  
Hearing:  
March 14, 2002

Paper No. 19  
EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re INKTEC CO., LTD.

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Serial No. 75/531,517

William H. Logsdon for INKTEC CO., LTD.

Martha Santomartino, Trademark Examining Attorney, Law  
Office 112 (Janice O'Lear, Managing Attorney).

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Before Hanak, Quinn and Walters, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

INKTEC CO., LTD. (applicant) seeks to register INKTEC  
in the stylized form shown below for "ink cartridges for  
computer printers" (Class 2) and "computer peripherals and  
computer printers" (Class 9). The intent-to-use  
application was filed on August 5, 1998.

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Citing Section 2(d) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark INKOTECH, previously registered in typed drawing form for "printing inks" (Class 2) and "ultraviolet acrylic coating for use on compact disks, printing paper and as insulation on fiber optic cable" (Class 17). Registration No. 2,203,121 registered November 10, 1998.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs, and were present at a hearing held on March 14, 2002.

In any likelihood of confusion analysis, two key, although not exclusive considerations, are the similarities of the marks and the similarities of the goods. 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.")

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Considering first the marks, we note that marks are compared in terms of visual appearance, pronunciation and connotation, if any. In terms of visual appearance, the two marks are only somewhat similar in that the letters in applicant's mark are depicted with some portions in white and other portions in black. We recognize that the registered mark is in typed drawing form, and that therefore we must consider all reasonable manners in which the registered mark could be depicted. Phillips Petroleum Co. v. C.J. Webb, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). Thus, we would have to visualize the registered mark as being depicted in, for example, all capital letters, all lower case letters or a mixture of capital and lower case letters. However, it is not reasonable to assume that the letters in the registered mark would be depicted in different colors, as are the letters in applicant's mark.

In terms of pronunciation, we find that the letter "O" in the middle of the registered mark would clearly be pronounced, and thus would cause the registered mark (INKOTECH) to be somewhat dissimilar from applicant's mark

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INKTEC.

Finally, in terms of connotation, we note that the Examining Attorney has not contended that either mark has any connotation. (Examining Attorney's brief pages 4 and 5). However, both marks suggest "ink technology." Nevertheless, this similarity in connotation is outweighed by the differences in visual appearance and pronunciation.

In sum, applicant's mark and the registered mark are by no means identical. There are obvious differences in visual appearance and pronunciation that would enable even ordinary consumers to distinguish the two marks.

Turning to a consideration of applicant's goods and registrant's goods, we note that the Examining Attorney has not even discussed registrant's "ultraviolet acrylic coating for use on compact disks, printing paper and as an insulation on fiber optic cable." (Examining Attorney's brief pages 7 and 8). Rather, the Examining Attorney argues that there exists a likelihood of confusion resulting from the contemporaneous use of registrant's mark INKOTECH on "printing inks" and applicant's stylized mark

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INKTEC on "ink cartridges for computer printers" and "computer printers." (Examining Attorney's brief pages 7 and 8).

The problem with the argument set forth by the current Examining Attorney is the fact that the prior Examining Attorney failed to make of record any evidence showing that even one company manufactures, on the one hand, printing inks and, on the other hand, ink cartridges for computer printers and computer printers. To be clear, the prior Examining Attorney made of record advertisements showing that large stores such as Staples and Office Depot sold computer printers, cartridges and pens. Even if we assume that the reference to "cartridges" is a reference to "ink cartridges for computer printers," and even if we assume that any store that sold pens would sell ink for pens, there are two problems with this evidence. First, merely because very large stores carry both applicant's goods and registrant's goods does not mean that the goods are related. It is common knowledge that today's very large stores carry a wide array of goods which are totally dissimilar. Second, the Examining Attorney has made of

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record no evidence showing that even these large stores sell to consumers "printing inks," the only one of registrant's goods discussed by the Examining Attorney. While "printing inks" might well be sold in bulk to manufacturers of "ink cartridges for computer printers," the purchasers of the "printing inks" would be sophisticated, professional buyers, namely, the manufacturers of the "ink cartridges for computer printers." Thus, based upon this record, the prior Examining Attorney has failed to make of record any evidence showing that there are common purchasers of "printing inks" and "ink cartridges for computer printers." Without such common purchasers, there is no chance for likelihood of confusion to occur. Electronic Design & Sales Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1391-92 (Fed. Cir. 1992).

Decision: The refusal to register is reversed.

