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**THIS DISPOSITION
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Paper No. 11
HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Doughmakers, LLC.

Serial No. 75/690,891

Kristen Fjeldstad and John W. Kepler, III of Suelthaus & Walsh, P.C. for Doughmakers, LLC.

Catherine K. Krebs, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Wendel, Bucher and Rogers, Administrative Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Doughmakers, LLC. has filed an application to register the mark DOUGHMAKERS for "pre-prepared dry food mixtures used to make bakery goods." ¹

Registration has been finally refused under Section 2(d) of the Trademark Act on the ground of likelihood of confusion with the mark DOUGHMAKER which is registered for

¹ Serial No. 75/690,891, filed April 26, 1999, based on an allegation of a bona fide intention to use the mark in commerce.

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"chemical for use in the baking industry to improve the quality of bread."²

The refusal has been appealed and applicant and the Examining Attorney have filed briefs. Applicant has waived its right to an oral hearing.

We make our determination of likelihood of confusion on the basis of those of the *du Pont*³ factors that are relevant in view of the evidence of record. Two key considerations in any *du Pont* analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods with which the marks are being used, or are intended to be used. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999).

Looking first to the respective marks, the Examining Attorney argues that the marks DOUGHMAKERS and DOUGHMAKER are essentially the same, the addition of the letter "S" on applicant's mark being insufficient to avoid confusion. Applicant acknowledges that the marks are essentially the same in sound and appearance, but argues that the

² Registration No. 1,927,802, issued October 17, 1995, Section 8 & 15 affidavits accepted and acknowledged, respectively.

³ *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

connotations and commercial impressions of the two marks, as used on the goods of each, are entirely different.

We agree with the Examining Attorney that the marks are essentially the same. The sole difference is the plural form of applicant's mark, which is almost totally insignificant in terms of likelihood of confusion. See *In re Pix of America, Inc.*, 225 USPQ 691 (TTAB 1985). Not only the appearance and the sound, but also the connotation and overall commercial impressions of the marks are essentially the same. We do not agree with applicant that the particular products on which these two marks are used result in different connotations for the marks. Both marks are used on products used in the process of making baked goods. We agree with the Examining Attorney that both would "suggest that the associated product will provide the 'something extra' needed to make the dough achieve the intended results." (Brief, p. 2-3). The overall commercial impressions of the marks are the same.

Before comparing the respective goods on which these marks are used, we note that in general the greater the degree of similarity in the marks, the lesser the degree of similarity that is required of the products on which they are being used, or are intended to be used, in order to support a holding of likelihood of confusion. If the

marks, as here, are essentially the same, it is only necessary that there be a viable relationship between the goods in order to find confusion likely. See *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

Turning to the goods at hand, we note that the issue of likelihood of confusion must be determined on the basis of the goods as identified in the application and in the cited registration. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). If there are no restrictions in the application as to channels of trade, it must be presumed that applicant's goods travel in all the normal channels of trade for goods of this nature. See *Kangol Ltd. v. KangaROOS U.S.A. Inc*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992).

Applicant insists that by the very identification of its goods as "pre-prepared dry food mixtures" for making bakery goods, the definition is not so broad as would "necessarily" extend to all channels of trade or all classes of purchasers. In fact, according to applicant, its mixes are intended to be sold at retail, to non-industrial consumers for making domestic baked goods. Applicant argues that registrant's goods are obviously for industrial use and thus marketed to large, industrial

producers of bread, whereas its product will be targeted to non-industrial consumers primarily for home use and likely will be sold to such consumers at retail stores, fairs and festivals

We agree with the Examining Attorney that applicant's identification of goods has no specific limitations as to channels of trade. While the registration clearly limits the use of registrant's chemical which functions as a bread dough improver to use in the baking industry or, in other words, to the industrial manufacture of bread, and is not inclusive of home baking, there is no restriction in the identification of applicant's goods to exclude registrant's target market. Although applicant may not presently intend to market its pre-prepared mixtures to other than retail customers for domestic use, applicant has not so limited the goods as identified. As pointed out by the Examining Attorney, applicant is free to market its goods wherever it is normal for goods of this nature to be sold, including to industrial buyers. As will be seen *infra*, the evidence of record shows that industrial baking companies are in fact potential buyers for pre-prepared mixes for the preparation of bakery goods.

Next we consider the goods themselves, and whether there is a viable relationship between the products such

that purchasers would assume a common source therefor when essentially the same mark is used thereon. In making this analysis, we would point out that it is not necessary that the goods of applicant and registrant be similar or even competitive to support a holding of likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from, or are associated with, the same source. See *In re Albert Trostel & Sons*, 29 USPQ2d 1783 (TTAB 1993) and the cases cited therein.

The Examining Attorney has made various materials of record to show that both flour additives such as registrant's bread dough improver and pre-prepared mixes for bakery goods such as applicant's may emanate from the same source. First, she has made of record information from the Web site of the present assignee of the cited registration, American Ingredients Company, which shows that its line of products includes not only dough improvers but also "functional bakery ingredients" and "bakery concentrates." Next, she has included information from the

American Society of Baking Web site listing the suppliers of "bases, mixes, and concentrates" and of "dough conditioners."⁴ American Ingredients Company appears on both of these lists, as do twelve other companies. Finally, she has introduced a third-party registration for the mark CARAVAN in which the goods are identified in general as "goods sold to bakers" and specifically include both "mixes for making bakery goods" and "dough conditioners."⁵

We find this evidence sufficient to demonstrate that both dough improvers and conditioners such as registrant's and pre-prepared mixes for making bakery goods such as applicant's might well emanate from the same source. Furthermore, from the Web site information, as well as the third-party registration, it is seen that both types of products are those which are marketed to industrial or other large scale purchasers for the making of bakery

⁴ We note that the Examining Attorney has made of record additional evidence that the terms "dough conditioner" and "dough improver" are used interchangeably.

⁵ While the Examining Attorney has referred to the registrations of two other companies which offer both types of products, we can give little weight to these registrations inasmuch as the separate products are marketed under different marks. It is only when the registration is for the same mark by a single entity for both types of goods that we can rely upon the registration as suggesting that these are goods which not only might be produced by a single entity, but marketed under the same mark. See *In re Albert Trostel & Sons Co.*, *supra*, *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988).

goods. Thus, the respective goods, as identified, must be presumed to include goods which might well be encountered by the same purchasers who, because of the virtual identity of the marks used thereon, might reasonably assume that they emanate from the same source. While applicant may argue that the average purchaser of its mixes would be an individual who has purchased one of applicant's bakeware products, which are also sold under the DOUGHMAKERS mark, there is nothing in applicant's identification of goods, as we have previously noted, which would so restrict the potential purchasers of applicant's mixes, either to non-industrial consumers or prior purchasers of applicant's other products. As identified, applicant's mixes must be considered to include those intended for commercial or industrial use, purchasers of which would have good reason to assume that registrant is now offering such a product under its DOUGHMAKER mark.

Accordingly, in view of the virtual identity of the marks DOUGHMAKER and DOUGHMAKERS and the relationship which has been shown to exist between the bread dough improver of registrant and the pre-prepared dry food mixtures used to make bakery goods of applicant, we find confusion likely. To the extent that there may be any remaining doubt, we follow the well-established principle that any doubt

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regarding likelihood of confusion must be resolved in favor of the registrant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusal to register under Section 2(d) is affirmed.

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