

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Hearing:
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tri Tool Inc.

Serial No. 76/069,635

Thomas J. Moore of Bacon & Thomas, PLLC for Tri Tool Inc.

Brian Neville, Trademark Examining Attorney, Law Office 114
(Margaret Le, Managing Attorney).

Before Simms, Hairston and Bucher, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Tri Tool Inc. ("applicant"), a Nevada corporation, has
appealed from the final refusal of the Trademark Examining
Attorney to register the mark TUBE MASTER ("TUBE"
disclaimed) for portable pipe and tube end shaping machines
that are sold to commercial customers, and that are used to
prepare the ends of pipes and tubes for welding, and that
cannot be used to bend pipes and tubes, and structural

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parts therefor.¹ The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 1,796,773, issued October 5, 1993 (Sections 8 and 15 filed) for the mark TUBEMASTER for tube bending machines. Applicant and the Examining Attorney have submitted briefs and an oral hearing was held.

We affirm.

The Examining Attorney argues that the respective marks are nearly identical, and that this fact weighs heavily against applicant. With respect to the goods, the Examining Attorney states that registrant's identification of goods does not specify whether its tube bending machines are portable or not, or if they are used in a plant or on a job site. The Examining Attorney contends, therefore, that we must presume that registrant's identification of goods encompasses all types of tube bending machines, including portable ones.

The Examining Attorney has made of record evidence that companies offer both tube bending and welding services which would involve, according to the Examining Attorney,

¹Application Serial No. 76/069,635, filed June 15, 2000, based upon an allegation of applicant's bona fide intention to use the mark in commerce.

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tube end shaping and the preparation of pipes and tubes for welding. Another company offers tube bending, flaring, welding, rolling, stamping and cutting services. Other evidence shows tube bending machines, tube end finishing machines and welding equipment being offered for sale by the same company. It is the Examining Attorney's contention, therefore, that a company using applicant's goods to prepare tubes for welding could also use registrant's goods to bend those tubes. In other words, the commercial purchasers of registrant's tube bending machines may likely be purchasers of tube end shaping machines. Also, according to the Examining Attorney, even though the prospective purchasers may be sophisticated in nature, this does not mean that they may not be confused in view of the near identity of the marks. Finally, the Examining Attorney asks us to resolve any doubt in favor of the registrant.

Applicant, on the other hand, argues that there is no likelihood of confusion because the goods are different and would be sold through different channels of trade to different sophisticated customers, who would be sensitive to the importance of selecting the proper machinery. More particularly, applicant maintains that the purchasers of registrant's goods would be manufacturers of non-linear

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tubes who would not be likely to buy applicant's portable tube end shaping machines used to prepare those goods for welding. That is to say, registrant's and applicant's goods have different purposes and would be sold to different purchasers. Applicant's portable machines would not be used to bend pipes and tubes but rather would be used to shape pipes and tubes already at a work site. Applicant's purchasers would be, according to applicant's attorney, companies engaged in welding tubes and would not be engaged in bending tubes or be interested in purchasing tube bending machines. Applicant also contends that the words "TUBE" and "MASTER" are nondistinctive and weak, with the latter word appearing in over 10,000 registered marks for many different goods.

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

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental

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inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

First, the respective marks are identical in sound and nearly identical in appearance and commercial impression. As the Examining Attorney has pointed out, where the marks are identical or nearly so, the goods need not be as closely related in order to support a finding of likelihood of confusion. Also, while the "TUBE" portion of the registered mark is descriptive and the word "MASTER" may be widely registered, even weak marks are entitled to protection against identical or very similar marks for commercially related goods. In this regard, we note that the record contains no third-party registrations of marks containing both of these components, except for the cited registration.

The respective products may also travel in the same or similar channels of trade and be sold to the same class of potential purchasers. Of course, it is not necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some

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manner, or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source, or that there is an association or connection between the sources of the respective goods. See, for example, *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ2d 910 (TTAB 1978).

Here, the evidence submitted by the Examining Attorney shows that the goods are related and that they may travel in the same channels of trade. The evidence shows that goods similar to registrant's (tube bending machines) and applicant's (tube end finishing machines) may be offered for sale by the same company. The evidence also shows that a number of companies offer both tube bending and welding services. This evidence tends to show that a purchaser in need of machines for bending tubes may also need machines for shaping tubes for welding purposes. A purchaser of applicant's portable pipe and tube end shaping machines which uses those machines to prepare pipes and tubes for

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welding who then encounters the nearly identical mark on a machine which bends tubes is likely to believe that the same company which made the tube end shaping machine is the source of the tube bending machine. Conversely, a purchaser of registrant's TUBEMASTER tube bending machines who then encounters applicant's TUBE MASTER portable tube shaping machine may well believe that registrant is now selling such portable machines. Because of the nearly identical marks, we agree with the Examining Attorney that even a relatively sophisticated purchaser would be confused when such similar marks are applied to such closely related goods.

Decision: The refusal of registration is affirmed.