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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Southeast-Atlantic Beverage Corporation

Serial No. 76/159,275

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(Mary I. Sparrow, Managing Attorney).

Before Seeherman, Hairston and Chapman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On November 3, 2000, Southeast-Atlantic Beverage Corporation (a Florida corporation) filed an application to register on the Principal Register the mark shown below

The logo consists of the word "BRAVO!" in a bold, stylized, blocky font. The letters are white with a thick black outline, and the exclamation point is also stylized. The overall appearance is that of a graphic or trademark mark.

for goods identified, as amended, as "non-alcoholic beverages, namely, carbonated and non-carbonated soft

drinks" in International Class 32.¹ The application is based on applicant's assertion of its bona fide intention to use the mark in commerce on the identified goods.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used on its identified goods, would so resemble the registered mark BRAVO! for "powders for making soft drinks" in International Class 32,² as to be likely to cause confusion, mistake or deception.

Applicant has appealed, and briefs have been filed. Applicant did not request an oral hearing.

We affirm the refusal to register. In reaching this conclusion, we have followed the guidance of the Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d

¹ The identification of goods in the original application was set forth as follows: "production and sales of non-alcoholic beverages."

² Registration No. 803,999, issued February 15, 1966, Section 8 affidavit accepted, renewed. The claimed date of first use is March 18, 1964. The records of the USPTO indicate that the owner by assignment of this registration is Del Monte Corporation.

1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Turning first to a consideration of the marks, applicant's mark and the registered mark are virtually identical, both consisting of the word "BRAVO" and the punctuation mark, "!" When analyzing applicant's mark in stylized lettering and the registered typed mark, it is not improper to give more weight to a dominant feature of a mark, in this instance, the word BRAVO along with the exclamation point appearing in both marks. See *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); and *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553 (TTAB 1987). Thus, applicant's mark and the registered mark are identical in sound and connotation, and are very similar in appearance and commercial impression. Moreover, registrant's mark appears in typed form and, therefore, the protection to be accorded registrant's registration extends to stylization of its mark, including in lettering similar to that of applicant's mark.³

³ Applicant's willingness to disclaim the term "BRAVO" (brief, unnumbered page 2) is of no avail because the technicality of a

Turning next to a consideration of the respective goods, it is well settled that goods need not be identical or even competitive to support a finding of likelihood of confusion; it being sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. See *In re Peebles Inc.*, 23 USPQ2d 1795, 1796 (TTAB 1992); and *In re International Telephone and Telegraph Corporation*, 197 USPQ 910 (TTAB 1978).

Also, it has been repeatedly held that, when evaluating the issue of likelihood of confusion in Board proceedings regarding the registrability of marks, the Board is constrained to compare the goods (or services) as identified in the application with the goods (or services) as identified in the registration. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and *Canadian Imperial Bank of*

disclaimer has no legal effect on the issue of likelihood of confusion, the public being unaware of what words have been disclaimed during the prosecution of applications. See *In re National Data Corp.*, supra.

Commerce, N. A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

In this case, the registered mark is for "powders for making soft drinks," while applicant intends to sell "non-alcoholic beverages, namely, carbonated and non-carbonated soft drinks." Applicant's argument that the registrant's powders are sold to manufacturers and producers of soft drinks, but applicant's soft drinks would be sold to the consuming public, is unsupported by evidence. Further, as the Examining Attorney points out, "powders for making soft drinks" is a broad identification of goods which could include not only powder as an ingredient of soft drinks, but also powder as a consumer soft drink mix, sold along with liquid soft drinks.

We find the respective goods are closely related, and could be sold through the same channels of trade, including grocery stores, to the same classes of purchasers, the public at large. See *Chicago Dietetic Supply House v. Perkins Products Co.*, 280 F.2d 155, 126 USPQ 367 (CCPA); *In re H & H Products*, 228 USPQ 771 (TTAB 1986); and *Seven-Up Co. v. Aaron*, 216 USPQ 807 (TTAB 1982). Moreover, the goods are inexpensive products purchased on impulse.

Finally, applicant's argument that it could not find any use of the registered mark on the products for which

it is registered (brief-unnumbered page 2, and reply brief) is irrelevant in the context of an ex parte appeal of a refusal to register. If applicant had wished to pursue such a claim, it should have filed a petition to cancel the cited registration pursuant to Section 14 of the Trademark Act.

Because of the essentially identical marks; the close relationship of the respective goods; and the overlap of the trade channels and purchasers; we find that there is a likelihood that the purchasing public would be confused when applicant uses its mark for its goods.

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