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OF THE TTAB

Paper No. 14

TJQ

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Com-Pac International, Inc.

Serial No. 76/181,701

Michael S. Beiser of Vedder, Price, Kaufman & Kammholz for applicant.

David H. Stine, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney).

Before Quinn, Walters and Rogers, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Com-Pac International, Inc. to register the mark INTEGRA for "packaging machinery used for making reclosable packages."¹

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's

¹ Application Serial No. 76/181701, filed December 15, 2000, alleging first use anywhere and first use in commerce on November 8, 2000.

goods, so resembles the previously registered mark INTEGRA TEAR for "plastic flexible packaging film and packages made therefrom"² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs.³ An oral hearing was not requested.

Applicant argues that the marks INTEGRA and INTEGRA TEAR are different, that the goods are different and are sold in different trade channels to distinctly different purchasers, and that the purchasers are sophisticated. In addition, applicant points to certain statements made by registrant during the prosecution of its then-application (now the cited registration), when it argued that there was no likelihood of confusion between its mark INTEGRA TEAR and a third-party's registered mark INTEGRA. The argument

² Registration No. 2,140,142, issued on March 3, 1998.

³ Applicant's brief is accompanied by Exhibits A, B and C. The Examining Attorney, in his brief, objected to the evidence as untimely, asserting that "with the exception of the full text printout of the two third-party registrations referenced in previous argument by the applicant (Exhibits A and B), neither the evidence material, nor any arguments based specifically thereon, have been considered in any way." (brief, p. 3). Applicant, in its reply brief, contends that Exhibit C, which the Examining Attorney has declined to consider, was in fact submitted during the prosecution of the application.

Our review of the file reveals that applicant is correct. Exhibit C was earlier submitted with applicant's response and request for reconsideration filed June 11, 2002. Accordingly, all of the evidence accompanying the appeal brief is considered to be of record, and this evidence has been considered in reaching our decision.

apparently was persuasive, insofar as registrant was ultimately successful in obtaining registration of its mark, and applicant relies on this argument in support of its proposition that registrant does not believe the marks INTEGRA and INTEGRA TEAR are similar. In support of its position, applicant submitted part of the prosecution file of the cited registration; copies of the cited registration and an expired third-party registration retrieved from the Trademark Electronic Search System (TESS); and an excerpt from registrant's website retrieved from the Internet.

The Examining Attorney maintains that the marks are similar in overall commercial impression, that the goods are closely related, and that the goods travel in the same channels of trade. Purchasers will assume, the Examining Attorney argues, that registrant's packaging film is a type of material intended for use with applicant's packaging machines. The Examining Attorney also dismisses applicant's arguments based on the sophistication of purchasers, and registrant's prior statements regarding dissimilarities between the marks INTEGRA and INTEGRA TEAR.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion 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).

Turning first to the marks, we recognize that they share the common element "INTEGRA." However, we must compare the marks in their entireties, including the presence of the term "TEAR" in registrant's mark. In attempting to distinguish the mark INTEGRA from INTEGRA TEAR, applicant makes the same arguments that registrant successfully made when it was prosecuting its then-application. Registrant, when confronted with a Section 2(d) refusal based on a prior third-party registration (now cancelled) of the mark INTEGRA for plastic films, argued as follows:

"Integra" connotes "a whole complete unit" based on the Latin term *integer*. For example, from the attached pages of the American Heritage Dictionary, "integer" means "whole numbers" or a "complete unit or entity." The meaning of "integral" includes "essential or necessary for completeness." The definition of "integrity" includes the "quality or condition of being whole or undivided; completeness." The term "integrate" means to make into a whole by bringing all parts together, i.e., to unify. The word "integra" also

translates from Spanish to mean "whole" or "complete."

The term "tear" raises the opposite connotation, i.e., that something is being divided or separated or becomes not complete. Applicant has utilized two words, in juxtaposition, that have directly opposite connotations. The meanings of the terms INTEGRA and TEAR connote respectively, to unify and to separate. The contradictory terms used in INTEGRA and TEAR give it a completely different commercial impression than INTEGRA.

Applicant's addition of the word TEAR to the word INTEGRA is not just a mere addition of a term. It significantly changes the connotation and commercial impression as discussed above. Under overall impression analysis, there is no rule that confusion is presumed if the junior user has a mark that contains, in part, the whole or another's mark. [citations omitted] Also, the addition of "tear" obviously changes the appearance and sound of the mark by adding a term.

Consideration of the marks in their entirety shows that the contradiction in the terms "INTEGRA" and "TEAR" makes them equal in the minds of a consumer, but makes the mark, as a whole, distinct from its parts.

We find these arguments to be persuasive in the present case.⁴ Although the term "TEAR" in registrant's

⁴ Applicant would have us use registrant's earlier statements in its underlying application as binding admissions against registrant's interest. Specifically, applicant points to registrant's argument that "TEAR" in its mark is the dominant portion, and that the term "INTEGRA" is commonly used, concluding

mark may be somewhat suggestive as applied to packaging film, it nonetheless is contradictory to the term "INTEGRA", and we agree with applicant that the marks INTEGRA and INTEGRA TEAR are different in connotation and overall commercial impression. These differences, in our view, outweigh any similarities in sound and appearance.

In addition to differences between the marks, of significant import in this case are differences between the goods and the customers therefor. Both applicant's machines and registrant's film are products in the packaging field and, therefore, at least superficially, appear to be related. Upon closer scrutiny, however, it is apparent that the products are specifically different in nature, and the products neither overlap nor move in common trade channels.

First, the goods are quite different. According to applicant, applicant's machines are sophisticated and quite expensive, facts which are supported by photographs of the machines. Notwithstanding our focus on the goods as identified, rather than what extrinsic evidence may reveal

that registrant is on record as expressing the opinion that the marks INTEGRA and INTEGRA TEAR are not confusingly similar. See: *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993). Suffice it to say that we have compared the marks ourselves, and have independently reached the conclusion that the marks are not confusingly similar.

about the goods, we have no basis upon which we could conclude that there are any types of packaging machines that are not complex and relatively expensive items. As for registrant's goods, the excerpts from registrant's website show that its packaging film is used in the food industry, indicating that cheese producers are primary customers for the film. Although we recognize, as stated above, that packaging machinery and packaging materials are related in the sense that they are used in the packaging field, these manufacturing goods are relatively specialized in nature and necessarily the subjects of deliberate purchases.

Given the specific differences between the nature of the goods, it is not surprising that they would be purchased by different classes of purchasers. Applicant sells its packaging machinery to industrial equipment managers of engineering and machinery departments at packaging manufacturing facilities. These customers make their own reclosable packaging in house. By contrast, registrant's packaging film, as shown by registrant's website, would be sold to raw materials managers, as for example, in the food and beverage industries, who then package their own company's products. The Board in the past has found no likelihood of confusion even with respect

to identical marks applied to goods and/or services used in a common industry where such goods and/or services are clearly different from each other and there is insufficient evidence to establish a reasonable basis for assuming that the respective goods, as identified by their marks, would be encountered by the same purchasers. See: Borg-Warner Chemicals, Inc. v. Helena Chemical Company, 225 USPQ 222, 224 (TTAB 1983) and cases cited thereat.

Further, given the nature of the goods, purchasers at these manufacturers are sophisticated. Thus, even in the unlikely event that there would ever be an overlap in manufacturer customers, such manufacturers are sophisticated and purchases would be made with a good deal of care. In essence, the manufacturers have sufficient expertise to distinguish between the sources of applicant's and registrant's goods. See: Electronic Designs and Sales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992); and Dynamics Research Corp. v. Langenau Manufacturing Co., 704 F.2d 1575, 217 USPQ 649 (Fed. Cir. 1983).

Lastly, the record is devoid of any evidence (e.g., third-party registrations) to even suggest that applicant's and registrant's goods are the types of goods that would emanate from a single source under the same mark. Simply

Ser No. 76/181701

put, there is no evidence that sophisticated purchasers would have a reason to believe that packaging machinery and packaging film share a common source.

In sum, in view of the cumulative differences between the mark and the goods sold thereunder, and the different sophisticated purchasers for the respective goods, we find that confusion is unlikely.

Decision: The refusal to register is reversed.