

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

Mailed:
September 30, 2003
Paper No. 12
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Game Tracker, Inc.

Serial No. 76208127

William D. Blackman of Carrier Blackman & Associates for
The Game Tracker, Inc.

William H. Dawe, III, Trademark Examining Attorney, Law
Office 108 (David Shallant, Managing Attorney).

Before Walters, Chapman and Bucher, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

The Game Tracker, Inc. seeks registration on the
Principal Register for the mark RIVERBOTTOM for goods
identified as "archery arrows having a distinctive
camouflage pattern imprinted thereon, and collapsible
enclosures having a distinctive camouflage pattern
imprinted thereon, namely hunting blinds," in International
Class 28.¹

¹ Application Serial No. 76208127 was filed on February 12,
2001, based upon applicant's allegation of use in commerce at
least as early as November 2000. Although the application as

This case is now before the Board on appeal from the final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has held that applicant's mark, when used in connection with the identified goods, so resembles the mark RIVER BOTTOMS, which is registered for "stencil kit for use in connection with camouflage painting of hunting equipment," in International Class 16,² as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney have fully briefed this appeal but applicant did not request an oral hearing.

We affirm the refusal to register.

Applicant contends that its mark creates a different commercial impression; that consumers would never confuse stencil kits with its arrows and hunting blinds; and that it is not even clear that registrant actually has any products on the market.

In turn, the Trademark Examining Attorney argues that the marks are highly similar as to overall commercial impression; and that the record demonstrates that hunting

filed also contained goods in International Class 25, this class of goods was subsequently abandoned by applicant.

² Registration No. 2,325,584, issued on March 7, 2000.

supply retailers sell goods of the type sold by registrant and by applicant.

Our determination under Section 2(d) is based upon an analysis of all of the facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. 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 relationship of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to a consideration of the relatedness of the respective goods, it is well settled that goods need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the goods are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same entity or provider. See Monsanto Co. v. Enviro-Chem Corp., 199 USPQ 590, 595-96 (TTAB 1978)

and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Despite applicant's arguments that these respective goods are easily differentiated, we concur with the position of the Trademark Examining Attorney that applicant's "archery arrows having a distinctive camouflage pattern imprinted thereon, and collapsible enclosures having a distinctive camouflage pattern imprinted thereon, namely hunting blinds," and registrant's goods identified as "stencil kit for use in connection with camouflage painting of hunting equipment," are so closely related in a commercial sense that, if rendered under similar marks, confusion as to their origin or affiliation would be likely.

Beyond the apparent logical connection between these goods as identified, the Trademark Examining Attorney has placed into the record printouts from various websites demonstrating a close relationship between these respective goods. For example, on the Hunter's Friend bow hunting website, <http://www.huntersfriend.com/>, alphabetically listed product categories list "Arrows" and "Blinds" right before "Camouflage." Then when the Trademark Examining Attorney followed this "camouflage gear" link, the featured camouflage spray paint kit expressly included stencils.

Similarly, the Hunter's Specialties Network website at <http://www.hunterspec.com> touts its "camo paint" as good for painting bows and blinds, and its "Permanent Camo Spray Paint Kit" comes complete with "leaf stencils." A number of other advertisements and stories retrieved from the LEXIS/NEXIS database placed into the record by the Trademark Examining Attorney demonstrate the complementary nature of camouflage painting kits to hunting blinds and archery equipment.

In speaking to this particular du Pont factor, applicant makes much of the fact that the goods are in entirely different classes of goods, and then argues as follows:

Stencils are generally flat and are very different from arrows and hunting blinds. The consumer is certainly not going to confuse stencils with arrows or with hunting blinds.

(Applicant's appeal brief, p. 4). However, the question we must decide is not whether consumers are likely to confuse the products, but whether they are likely to confuse the source of the products. The evidence shows that these are complementary goods that move in the same channels of trade. Both types of products, as identified, place the same emphasis on camouflaging hunters. Moreover, the mere fact that applicant's arrows and blinds are classified in

one class while registrant's camouflage painting stencils are in a different class does not mean that such confusion is not likely to result. The classification system is for the convenience of the U.S. Patent and Trademark Office, and does not serve as evidence for or against the relatedness of goods or services. See National Football League v. Jasper Alliance Corp., 16 USPQ2d 1212, 1216 n. 5 (TTAB 1990).

We turn next to the du Pont factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound and connotation. Applicant contends that registrant's RIVER BOTTOMS mark and its RIVERBOTTOM mark are different in all three respects, while the Trademark Examining Attorney finds them virtually identical as to appearance, sound and connotation.

The differences between the registered mark and applicant's mark are fairly straightforward. Applicant's RIVERBOTTOM mark is in the singular form while registrant's mark is in the plural form. Moreover, applicant's mark, as shown on the typed drawing of the application papers, has no space between the words as does registrant's RIVER BOTTOMS mark.

As to overall appearance, we find the absence of a space in applicant's mark provides for a negligible difference in appearance. Moreover, as noted by the Trademark Examining Attorney, the specimens show that applicant actually uses this mark in a special form logo having a representation of an oak leaf between the words RIVER and BOTTOM:



Similarly, when it is used in text, it is shown as RiverBottom. Hence, in actual practice, applicant eliminates any visual differences with the registered mark growing out of the absence of a space between the words "River" and "Bottom" as shown in the application drawing.

The only other arguable difference in the marks is applicant's use of the singular form, which we find insignificant in terms of the likelihood of confusion of purchasers. See Wilson v. Delaunay, 245 F.2d 877, 114 USPQ 339, 342 (CCPA 1957) ["There is no material difference in the trademark sense between the singular and plural form of the word ZOMBIE and they will therefore be regarded as the same mark"]; and In re Pix of America, Inc., 225 USPQ 691 (TTAB 1985).

As to any aural difference associated with registrant's pluralization, this difference on the end of the fourth and final syllable of these marks is so insignificant that it cannot be viewed as a serious distinction between these two marks.

As to connotation, when used in connection with camouflage gear for hunters, we find that the terms RIVER BOTTOMS and RIVERBOTTOM will both suggest essentially the same idea to prospective purchasers. One likely connotation of these terms is the suggestion that the coloration may "... resemble the appearance of leaves, sticks and other things that might be found ... at the bottom of a ... river." (Applicant's brief, p. 4). Hence, we find that these marks, whether found to be arbitrary or suggestive when used with the goods identified herein, will convey very similar meanings.

In view of the foregoing, we conclude that purchasers and prospective customers, familiar with the registered mark RIVER BOTTOMS for camouflage painting stencil kits, would be likely to believe, upon encountering the highly similar mark RIVERBOTTOM for camouflaged arrows and blinds, that such closely related goods emanate from or are associated with the same source.

Finally, applicant argues that it is unclear whether or not registrant "has any goods actually on the market" (Applicant's brief, p. 4) or is "actually selling any commercial products." (Applicant's brief, p. 5). However, in the context of an *ex parte* appeal, applicant's argument that registrant may not be using his mark in connection with the identified products is simply not relevant. If applicant believes that registrant is not using the RIVER BOTTOMS mark, it is incumbent upon applicant to file a petition to cancel the cited registration on the ground of abandonment, if appropriate. Otherwise, the fact that applicant's counsel could not locate registrant's cited mark in conjunction with any products through an Internet search is not particularly probative of whether there is a likelihood of confusion among consumers in the marketplace.

Decision: The refusal to register under Section 2(d) of the Trademark Act is hereby affirmed.