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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Grange Insurance Association

Serial No. 76/279,718

Claire Foley of Christensen O'Connor Johnson Kindness,
PLLC, for Grange Insurance Association.

Eugenia K. Martin, Trademark Examining Attorney, Law Office
114 (Margaret Le, Managing Attorney).

Before Cissel, Seeherman and Rogers, Administrative
Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On July 3, 2001, applicant, a corporation organized
and existing under the laws of the state of Washington,
filed the above-identified application to register the mark
GRANGE INSURANCE GROUP on the Principal Register for
"insurance underwriting services, in International Class
36." Applicant claimed use of the mark in commerce in
connection with these services since 1978.

The Examining Attorney refused registration under Section 2(d) of the Lanham Act based on four registered service marks, all of which are now owned by Grange Mutual Casualty Company, an Ohio corporation. The cited registered marks are shown below:



is registered on the Principal Register for "life insurance underwriting services";¹



is registered for "insurance underwriting services in the field of property, casualty, life, accident and health";²

¹ Reg. No. 1,636,326, issued on February 26, 1991. Originally owned by Grange Life Insurance Company, but assigned to Grange Mutual Casualty Company. The registration includes a disclaimer of "LIFE INSURANCE" apart from the mark as shown. Affidavits under Sections 8 and 15 accepted and acknowledged; renewed on June 12, 2001.

² Reg. No. 1,663,622, issued on November 5, 1991. The registration includes a disclaimer of "INSURANCE" apart from the marks shown. Affidavits under Sections 8 and 15 accepted and acknowledged.



is registered for "life insurance underwriting services";³
and



is registered for "insurance underwriting services, namely,
property, casualty, life, accident, and health insurance
underwriting services."⁴

In addition to refusing registration based on the
likelihood of confusion with these four registered marks,
the Examining Attorney addressed several informalities,
including the indefinite nature of the recitation of

³ Reg. No. 1,604,932, issued on July 3, 1990. Originally owned by Grange Life Insurance Company, but assigned to Grange Mutual Casualty Company. The registration includes a disclaimer of "LIFE INSURANCE" apart from the mark as shown. Affidavits under Sections 8 and 15 accepted and acknowledged; renewed on Nov. 16, 2000.

⁴ Reg. No. 1,535,724, issued on April 18, 1989. The registration contains a disclaimer of "INSURANCE" apart from the mark as shown. Affidavits under Sections 8 and 15 accepted and acknowledged.

services in the application, as filed, and the requirement for applicant to disclaim the term "insurance group" apart from the mark as shown.

Applicant responded to the first Office Action by amending the recitation of services to read as follows: "property and casualty insurance underwriting services." Applicant also disclaimed the term "insurance group" apart from the mark as shown.

In addition, applicant argued that the refusal to register under Section 2(d) of the Act was not well taken. Applicant based its argument on the contention that the mark it seeks to register is not similar to any of the four cited registered marks because the disclaimed word "INSURANCE" in these marks does not indicate source, and therefore cannot be the basis for any confusion, and applicant has the right to use the term "Grange" by virtue of a license from The National Grange of the Order of Patrons of Husbandry (NATIONAL GRANGE). Applicant submitted a dictionary definition of "Grange" as "an association of farmers founded in the United States in 1867."⁵ Applicant stated that its "roots stem from" this organization.

⁵ The American Heritage College Dictionary, Third Edition, p. 592.

A copy of the license agreement was submitted. It is dated August 1, 2001, less than a month after the filing date of the application to register the mark. In the agreement, for the sum of one dollar, The National Grange of the Order of Patrons of Husbandry grants applicant the non-exclusive, non-transferable right to use in perpetuity the "name" "Grange," which applicant acknowledges is a registered trademark of the licensor.

The Examining Attorney accepted the amendment to the recitation of services and the disclaimer, but continued and made final the refusal to register based on likelihood of confusion. She contended that the marks are similar because each is dominated by the word "GRANGE," and the services with which the marks are used are the same. She did not respond to applicant's argument based on its license agreement with National Grange.

Applicant timely filed a Notice of Appeal, which was followed by applicant's appeal brief. The Examining Attorney then filed her brief on appeal, but applicant neither filed a reply brief nor requested an oral hearing before the Board.

The predecessor to our primary reviewing court listed the principal factors to be considered in determining whether confusion is likely in the case of *In re E.I. du*

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Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Chief among these factors are the similarity of the marks as to appearance, pronunciation, meaning and commercial impression and the similarity of the goods or services.

"When marks would appear on virtually identical goods or services, the degree of similarity between the marks necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ 6098, 1700 (Fed. Cir. 1982). In that the cited registrations and the application are all for insurance underwriting services, and Registration No. 1,535,724 encompasses the property and casualty insurance underwriting services identified in applicant's application, the degree of similarity between the marks necessary to support the conclusion of likely confusion is less than would be the case if the services were not the same.

The marks in the application and the cited registrations easily meet this level of similarity because each is dominated by the same word, "GRANGE." It is well settled that although we must consider the marks in their entireties, it is nonetheless reasonable to consider whether some components of the marks have more source-

identifying significance than others. Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693 (CCPA 1976); In re El Torito Restaurants Inc., 90 USPQ2d 2002 (TTAB 1988). Descriptive, disclaimed matter is typically less significant than other components of marks which combine descriptive terminology with other elements. Similarly, design features generally are accorded less significance than the literal elements with which they are combined because the word portion is more likely to be recalled and used in calling for or recommending the goods or services. In re Appetito Provisions Co., 3 USPQ2d 1553 (TTAB 1987). The likely recollection of the average purchaser of the respective goods is what must be considered in resolving the issue of likelihood of confusion. Spoons Restaurants, Inc. v. Morrison, Inc., 23 USPQ 71735 (TTAB 1991); and In re Steury Corp., 189 USPQ 353 (TTAB 1975). Such a person may not possess perfect recollection, nor will he or she necessarily be confronted by both marks simultaneously so that a side-by-side comparison can be conducted. See: In re Continental Graphics Corp., 52 USPQ 1374 (TTAB 1999).

Application of these principles to the facts presented by the instant application leads us to agree with the Examining Attorney that confusion is likely in this case. The dominant element in applicant's mark and in each of the

cited registered marks is the word "GRANGE." The descriptive terms with which "GRANGE" is combined, "INSURANCE GROUP" and "LIFE INSURANCE," as well as the suggestive slogan, "YOUR PARTNER IN PROTECTION," and the flag design which appears in each of the registered marks, have less source-identifying significance than the word "GRANGE," which appears in much larger print and has no demonstrated descriptive or suggestive connotation.

The registered marks and applicant's mark create similar commercial impressions because each is dominated by the same word, "GRANGE." When these similar marks are used in connection with the same services, confusion is plainly likely.

Applicant's arguments that confusion is not likely because of its license agreement with National Grange and because no incidents of actual confusion between its mark and the marks of the registrant have not come to its attention are not persuasive of a different result in this case.

It is well settled that actual confusion does not need to have taken place in order for us reasonably to conclude that confusion is likely. *Weiss Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990). Moreover, in the instant case, we have no evidence

as to the nature or extent of the uses of the marks in question by either applicant or the owner of the cited registrations, so we do not know whether there has even been any real opportunity for such confusion to have arisen. Applicant's argument that the use of its mark has not resulted in confusion with the registered marks plainly does not mandate a finding that confusion is not likely.

The argument predicated on the license to use "the name" "Grange" is not well taken either. As noted above, applicant's claims that its "roots" "stem from" the National Grange were never fully explained, nor were applicant's arguments that it has used the word since 1932 and that it owns registrations for marks which include the term substantiated with any evidence. Applicant did not claim ownership of any registrations for related marks in the application, nor did applicant amend the application to do so. Of even more significance, however, is the fact that applicant did not explain (nor did the Examining Attorney question) what relationship, if any, the National Grange has with the owner of the cited registrations. On its face, the license to use "Grange" is not an agreement with the owner of the cited registrations, so it does not appear to have any bearing on the issue before us, whether confusion is likely with the marks shown in the cited

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registrations, which are not even mentioned in the license.

Applicant has not shown that the National Grange (and, derivatively, applicant) has superior rights in GRANGE for insurance underwriting services. Moreover, even if applicant could demonstrate such rights, we must still accord the registrations the benefits of Section 7(b) of the Trademark Act, namely, that "a certificate of registration of a mark upon the principal register provided by this Act shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate."

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