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Oral Hearing:
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CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Spicer Technology, Inc.

Serial No. 78/015,453

Robert M. Leonardi, Esq. and Matthew Stavish, Esq. for
Spicer Technology, Inc.

John M. Gartner, Trademark Examining Attorney, Law Office
102 (Thomas V. Shaw, Managing Attorney).

Before Simms, Seeherman and Walters, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Spicer Technology, Inc. has filed an application to
register the mark TXT on the Principal Register for
"axles for use with on-highway vehicles."¹

¹ Serial No. 78/015,453, in International Class 12, filed July 5, 2000,
based on an allegation of a bona fide intention to use the mark in
commerce.

The Trademark Examining Attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark TXT, previously registered for "electric and gasoline powered cars used as plant personnel carriers, baggage carriers, general utility and maintenance cars, motel and resort cars, golf cars and structural parts therefor,"² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, and an oral hearing was held. We reverse the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *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 inquiry mandated by Section 2(d) goes to the cumulative effect of differences

² Registration No. 2,037,815 issued February 11, 1997, to Textron Inc., in International Class 12. [Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

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in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The Examining Attorney contends that the marks are identical; that TXT is an arbitrary, strong mark for the goods involved in this case; that the goods are sold to the same customers; that registrant's "electric and gasoline powered cars" encompass "on-highway vehicles"; that the term "structural parts" in registrant's identification of goods encompasses vehicle axles; and, therefore, that the goods are identical. The Examining Attorney submitted no evidence in support of his position.

Applicant contends that the goods are different because applicant's goods are for "on-highway vehicles" whereas registrant's goods are all vehicles that are not used on the highway; that applicant's goods are essentially small vehicles often called "golf carts"; and that "structural parts" does not encompass applicant's goods because the term refers only to body and frame parts, whereas applicant's goods "are contained in the vehicles drivetrain system" (Brief, pg. 3). Applicant

states that the trade channels are different because applicant's axles are not sold directly to vehicle end users, rather they are sold to original equipment vehicle manufacturers, whereas registrant's goods are likely sold to end-users; that both applicant's and registrant's customers are knowledgeable sophisticated purchasers; and that the respective goods are expensive and purchased only "after competitive cost and product evaluation and negotiations" (Brief, pg. 4).

Considering, first, the marks, it is clear that applicant's mark, TXT, is identical to the mark in the cited registration, TXT. Applicant states in its response of May 18, 2001, that "'TXT' does not have any meaning in relation to axles for use in motor vehicles, but was derived from the term 'torque transfer technology.'" Absent any evidence as to whether, or to what extent, TXT or "torque transfer technology" has any relevance to either applicant's or registrant's goods, we presume that TXT is arbitrary in relation thereto.

Turning to consider the goods involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather

than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

From the identification of goods in the cited registration, the vehicles identified are for very specific uses and are likely quite different from "on-highway vehicles." Thus, it is likely that applicant's axles, as identified, would be for an entirely different class of vehicles from those identified in the cited registration. Further, applicant's axles are likely to be sold to vehicle repair shops and original equipment manufacturers, whereas the vehicles identified in the cited registration are likely to be sold to end-users of such vehicles, for example, plants, factories, airports or airlines, motels, resorts, and golf courses. Thus, the channels of trade and classes of purchasers for the respective products are obviously different. The Examining Attorney has presented no evidence to warrant a different conclusion.

We conclude that in spite of the identity of the marks, the Examining Attorney has not established that applicant's identified goods are the same as, or similar or related to, the goods in the cited registration or that the trade channels and purchasers for such goods overlap. Therefore, we cannot conclude that registration of applicant's mark is likely to cause confusion as to the source or sponsorship of such goods.

Decision: The refusal under Section 2(d) of the Act is reversed.