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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Plymouth Steel Corporation

Serial No. 76020956

Daniel H. Bliss of Bliss McGlynn for Plymouth Steel Corporation.

Raul F. Cordova, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney).

Before Seeherman, Walters and Bucher, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Plymouth Steel Corporation has filed an application to register the mark PLYMOUTH STEEL CORPORATION on the Principal Register for "carbon and alloy drawn steel

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bars."¹ Applicant entered a disclaimer of STEEL CORPORATION apart from the mark as a whole.

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 marks PLYMOUTH TUBE² and PLYMOUTH TUBE CO USA³ and the mark shown below,⁴ all previously registered for "steel tubing," in International Class 6, that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.



¹ Serial No. 76020956, in International Class 6, filed April 7, 2000, based on use in commerce, alleging first use as of July 15, 1958, and use in commerce as of May 15, 1972.

² Registration No. 1,663,934 issued November 12, 1991, to Plymouth Tube Company. The registration includes a disclaimer of TUBE apart from the mark as a whole. [Sections 8 and 15 affidavits accepted and acknowledged, respectively; renewed for a period of ten years.]

³ Registration No. 1,663,164 issued November 5, 1991, to Plymouth Tube Company. The registration includes a disclaimer of TUBE CO USA apart from the mark as a whole. [Sections 8 and 15 affidavits accepted and acknowledged, respectively; renewed for a period of ten years.]

⁴ Registration No. 1,663,933 issued November 12, 1991, to Plymouth Tube Company. The registration includes a disclaimer of USA apart from the mark as a whole; and the statements "The mark consists in part of an arbitrary design" and "The lining and stippling shown in the drawing are features of the mark and not intended to indicate color." [Sections 8 and 15 affidavits accepted and acknowledged, respectively; renewed for a period of ten years.]

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm 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 & 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 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 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); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The Examining Attorney contends that applicant's mark is similar to each of the cited marks; that PLYMOUTH is the dominant portion of each of the marks because the other words in the marks are either entity designators, such as CO or CORPORATION, or generic terms, such as TUBE

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or STEEL, or a "crowded element,"⁵ such as USA; that the design element of the mark in Registration No. 1,663,933 has a lesser impact than the word portions thereof; and, thus, that the commercial impressions of the marks are similar.

Regarding the goods, the Examining Attorney contends that steel bars and steel tubing "are similar type goods moving in the same or related trade channels" (Brief, pg. 4). In support of his position, the Examining Attorney submitted excerpts from four Internet websites. He contends that this evidence establishes that "steel mills manufacture both products, usually to the order or specification of others"; that "steel producers sell a variety of different goods to the construction or building industry or other plant manufacturers"; and that "regardless of the final steel shape, the steel products are sold in gross and tubes and bars would be seen as coming from the same source." (Office action, July 9, 2002, p. 2.)

The Internet website evidence submitted by the Examining Attorney shows the following:

www.ThomasRegional.com, July 8, 2002: This site describes itself a "Your Industrial Search

⁵ Brief, pg. 3. We are not sure what the Examining Attorney intended by this language.

Engine [-] Locate Suppliers by Products/Services, Brand and Company Name." The excerpt submitted includes the following statements about a supplier, Brandywine Valley Fabricators, Inc. - "For: Iron & Steel Bars & Rods"; "Keywords: Structural sheet & plate, tube, angles & channels, press brakes, manufacturer, steel fabricating, welding, bending, forming, rolling, CNC & conventional machine work, flame cutting service."

www.click-onsource.com, July 8, 2002: On a page entitled "Carbon Steel - Cold Finished," a list of products on the left side of the page includes "Steel beams, steel channels, structural steel, sheet metal, alloy bars ... carbon steel bars ... steel tubing..."

www.hghouston.com, July 8, 2002: This site is identified on the first page as follows: "The Hendrix Group [-] Materials & Corrosion Engineers [-] A Corrosion and Materials Technology Site." The first page includes a long list of "Stainless Steel Piping/Tubing" and the second page includes a list of "Stainless Bars & Shapes."

www.chenbros.com, July 8, 2002: This excerpt includes two pages from the website showing products. The first page is for "Stainless Steel Bars 'Cold Formed Bars.'" The next page is for "Stainless Steel Tubes 'Welded and Seamless.'" "

Applicant contends that its mark is different in sight and sound from the cited marks because the wording in addition to the word PLYMOUTH is different; that, viewed in their entirety, the marks are different; that the Examining Attorney has improperly dissected the marks; and that there is no basis for finding PLYMOUTH to be a dominant term. Regarding the goods, applicant

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contends that the only similarity between the goods is their classification as metal goods; that carbon and alloy drawn steel bars are different products; that a solid bar is not a hollow tube; and that the products are used in different contexts. Applicant argues that the trade channels for the respective goods are different; and that the relevant consumers are highly sophisticated and discriminating.

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entirety, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, it is well settled that one feature of a mark may be more

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significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

We agree with applicant that the marks must be considered in their entireties. Further, the mere fact that certain terms are disclaimed does not eliminate those terms from the mark. However, we also agree with the Examining Attorney that certain portions of a mark may be perceived as more dominant. In this case, there is no indication that PLYMOUTH is anything other than an arbitrary term in relation to the respective goods; and it is the first word in each mark. There is no question that the terms CORPORATION in applicant's mark and CO in the registered marks are merely entity designations; that STEEL in applicant's mark and TUBE in the registered marks are generic terms in relation to the respective products; and that USA in one of the cited marks is likely to be understood primarily as a geographically descriptive term and it appears in the design mark in significantly smaller letters than the other words comprising the mark. The design element in the mark in Registration No. 1,663,933 consists primarily of a line

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through the wording and a circle design to the left of the lettering. To the extent that this circle design is intended to represent a steel tube, it is at least highly suggestive of the identified goods. Thus, we agree with the Examining Attorney that, in each mark, the term PLYMOUTH is the dominant portion thereof. We conclude that the overall commercial impression of applicant's mark is substantially similar to the overall commercial impressions of the three cited registered marks.

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 or registrations, 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). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is

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enough that goods or services are related in some manner or that the conditions and activities surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

The only evidence in the record consists of the four excerpted Internet sites. While this is not a substantial amount of evidence, it is very clear that the noted companies manufacture and sell a wide variety of steel products including, in each case, steel bars and steel tubing. It would appear from these excerpts that companies manufacture steel in a variety of shapes and forms, among them bars and tubes. Thus, there is sufficient evidence to support a finding that the goods are sufficiently related that, if identified by confusingly similar marks, confusion as to source is likely.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of

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applicant's mark, PLYMOUTH STEEL CORPORATION, and registrant's marks, PLYMOUTH TUBE and PLYMOUTH TUBE CO USA, with and without the design shown above, their contemporaneous use on the related goods involved in this case 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 affirmed.