

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

Mailed: April 22, 2004  
Paper No. 13  
GDH/gdh

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**Trademark Trial and Appeal Board**

---

In re Louisiana Sugar Shack, L.L.C.

---

Serial No. 76263209

---

John S. Egbert of Harrison & Egbert for Louisiana Sugar Shack,  
L.L.C.

Geoffrey Fosdick, Trademark Examining Attorney, Law Office 111  
(Craig Taylor, Managing Attorney).

---

Before Hohein, Bucher and Drost, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Louisiana Sugar Shack, L.L.C. has filed an application  
to register the mark "SUGAR SHACK" for "processed coffee and  
sugar."<sup>1</sup>

Registration has been finally refused under Section  
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that  
applicant's mark, when applied to its goods, so resembles the

---

<sup>1</sup> Ser. No. 76263209, filed on May 29, 2001, which is based on an  
allegation of a bona fide intention to use the mark in commerce. The  
word "SUGAR" is disclaimed.

mark "SUGAR SHACK," which is registered for "restaurant and ice cream store services,"<sup>2</sup> as to be likely to cause confusion, or to cause mistake, or to deceive.

Applicant has appealed. Briefs have been filed, 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 facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity of the goods and services and the similarity of the marks.<sup>3</sup>

Turning first to consideration of the respective marks, applicant concedes in its brief that such marks "share the common terms 'SUGAR' and 'SHACK' to form 'SUGAR SHACK'" and are thus identical in sound, appearance and meaning. Applicant asserts, nonetheless, that its mark and registrant's mark "differ in commercial impression" because, as set forth in its brief:

---

<sup>2</sup> Reg. No. 1,464,062, issued on November 3, 1987, which sets forth a date of first use anywhere and in commerce of October 1986; combined affidavit §§8 and 15.

<sup>3</sup> The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [and services] and differences in the marks."

The reference mark consists of the terms "SUGAR" and "SHACK" as applied to the ... services in the registration, namely, restaurant and ice cream parlor services, which provides the commercial impression of some form of old time candy store. The registrant is clearly relying on the term "SUGAR SHACK" to create a mental image of an old time place to purchase sweets in relation to its ice cream parlors. Such "sugar shacks" were known as rural candy stores in the early part of the 1900's. The applicant's mark uses a combination of the words "SUGAR" and "SHACK" as applied to the goods in the application, namely, processed coffee and sugar, which provides the commercial impression of a play on words to form "SUGAR SACK". The significance of the commercial impression as applied to the Applicant's goods is that in the minds of the purchasing consumer, the mark is suggestive of old time "sugar sacks" which were burlap bags used as containers for both coffee and sugar in the early 1900's. The Applicant uses this play on words to emote [sic; evoke?] mental images of old time cane sugar and fresh coffee.

Applicant continues by insisting, in view thereof, that even though it and the registrant are using the same mark, there is no likelihood of confusion inasmuch as "the commercial impression obtained by both is clearly different and distinct."

We concur with the Examining Attorney, however, that the marks at issue are identical in all respects, including commercial impression. As pointed out by the Examining Attorney in his brief, applicant offered absolutely no evidence to support its assertions that, when used in connection with registrant's restaurant and ice cream store services, the mark "SUGAR SHACK" evokes the thought of some form of old time candy store while, when used in connection with applicant's processed coffee and sugar, the mark engenders the image of some old time burlap-bag

containers for such goods. In particular, as to applicant's contention that its use of the mark "SUGAR SHACK" will, in effect, be interpreted by consumers as a double entendre which also signifies the term "SUGAR SACK," the Examining Attorney observes that such "is highly unlikely." The reason therefor, the Examining Attorney persuasively notes, is that "the two interpretations that cause an expression to be a double entendre must be interpretations that the public would make fairly readily" from the mark itself, citing *In re Wells Fargo & Co.*, 231 USPQ 95, 99 (TTAB 1986). Here, however, even assuming that "sugar shack" is a term signifying an old time candy store, as asserted by applicant, there is simply nothing to suggest that, when the mark "SUGAR SHACK" is used in connection with applicant's goods, it would readily convey the additional idea of an old time burlap-bag container or "sugar sack." Accordingly, because the respective marks engender the same overall commercial impression, as well as being identical in sound, appearance and meaning, we agree with the Examining Attorney that if such marks were to be contemporaneously used in connection with related goods and services, confusion as to the source or sponsorship thereof would be likely to occur.

Turning, therefore, to the goods and services at issue, applicant maintains that confusion is not likely because its processed coffee and sugar are goods which "are not closely related" to registrant's restaurant and ice cream store services. In particular, applicant asserts among other things that:

The Applicant's goods are sold  
exclusively through the Applicant's own

retail stores, namely, a store named "SUGAR FANTASIES", located in Louisiana. Since it would be impossible for the cited registrant to sell the Applicant's goods in their ice cream parlor, or vice versa, there is absolutely no chance that [a] consumer would be confused as to the source of the goods or services. Based upon this element alone, there can be no likelihood of confusion if the goods in question are offered through such restrictive channels of trade as to alleviate any possibility of a likelihood of confusion. Accordingly, there is no likelihood of confusion between the two marks.

Additionally, there is no *per se* rule which mandates a finding that confusion is likely whenever foods and restaurant services are sold under similar marks. See, e.g.: *Jacobs v. International Multifoods Corp.*, 668 F.2d 1234, 212 USPQ 641 (CCPA 1982) [no likelihood of confusion between BOSTON TEA PARTY for tea and BOSTON SEA PARTY for restaurant services; "a party must show something more than that similar or even identical marks are used for food products and for restaurant services"]; and *In re Central Soya Company, Inc.*, 220 USPQ 914 (TTAB 1984) [no likelihood of confusion between POSADA (stylized) for Mexican style prepared frozen enchiladas and LA POSADA for lodging and restaurant services]. Actual food products offered for sale to the public in grocery stores and providing restaurant services to consumers, which appear similar on paper, are in reality not related whatsoever. The consumer at the ice cream restaurant does not know what type of sugar is used in making the ice cream, [since] the consumer only knows that the end product of ice cream is offered for sale under the store's service mark. Applicant argues that even though similarity or dissimilarity of the services or goods between an application and existing registration are examined as described in the listing of goods in the respective applications, one must use logic in comparing those goods and services. ....

.... In the present case, the goods and services are actually not related at all. The cited registration is for "restaurant and ice cream store services" .... It would be

erroneous to assume that ice cream stores would sell the Applicant's processed coffee and sugar, which are almost certainly only offered for sale at markets. .... The Examiner is confusing the main ingredient of ice cream, which is "sugar", with the end product, which is the ice cream. The applicant's goods are not ice cream, nor any other good that would be normally sold through the cited registrant's restaurants. Therefore, there is no likelihood of confusion.

The Examining Attorney, on the other hand, correctly points out that it is well settled that the issue of likelihood of confusion must be determined on the basis of the goods and services as they are respectively set forth in the involved application and the cited registration, and not in light of what such goods are asserted to actually be. See, e.g., Octocom Systems Inc. v. Houston Computer Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815-16 (Fed. Cir. 1987); CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Thus, where an applicant's goods and a registrant's services are broadly described as to their nature and type, it is presumed in each instance that in scope the application and registration encompass not only all goods and services of the nature and type described therein, but that the identified goods and services move in all channels of trade which would be normal for those goods and services, and that they would

be purchased by all potential buyers thereof. See, e.g., In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).

In this case, the Examining Attorney properly observes, applicant's argument "makes two assumptions which are not supported by the ... record" in that it "limits both the scope of the registrant's services and the marketing channels for the applicant's goods." Specifically, the Examining Attorney accurately notes that registrant's services are identified in the cited registration as "restaurant and ice cream store services," and are not merely "ice cream stores" or "ice cream restaurants" as more narrowly characterized by applicant. Similarly, the Examining Attorney correctly observes that applicant's goods are identified simply as "processed coffee and sugar" and thus are not limited or restricted to those which are sold only through applicant's own retail stores. The issue of likelihood of confusion, as the Examining Attorney correctly states, must therefore be determined "in relation to 'processed coffee and sugar' and 'restaurant and ice cream store services,' not 'sugar' and 'ice cream stores.'"

Moreover, in making such a determination, it is well established that an applicant's goods and a registrant's services need only be 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 producer or provider. See, e.g.,

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). In fact, as the Examining Attorney notes in this regard, "it has often been held that food products and food services are closely related." See, e.g., Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 218 USPQ 390, 394 (Fed. Cir. 1983); Southern Enterprises, Inc., v. Burger King of Florida, Inc., 419 F.2d 460, 164 USPQ 204, 205 (CCPA 1970); In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1469-70 (TTAB 1988); In re Appetito Provisions Co. Inc., 3 USPQ2d 1553, 1556 (TTAB 1987); In re Best Western Family Steak House, Inc., 222 USPQ 827, 829 (TTAB 1984); Roush Bakery Products Co., Inc. v. Ridlen, 190 USPQ 445, 448 (TTAB 1976); In re Three Chefs Corp., 175 USPQ 177, 178 (TTAB 1972); and Marriott Corp. v. Top Boy International, Inc., 165 USPQ 642, 643 (TTAB 1970).

Nevertheless, applicant is correct that "there is no *per se* rule which mandates a finding that confusion is likely whenever foods and restaurant services are sold under [the same or] similar marks" since, as pointed out in *Jacobs v. International Multifoods Corp.*, supra at 642, "[t]o establish likelihood of confusion a party must show something more than that similar or even identical marks are used for food products and for restaurant services." In the present case, however, the required showing of "something more" is met by the fact that, as noted by the Examining Attorney, the record "contains [copies of] 48 [use-based] third-party registrations which include both 'coffee' and 'restaurant' services" in the listing of goods and

services for which, in each instance, a mark is registered.<sup>4</sup> In particular, it is noted that 21 of such registrations are for "coffee," "ground and whole bean coffee," "coffee beans," "coffee beans and ground coffee" or "coffee in bean and ground form," on the one hand, and "restaurant services," on the other.<sup>5</sup>

Applicant, in its brief, contends that "the third-party registrations are not probative" of "any relatedness between the goods of the Applicant and the services of the cited registrant." The reason therefor, according to applicant, is that "it is well settled that third-party registrations are not evidence that the marks depicted therein are in use or that the public is aware of them," citing *Olde Tyme Foods, Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). Although, admittedly, the use-based third-party registrations which are of record herein are not evidence that the different marks shown therein are in use or that the public is familiar with them, it is well established that they nonetheless have some probative value to the extent that they serve to suggest that the goods and services listed therein are of the kinds which may emanate from a single

---

<sup>4</sup> While only four of such registrations also expressly list the item "sugar" and none sets forth "ice cream store services," a refusal under Section 2(d) is proper if there is a likelihood of confusion involving any of the goods and/or services set forth in the application and cited registration. See, e.g., *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); and *Shunk Mfg. Co. v. Tarrant Mfg. Co.*, 318 F.2d 328, 137 USPQ 881, 883 (CCPA 1963).

<sup>5</sup> To be fair, it is also pointed out that the "coffee" identified in the rest of the third-party registrations is that of an item which either is "for consumption on or off the premises" of the associated "restaurant services" or otherwise is clearly indicated to be in the form of a beverage rather than in the bean and/or ground form which would be the case with applicant's "processed coffee." Thus, the

source. See, e.g., In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993) and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 at n. 6 (TTAB 1988).

In consequence thereof, we concur with the Examining Attorney's conclusion that the goods and services at issue herein are sufficiently related in a commercial sense. The use-based third-party registrations, especially those which encompass various kinds of processed coffee such as whole bean and ground coffee, on the one hand, and restaurant services, on the other, plainly demonstrate the requisite "something more" in that they suggest that such goods and services may emanate from a single source. In particular, such registrations serve to confirm that processed coffee is an item which is featured or otherwise available for purchase in connection with restaurant establishments. The average consumer, therefore, would view an item like applicant's processed coffee as emanating from or sponsored by the same source which provides restaurant services if such goods and services were to be sold under the same or substantially similar marks.

We accordingly conclude that consumers and potential customers, who are familiar or acquainted with registrant's "SUGAR SHACK" mark for its "restaurant and ice cream store services," would be likely to believe, upon encountering applicant's identical "SUGAR SHACK" mark for, in particular, the "processed coffee" products of its items of "processed coffee and

---

remaining third-party registrations are less probative than the 21 others noted above.

**Ser. No.** 76263209

sugar," that such related goods and services emanate from, or are sponsored by or associated with, the same source.

**Decision:** The refusal under Section 2(d) is affirmed.