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OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Grow More, Inc.

Serial No. 78122114

John J. Connors of Connors & Associates for applicant.

Florentina Blandu, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Quinn, Holtzman and Zervas, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Grow More, Inc. to
register the mark shown below

GROW  MORE

for "fertilizers for agricultural use."¹ Pursuant to the
trademark examining attorney's requirement, the words "GROW
MORE" are disclaimed apart from the mark.

The examining attorney refused registration under
Section 2(d) of the Trademark Act on the ground that

¹Application Serial No. 78122114, filed April 16, 2002, asserting first
use anywhere and first use in commerce on March 14, 1991.

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applicant's mark, when used in connection with applicant's goods, so resembles the previously registered mark MORGRO for "gardening products, namely, insecticides, herbicides, fungicides and weed killers,"² and for "fertilizers,"³ as to be likely to cause confusion. The cited registrations are owned by the same entity.

When the refusals were made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

Applicant argues that the marks are visually different, and that the marks do not sound alike. Applicant has submitted sixty-five third-party registrations of marks that include the terms "grow" or "gro" covering fertilizers or related products. Based on this evidence, applicant contends that consumers are able to distinguish between marks in the fertilizer field based on even small differences between them.

The examining attorney maintains that the goods are identical or otherwise closely related. The examining attorney also contends that the marks are similar, asserting that the literal portion of applicant's mark is essentially a transposition of the registered mark, and

²Registration No. 1006212, issued March 11, 1975; renewed.

³Registration No. 1418829, issued December 2, 1986; Section 8 affidavit accepted, Section 15 affidavit filed.

that the transposition does not change the overall commercial impression, so that confusion is likely between the marks. The following scenario is set forth by the examining attorney to support her finding of likelihood of confusion (Appeal Brief, p. 9):

A consumer with the average vague memory of the marks will likely become confused between "More Grow" and "Grow More" [the phonetic spoken equivalent of each mark]. For example neighbor A says, "Hey, your yard looks great! What are you using on it?" Neighbor B responds "Morgro--its [sic] great stuff. Try it." Neighbor A goes--a few days or even weeks later--to agricultural store or hardware store [sic] and comes across "Grow More" fertilizers and weed killers. In his head he thinks "More Grow? Grow More? What was it called? This must be the stuff!"

In support of the refusal, the examining attorney submitted excerpts of websites retrieved from the Internet showing the relationship between fertilizers and insecticides and herbicides, and that the products may be manufactured by the same entity.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d

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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 any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also: In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Turning first to the goods, we must base our comparison on the identifications in the application and the cited registrations. In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1690 at n. 4 (Fed. Cir. 1993). Applicant's "fertilizers for agricultural use" and registrant's "fertilizers" are legally identical for purposes of the likelihood of confusion analysis. In addition, we find that applicant's fertilizers are closely related to registrant's "insecticides, herbicides, fungicides and weed killers." In the absence of any limitations in the identifications, it is presumed that the goods move in the same channels of trade and are purchased by the same classes of purchasers. In re Elbaum, 211 USPQ 639 (TTAB 1981).

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Accordingly, we turn to the question of whether the respective marks are sufficiently similar so that their use in connection with the goods would be likely to cause confusion.

Considering applicant's mark, it is clear that the literal portion, GROW MORE, dominates over the subordinate leaf design. Purchasers will use the words to refer to or request the goods. In re Appetito Provisions Co., Inc., 3 USPQ2d 1553, 1554 (TTAB 1987). Although it is not proper to dissect a mark, if one feature of a mark is more significant than another feature, greater weight may be given to the dominant feature for purposes of determining likelihood of confusion. Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983).

In comparing applicant's mark GROW MORE and design with registrant's mark MORGRO, the marks are different in sound and appearance. The marks look different and, because of the reversal of the terms comprising the marks, the marks sound different.

In terms of meaning, the marks are highly suggestive, and the highly suggestive nature of the marks is a significant factor to consider in this case. Insofar as applicant's mark is concerned, the examining attorney even

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required a disclaimer of the words "GROW MORE." The third-party registrations, being like dictionary evidence to show the meaning of the terms "grow" and "gro," establish the suggestive nature of the marks, that is, that the products will promote better or improved growth of agricultural products. *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281, 1285-86 (Fed. Cir. 1984); and *In re Dayco Products-Eagle Motive Inc.*, 9 USPQ2d 1910, 1911-12 (TTAB 1988).

The main thrust of the examining attorney's argument is that the terms comprising the marks are simply transposed, and that this is not enough to avoid confusion.

Where the primary difference between marks is the transposition of the elements that comprise the marks and where the transposition does not change the overall commercial impression, there may be a likelihood of confusion. *In re Wine Society of America Inc.*, 12 USPQ2d 1139 (TTAB 1989). However, if the transposed mark creates a distinctly different commercial impression, then confusion is not likely. *In re Best Products Co., Inc.*, 231 USPQ 988 (TTAB 1986).

In the present case, we find that the transposition of the terms "GROW" and "MORE," together with the change in spelling, give the marks different overall commercial

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impressions. Applicant's mark GROW MORE and design would appear to be grammatically correct, whereas registrant's mark MORGRO is not only grammatically incorrect, but also the words in registrant's mark are misspelled. Thus, we find that registrant's mark conveys a commercial impression that is jarring in a way that applicant's mark is not. The transposition of the terms and the different spellings of the terms, coupled with the highly suggestive nature of the marks, are enough to distinguish the marks, even when applied to identical or closely related goods. Also, the addition of the leaf design in applicant's logo mark, although less significant than the words, nevertheless serves to further distinguish this mark from registrant's mark.

Based on the record before us, we see the examining attorney's assessment of the likelihood of confusion as amounting to only a speculative, theoretical possibility.

Decision: The refusal to register is reversed.