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THE TTAB

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PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pamela Jean Bowman

Serial No. 78161583

Pamela Jean Bowman, pro se.

Tricia McDermott Thompkins, Trademark Examining Attorney,
Law Office 114 (K. Margaret Le, Managing Attorney).

Before Seeherman, Quinn and Hairston, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark DESERT ROSE for goods identified in the application, as amended, as "perfume, perfume spray, cologne, cologne spray, toilet water, hand cream, bath soap, bath crystals, body lotion, body powder, shower gel, men's cologne, men's cologne spray, [and] hair spray."¹

¹ Application Serial No. 78161583, filed on September 5, 2002, which is based on an allegation of a bona fide intention to use the mark in commerce.

Applicant has appealed the trademark examining attorney's final refusal to register applicant's mark. The refusal was made under Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the ground that applicant's mark, as applied to applicant's goods, so resembles the mark DESERT ROSE, previously registered for "depilatory wax,"² as to be likely to cause confusion.

The appeal has been fully briefed, but applicant did not request an oral hearing. We affirm the refusal to register.

Our likelihood of confusion determination under Section 2(d) of the Trademark Act is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *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 §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).

² Registration No. 2,191,416 issued September 22, 1998; Section 8 affidavit accepted.

We find, first, that applicant's mark and the cited registered mark are identical in terms of appearance, sound, connotation and overall commercial impression. This fact weighs in favor of a finding of likelihood of confusion.

We turn next to the issue of the similarity or dissimilarity of applicant's and registrant's respective goods, trade channels, and classes of purchasers. It is not necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods. In re International Telephone & Telegraph Corp., 197 USPQ (TTAB 1978). Moreover, the greater the degree of similarity between the applicant's mark and the cited registered mark, the lesser the degree of similarity between the applicant's goods and the registrant's goods that is required to support a finding of

likelihood of confusion; where the applicant's mark is identical to the registrant's mark, as it is in this case, there need be only a viable relationship between the respective goods in order to find that a likelihood of confusion exists. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

Applying these principles to the present case, we find that applicant's fragrance products, hand cream, body lotion, bath/shower products, and hair spray, on the one hand, and registrant's depilatory wax, on the other hand, are related goods. In this regard, the examining attorney states at page 2 of her final Office action that a search of the Office's data base revealed 314 registrations of marks that cover depilatories, on the one hand, and lotions, perfumes and other cosmetic products, on the other hand. The examining attorney submitted copies of five of such registrations. Although third-party registrations are not evidence that the different marks shown therein are in use or that the public is familiar with them, they have some probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under the same mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB

1993); and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 (TTAB 1998).

Further, although applicant's depilatory wax is different in nature from registrant's fragrance products, hand cream, body lotion, bath/shower products, and hair spray, they are all grooming products that are sold in the same channels of trade, e.g., drug stores, mass merchandisers, and specialty cosmetic stores, to the same class of purchasers, namely, ordinary consumers. Also, these kinds of products can be relatively inexpensive and bought off the shelf in stores under conditions in which consumers will not take great care in making their purchases.

Finally, applicant argues that its DESERT ROSE mark will always appear with applicant's company name "Perfumes of the Bible." However, the issue of likelihood of confusion must be determined by comparing applicant's mark as it appears in the application and the mark which appears in the cited registration. Thus, for purposes of determining likelihood of confusion, it is irrelevant that applicant's DESERT ROSE mark will always appear with applicant's company name because the company name is not part of the mark applicant seeks to register.

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In sum, we find that purchasers and prospective purchasers familiar with registrant's DESERT ROSE mark for perfume, perfume spray, cologne, cologne spray, toilet water, hand cream, bath soap, bath crystals, body lotion, body powder, shower gel, men's cologne, men's cologne spray, and hair spray, would be likely to believe, upon encountering applicant's mark DESERT ROSE for depilatory wax, that such products emanate from or are otherwise sponsored by or associated with a common source.

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