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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kraft Foods Schweiz Holding AG

Serial No. 78288562

Mary A. Carragher of Kraft Foods Holdings, Inc. for Kraft Foods Schweiz Holding AG.

Nelson B. Snyder III, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

Before Seeherman, Rogers and Holtzman, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Kraft Foods Schweiz Holding AG, a Swiss corporation, has appealed from the final refusal of the Trademark Examining Attorney to register THE ART OF THE PERFECT CUP, with CUP disclaimed, as a trademark for "electric coffee makers for domestic use" in Class 11 and "coffee, tea and

chocolate" in Class 30.¹ Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the previously registered mark PERFECT CUP for ground coffee, instant cappuccino and cocoa mix² that, if used on applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed appeal briefs. An oral hearing was not requested.

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 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

With respect to the goods, the Examining Attorney has made of record numerous third-party registrations showing that entities have registered a single mark for, variously, coffee, tea, cocoa and coffee makers.³ The Examining

¹ Application Serial No. 78288562, filed August 18, 2003, based on Section 1(b) of the Trademark Act (intent-to-use).

² Registration No. 2513460, issued November 27, 2001.

³ See, for example, Registration No. 2789689 for, inter alia, electric coffee makers, coffee and tea; No. 1815937 for, inter alia, coffee, tea and cocoa; No. 2353237 for, inter alia,

Attorney has also submitted evidence showing that third parties (e.g., Starbucks, Melitta, Lavazza) sell both coffee and coffee makers. In addition, the Examining Attorney has submitted a dictionary definition of "coffeemaker" as meaning "a kitchen appliance for brewing coffee automatically,"⁴ thereby demonstrating the complementary nature of coffee and coffee makers.

Applicant does not dispute that the goods are in part identical and otherwise related. "Applicant admits that makers of appliances for brewing or making coffee or tea are also, in some instances as pointed out by the Examining Attorney, purveyors of coffee and/or tea." Brief, pp. 2-3. However, applicant submits that, in view of the limited scope of protection to which the registered mark is entitled, the differences in the marks are sufficient to distinguish them and thereby prevent confusion.

Applicant has submitted a substantial amount of evidence showing that "perfect cup" is a commonly used

electric coffee makers, whole and ground coffee; No. 2355301 for, inter alia, electric coffee makers, coffee, tea and cocoa.

We have not considered those third-party registrations which are not based on use in commerce. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) (third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source.

⁴ The American Heritage Dictionary of the English Language, 4th ed., © 2000.

phrase to refer to good-tasting coffee. For example, the following are titles found in various website articles:

"Factors in a Perfect Cup (of espresso)," www.lucidcafe.com;

"How to make espresso and cappuccino," www.dangray.org. This article begins, "So, how do you make a perfect cup of Espresso or Cappuccino?";

"A Perfect Cup of Coffee," www.disenchanted.com. This article states "as long as you understand the chemistry of coffee you can produce a perfect cup every time";

"Brew a Perfect Cup" from Thanksgiving Coffee, www.thanksgivingcoffee.com;

"Brewing The Perfect Cup of Java," www.sallys-place.com

"How I Make the Perfect Cup" by Coffee Times owner, Les Drent, www.coffeetimes.com

"The perfect cup" from coffeemaven.com, "Your Internet Coffee Source," www.coffeemaven.com

"The Perfect Cup," www.carmel-coffee.com. This article begins, "Creating the perfect cup of coffee involves six critical steps."

"10 Timeless Tips to a Perfect Cup of Coffee," <http://ezinearticles.com>

"Searching For The Perfect Cup of Coffee—Part One—COSTA RICA," www.cheftalk.com

"Brewing the Perfect Cup of Coffee," from Quetzal Coffee Company, www.quetzal-coffee.com

"Tips For That Perfect Cup of Java...,"
www.bisuzcoffee.com

A Google search summary also lists the book Perfect Cup: A Coffee Lover's Guide to Buying, Brewing and Tasting by Timothy James Castle.

In view of this evidence, we conclude that PERFECT CUP is a well-recognized term that indicates that coffee tastes good. As the Examining Attorney correctly notes, we cannot treat the cited mark as laudatorily descriptive, since the registration is entitled to the presumptions of Section 7(b) of the Trademark Act. However, we can say that it is a highly suggestive term, and therefore that the registration is entitled to only a very limited scope of protection.

With that in mind, we turn to a consideration of the marks. Although the registrant's mark PERFECT CUP is contained within applicant's mark THE ART OF THE PERFECT CUP, because "perfect cup" is such a highly suggestive and commonly used phrase, consumers are not likely to believe that the marks identify a single source for the goods simply because they both contain this term. We agree with applicant that the additional wording in its mark is sufficient to distinguish its mark from the cited mark. Because the words THE ART OF THE appear at the beginning of

applicant's mark, and because PERFECT CUP is a common phrase with limited source-identifying significance, the words THE ART OF are likely to have a greater impact on consumers, and be the portion of applicant's mark to which they give greater notice.⁵ Thus, when the marks THE ART OF THE PERFECT CUP and PERFECT CUP are compared in their entireties, there are differences in appearance and pronunciation. Further, as applicant points out, the connotations of the marks differ somewhat, in that THE ART OF THE PERFECT CUP, as used in connection with coffee or tea or cocoa refers to the act or skill in making the coffee or tea or cocoa, and as used in connection with a coffee maker refers to the appliance's ability to make good coffee, while PERFECT CUP refers to the coffee itself. Moreover, applicant's mark has the appearance of a slogan, rather than a product mark. See applicant's response filed

⁵ We note the Examining Attorney's argument, with supporting evidence, that there are various registrations for marks beginning with THE ART OF for food products, such that THE ART OF would not be considered the dominant part of applicant's mark. We further note that these third-party registrations all include a disclaimer of the name of the food product, but not of the words THE ART OF. Third-party registrations, while not evidence of use of the marks, can be used to show that a term has a certain significance in a particular field. While THE ART OF may, therefore, have significance when used in connection with food products, such significance still has greater source-identifying value than the portion of the mark naming the food product, or in the case of applicant's mark, the commonly used term "perfect cup."

June 7, 2004, in which it describes its mark as a slogan. Overall, therefore, the marks convey different commercial impressions.

Applicant and the Examining Attorney have not discussed any of the remaining du Pont factors. Because of this, and because no evidence has been submitted on other factors, we, too, have limited our discussion to these factors. To the extent that any other factors are applicable, we must treat them as neutral.

In view of the weakness of the term PERFECT CUP, and the limited scope of protection to which the cited registration is entitled, we find that the marks are sufficiently different such that confusion is not likely from the contemporaneous use of THE ART OF THE PERFECT CUP and PERFECT CUP, despite the fact that they are used on identical or highly related goods.

Decision: The refusal of registration is reversed.