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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Emissive Energy Corporation

Serial No. 78440691

Mark E. Tetreault of Barlow, Josephs & Holmes, Ltd., for
Emissive Energy Corporation.

Alex Seong Keam, Trademark Examining Attorney, Law Office
114 (K. Margaret Le, Managing Attorney).

Before Hohein, Hairston, and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On June 24, 2004, applicant Emissive Energy
Corporation filed an intent-to-use application (No.
78440691) to register on the Principal Register (in
standard character form) the term:

T2

for "flashlights" in Class 11.

The examining attorney has refused to register
applicant's mark under Section 2(d) of the Trademark Act,

15 U.S.C. § 1052(d), because of Registration No. 2,591,220, issued July 9, 2002, for the mark (in standard character form):

SLIQUE T2

for "electric lighting fixtures" in Class 11.

The examining attorney's position is that applicant's "mark is essentially the registered mark with one element deleted." Brief at unnumbered p. 3. Furthermore, the examining attorney argues that "applicant cannot now dispute the registrant's use of the mark or a portion thereof." Brief at unnumbered p. 5. Finally, the examining attorney introduced numerous registrations that show that the same mark has been registered by a common entity for flashlights and electric lighting fixtures, including one (No. 2,564,808) apparently owned by applicant. A sample of these registrations include: Nos. 2,372,511 (flashlights and electrical lighting fixtures); 2,586,147 (flashlights, electrical nightlights, electrical lighting fixtures, table lamps, wall lamps, and desk lamps); 2,717,502 (table and desk lamps, electric night lights, flashlights, electric lighting fixtures, and lamp shades); 2,655,043 (electric lighting fixtures, lamps, electric nightlights, and flashlights); and 2,663,283

(electric lighting fixtures, electric lighting tubes and flashlights).¹

Applicant responds by arguing (Brief at 2-3) that:

Registrant's mark SLIQUE T2 is registered in connection with electric light fixtures. Specifically, the Applicant presented evidence in the response dated July 27, 2005 that detailed the actual products sold by the registrant in connection with the mark SLIQUE T2. The SLIQUE T2 product is described in the Registrant's product literature as an "under cabinet/display subminiature fluorescent" task lighting fixture. Further, the product literature clearly designates that the lighting fixture utilizes T2 subminiature fluorescent lamps.

Applicant attached a page that apparently describes registrant's SLIQUE T2 product. The page has a column labeled "Specifications" and it contains the following headings: Construction, Diffuser, Finish, Installation Features, Labels, Lamps, and Lifetime Guarantee. Under "Construction," the specification lists the following

¹ The examining attorney also submitted an article from the Internet entitled "Lighting Fixtures & Equipment" but it appears to be, at best, equivocal support for the examining attorney's position:

SBI has released an in-depth analysis of the \$16.5 billion U.S. lighting fixture and equipment industry. The study covers all industry sectors of this growing and profitable market including:

- Residential Lighting Fixtures
- Commercial/Industrial Lighting Fixtures
- Portable Electric Lamps
- Outdoor Lighting Fixture[s] and Equipment
- Flashlights & Related Products
- Non-Electric Lighting Fixtures and Lamps using their own power source

The story does not show that flashlights and light fixtures originate from a common source.

information: "Extruded aluminum housing with injection molded polycarbonate endcaps. Internal specular aluminum asymmetric reflector." More directly under "Lamps," the following information (emphasis added) is set out:

1 or 2 FM11/H or FM13/H **T2** subminiature fluorescents. Supplied with 3000K tri-phosphor lamps. Optional 4100K lamps are available. 10,000 hour rated average lamp life. CRI 80.

Furthermore, applicant argues that the term T2 is a model or grade designation and it is merely descriptive of registrant's goods. However, applicant (brief at 3) distinguishes its T2 mark for its goods:

In contrast, the Applicant is selling portable LED flashlights using the various flashlight brand names T1, T2, T3, T4 and T5. The Applicant has adopted these trademarks because this particular line of high brightness flashlights is manufactured and marketed as a tactical/police grade of lights. The Applicant has therefore adopted the T designation to evoke the underlying tactical designation of the flashlights. With regard to the T2 brand of the present application, the T2 does not indicate any particular model, component, lamp, grade or level of flashlight, it is simply utilized to differentiate the Applicant's line of flashlights from others selling competitive flashlights.

After the examining attorney made the refusal final, this appeal followed.

When there is a question of likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). See also In re E. I.

du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); and Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In considering the evidence of record on these factors, we must 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).

In this case, we begin by looking at the relationship between the goods, flashlights and electric lighting fixtures. The examining attorney's evidence of registrations certainly suggests that these goods are related. In re Infinity Broadcasting Corp. of Dallas, 60 USPQ2d 1214, 1217-18 (TTAB 2001) ("The registrations show that entities have registered their marks for both television and radio broadcasting services. Although these registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nevertheless have probative value to the extent that they serve to suggest that the services listed therein, including television and radio broadcasting, are of a kind which may emanate from a single 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)". We add that while the goods are related, it is also clear that they are not identical.

The next question concerns whether the marks in their entirety are similar. We compare their similarities in sound, appearance, meaning, and commercial impression. "When it is the entirety of the marks that is perceived by the public, it is the entirety of the marks that must be compared." Opryland USA Inc. v. Great American Music Show Inc., 970 F.2d 847, 23 USPQ 1471, 1473 (Fed. Cir. 1992). However, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of the mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

The comparison of the marks in this case is fairly straightforward. Neither mark contains a design or stylization. Registrant's mark is for the term SLIQUE T2 while applicant's mark is simply T2. Obviously, the marks are similar because they both contain the same term T2. They are different inasmuch as registrant's mark adds the term SLIQUE. The term SLIQUE is phonetically similar to

the word "sleek." There is no evidence that either term is highly suggestive or has any meaning in the relevant trade. The term SLIQUE is a significant feature of registrant's mark. When the terms SLIQUE T2 and T2 are compared, the addition of the word SLIQUE at the beginning of registrant's mark changes the appearance, sound, meaning, and commercial impression of the marks. It is a difficult term to overlook and we have no reason to believe that consumers will discount the term when they encounter it.

Furthermore, when we look at the term T2, there is evidence that at least with respect to registrant's electric lighting fixtures, the term is highly suggestive. Applicant has submitted evidence to show that registrant itself uses the term in the following manner: "1 or 2 FM11/H or FM13/H T2 subminiature fluorescents." This evidence suggests that the term may have some suggestive meaning in the trade. It also indicates that SLIQUE would be the dominant part of the registrant's mark.

Here, when we compare applicant's and registrant's marks and goods, we find that, while flashlights and electric lighting fixtures are related, they are not identical and there are significant differences between the goods themselves. The marks themselves are different inasmuch as SLIQUE T2 contains the word SLIQUE, which is a

significant term absent from applicant's mark. Considering these factors, we conclude that confusion is not likely in this case. Bongrain International (American) Corp. v. Delice de France, Inc., 811 F.2d 1479, 1 USPQ2d 1775, 1779 (Fed. Cir. 1987) (The "statute refers to likelihood, not the mere possibility, of confusion"). See also Champagne Louis Roederer S.A. v. Delicato Vineyards, 148 F.3d 1373, 47 USPQ2d 1459, 1460 (Fed. Cir. 1998) ("CRISTAL and CRYSTAL CREEK evoke very different images in the minds of relevant consumers").

Decision: The refusal to register is reversed.