THIS DECISION IS CITABLE AS
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TJQ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Woodstock's Enterprises, Inc. (California)
v.
Woodstock's Enterprises, Inc. (Oregon)

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Cancellation No. 21,229

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Kenneth S. Klarquist and James E. Geringer of Klarquist, Sparkman, Campbell, Leigh & Whinston for Woodstock's Enterprises, Inc., a California corporation.

Nancy J. Moriarty and J. Peter Staples of Chernoff, Vilhauer, McClung & Stenzel for Woodstock's Enterprises, Inc., an Oregon corporation.

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Before Rice, Cissel and Quinn, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Woodstock's Enterprises, Inc., a California corporation (hereinafter "petitioner" or "Woodstock's Enterprises, Inc.-California"), has petitioned to cancel the registration issued to Woodstock's Enterprises, Inc., an Oregon corporation (hereinafter "respondent" or "Woodstock's Enterprises, Inc.-Oregon"), for the mark shown below

for "restaurant services."[1]

As grounds for cancellation, petitioner alleges that respondent committed fraud on the Office in obtaining its registration. More specifically, petitioner alleges that respondent obtained the involved registration through the fraudulent application oath of its president, Carol Lee Woodstock, who intentionally failed to disclose that five independent corporations in California owned and used the mark WOODSTOCK'S in connection with pizza restaurant services in California. Petitioner further alleges, in an amended petition for cancellation, that the registered mark has been abandoned due to respondent's failure to exercise control over the nature and quality of the services rendered by the restaurants in California.

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[1]Registration No. 1,614,417, issued September 18, 1990; Section 8 affidavit accepted. The words "Pizza Parlor" are disclaimed apart from the mark.

Respondent, in its answer, denied the salient allegations of the petition for cancellation.

The record is voluminous, consisting of the pleadings; the file of Registration No. 1,614,417; trial testimony, with related exhibits, taken by each party; and a discovery deposition, with related exhibits, and a state of Washington trademark registration introduced by way of petitioner's notice of reliance.[2] Both parties filed briefs on the case. Both parties were represented by counsel at an oral hearing held before the Board.

This case presents a story of a successful business relationship gone sour, a situation brought on principally by the untimely deaths of Chuck Woodstock, the founder of the WOODSTOCK'S pizza parlors, and Michael Chew, his friend and business partner in the expansion of Mr. Woodstock's pizza restaurant business. We turn, at the outset, to recount generally the pertinent chronological history that has culminated in the present litigation.

The story begins in 1977 when Charles "Chuck" Woodstock formed respondent and opened the original WOODSTOCK'S pizza restaurant in the college town of Corvallis, Oregon, home of Oregon State University. Mr. Woodstock served as the president and 100 percent shareholder of Woodstock's Enterprises, Inc.-Oregon. Mr. Woodstock's motto, among

[2]Respondent's notice of reliance on a portion of Jeffrey Ambrose's July 7, 1994 deposition is superfluous; all his testimony is part of the record under Trademark Rule 2.123.

others, was "the best pizza for the best price." Chuck Woodstock followed up his Oregon endeavor in 1981 when he and Michael Chew formed Woodstock's Enterprises, Inc.-California, and opened the first of five WOODSTOCK'S PIZZA PARLOR restaurants in California. This first restaurant is located in San Luis Obispo. Messrs. Woodstock and Chew each owned 50 percent of the corporation. They later opened four other restaurants, each time forming a new corporation and taking in additional investors. The second California corporation, Woody, Woodstock, Chew, Inc., was formed by Michael Chew, Chuck Woodstock and Mr. Woodstock's brother, Larry Woodstock. This corporation opened a restaurant in Isla Vista, California, near Santa Barbara, in 1982. The next restaurant opened in 1983 in Chico, California; this restaurant was owned by Woodstock's Enterprises Chico, Inc., with Michael Chew, Chuck Woodstock and John Broadbent as shareholders. Subsequently, Michael Chew, Chuck Woodstock and Jeff Ambrose formed Woodstock's Enterprises San Diego, Inc. which opened a restaurant in San Diego, California in March 1985. Lastly, Michael Chew and Chuck Woodstock formed Woodstock's Enterprises Davis, Inc. (Tammy Rumpel later became an investor) which opened a restaurant in Davis, California in December 1985.

Chuck Woodstock and Michael Chew were killed in a private plane crash on December 9, 1985. The ownership interests of Messrs. Woodstock and Chew passed to their heirs, leaving Carol Woodstock, Chuck Woodstock's widow, as

100 percent owner of Woodstock's Enterprises, Inc.-Oregon, and various individuals, including Ms. Woodstock, as owners of the California corporations.

As a result of the deaths mentioned above, the shareholders in the Oregon and California corporations held an election for a new president. Carol Woodstock was elected, on January 23, 1986, president of each of the Woodstock's corporations, that is, of both petitioner and respondent, as well as of each of the other California corporations.

On May 17, 1989, Carol Woodstock, as president of Woodstock's Enterprises, Inc.-Oregon, signed an oath that she believed respondent to be the owner of the mark WOODSTOCK'S PIZZA PARLOR and design and that, to the best of her knowledge, no other person, firm or corporation or association had the right to use the mark in commerce without authorization by respondent. The oath supported the underlying application to register WOODSTOCK'S PIZZA PARLOR and design that was filed on October 23, 1989 in the name of respondent. It is the registration that issued from this application that petitioner now seeks to have canceled.

Carol Woodstock's presidency continued until August 14, 1990, at which time a special meeting of the board of directors of Woodstock's Enterprises, Inc.-California was held. By a majority vote, the board decided to remove Carol Woodstock as president of the California corporations. The testimony reveals that board members were unhappy with her performance, alleging inaccessibility and lack of direction. The board further resolved to appoint Jeff Ambrose, part owner of the San Diego restaurant and general manager of the California restaurants, as president of the California corporations. At the same meeting, Carol Woodstock indicated that she was willing to sell her shares in the California restaurants.

Although the record reveals a number of proposals (from both those within the corporations and those outside the corporations) relating to the purchase/sale of the California restaurants, nothing in this regard was ever consummated. What did take place was an assignment involving trademark rights between Woodstock's Enterprises, Inc.-California and the other California corporations. By way of the assignment agreement dated October 1, 1992, the California corporations assigned to Woodstock's Enterprises, Inc.-California all of their respective rights to the marks WOODSTOCK'S and WOODSTOCK'S PIZZA. Contemporaneously, Woodstock's Enterprises, Inc.-California granted back licenses to each of the other California corporations to use the aforementioned marks in connection with their restaurant services.

Against this general historical background, we now turn to consider the two grounds for cancellation, namely fraud and abandonment.

<u>FRAUD</u>

Petitioner alleges that respondent committed fraud on the Patent and Trademark Office because respondent's president, Carol Woodstock, failed to disclose, when respondent filed its application for the registration now sought to be canceled, the rights of the respective California corporations. Among other things, petitioner places importance on the fact that a California state trademark registration of the mark WOODSTOCK'S PIZZA PARLOR was issued in 1983 in the name of petitioner.

Carol Woodstock, in her capacity as president of respondent, executed the oath supporting the underlying application on May 17, 1989. Ms. Woodstock's oath included the following statements:

> ...she believes the applicant to be the owner of the mark sought to be registered; to the best of her knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce *without authorization by the applicant*, either in the identical form or in such near resemblance thereto as to be likely, when applied to the services of such other person, to cause confusion, or to cause mistake or to deceive...[emphasis added]

The application was filed on October 23, 1989. At the time that the statements were made, and five months later when the application was filed, Ms. Woodstock was president (and sole shareholder) of Woodstock's Enterprises, Inc.-Oregon and president (and part shareholder) of each of the California corporations, including petitioner, as well as a member of the board of directors of each of the California corporations. No reference to the California corporations was made in the application.

In considering the charge of fraud here, the following principles control:

> Fraud implies some intentional deceitful practice or act designed to obtain something to which the person practicing such deceit would not otherwise be entitled. Specifically, it involves a willful withholding from the Patent and Trademark Office by an applicant or registrant of material information which, if disclosed to the Office, would have resulted in disallowance of the registration sought or to be maintained. Intent to deceive must be "willful." If it can be shown that the statement was a "false misrepresentation" occasioned by an "honest" misunderstanding, inadvertence, negligent omission or the like rather than one made with a willful intent to deceive, fraud will not be found. Fraud, moreover, will not lie if it can be proven that the statement, though false, was made with a reasonable and honest belief that it was true or that the false statement is not material to the issuance or maintenance of the registration. It does appear that the very nature of the fraud requires that it be proven "to the hilt" with clear and convincing evidence. There is not room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party.

First International Services Corp. v. Chuckles Inc., 5 USPQ2d 1628, 1634 (TTAB 1988); and Smith International, Inc. v. Olin Corp., 209 USPQ 1033, 1043-44 (TTAB 1981). See also: Torres v. Cantine Torresella S.r.l., 808 F.2d 46, 1 USPQ2d 1483, 1484 (Fed. Cir. 1986). See generally: J. T.

McCarthy, McCarthy on Trademarks and Unfair Competition §§ 31:76-31:77 (4th ed. 1996).

The first thing that should be noted about the application oath is that it is phrased in terms of a subjective belief, thereby making it extremely difficult to prove fraud so long as the signer has an honestly held, good faith belief. The Board has noted in the past that the wording of the oath in terms of a "belief" of applicant "preclude[s] a definitive statement by the affiant that could be ordinarily used to support a charge of fraud." Kemin Industries, Inc. v. Watkins Products, Inc., 192 USPQ 327 (TTAB 1976).[3] Another noteworthy point about the specific oath under consideration here is that it contains additional language not usually found in boilerplate application oaths, namely, that "to the best of [Carol Woodstock's] knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce ***without authorization by [Woodstock's Enterprises, Inc.-Oregon]***..." (additional language is highlighted)

Upon careful consideration of the record, we find that Carol Woodstock reasonably held, at the time she signed the application oath, an honest, good faith belief that her corporation, Woodstock's Enterprises, Inc.-Oregon, as the

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[3]See also: McCarthy, McCarthy on Trademarks and Unfair Competition, supra at § 31:76. This commentator has pointed out that "[t]he oath is phrased in terms of a subjective *belief*, such that it is difficult, if not impossible, to prove objective falsity and fraud so long as the affiant or declarant has an honestly held, good faith belief." (emphasis in original)

senior user of the registered mark, was the owner of the mark and that the California corporations did not have the right to use the registered mark without respondent's authorization.

There is no dispute over the fact that respondent is the senior user of the WOODSTOCK'S marks. Further, while it is true that the subsequent California restaurants were owned by separate entities, the record shows that the Oregon restaurant and the five California restaurants had all the appearances of being a chain of WOODSTOCK'S pizza parlors. Having said this, we also recognize that there is no agreement (such as a license or franchise agreement), written or oral, which covers trademark rights as between respondent and petitioner. Nonetheless, witnesses of both sides have testified as to their perceptions about the restaurants. They assumed that there was some relationship between the Oregon and California restaurants, some referring to them as a "chain" or "brother-sister."

There are other facts which lend credence to the perception that the Oregon and California restaurants were part of the same chain with common ownership. In corporate business records, the restaurants were numbered "1" (the Oregon restaurant) through "6" (the Davis, California restaurant). The new employees' handbook indicated that the first Woodstock's Pizza Parlor opened in Corvallis, Oregon and "since then, five more shops have been opened." After listing these five locations in California, the handbook reads "[t]he employees at any one of these six shops are truly dedicated to their work and to their fellow employees." There were joint Oregon/California promotional efforts like the squeeze bottle in 1989 (listing all six locations), and the T-shirts which were purchased in bulk by respondent and distributed to the other restaurants. Respondent lent money to the California corporations to cover start-up costs, and some of the employees in California were trained at the Oregon restaurant. Until 1990, corporate records for all six restaurants were kept in Oregon, the corporations used a joint payroll to pay their employees, the restaurants engaged in some bulk ingredient purchases, similar employment contracts for managers were used for all restaurants, and the restaurants were covered under the same insurance policy.

The above facts, coupled with Carol Woodstock's own testimony, lead us to conclude that her oath was not fraudulent. Simply put, in view of the totality of circumstances surrounding the operations of the Oregon and California restaurants, we find that Carol Woodstock, when she signed the application oath, had a good faith, honest belief that respondent, as the senior user, owned the mark and that no other entity, including any of the California corporations, had the right to use the same or similar mark without respondent's authorization. Respondent's failure to disclose in 1989 the permissive use by the California junior users is irrelevant and could not have been material to the grant of a federal registration to respondent. Respondent, as the senior user, and in the absence of a court holding or a concurrent use proceeding, is entitled to an unrestricted federal registration in spite of the existence of junior users who might have common law rights of use in California. That is to say, even though, as petitioner alleges, Ms. Woodstock "failed to acknowledge the conflicting rights of the Woodstock California corporations", one simple fact remains--Woodstock's Enterprises, Inc.-Oregon is the senior user of the WOODSTOCK'S marks. Further, the Oregon/California operations had the appearances of being a chain of pizza parlors with common ownership. Thus, there is no fraud. See: Money Store v. Harriscorp Finance, Inc., 689 F.2d 666, 216 USPQ 11 (7th Cir. 1982); Giant Food, Inc. v. Malone & Hyde, Inc., 522 F.2d 1386, 187 USPQ 374 (CCPA 1975); Hollowform, Inc. v. Aeh, 515 F.2d 1174, 185 USPQ 790 (CCPA 1975); American Security Bank v. American Security & Trust Co., 571 F.2d 564, 197 USPQ 65 (CCPA 1978); Selfway, Inc. v. Travelers Petroleum, Inc., 579 F.2d 75, 198 USPQ 271 (CCPA 1978); Metro Traffic Control Inc. v. Shadow Network Inc., ___F.3d___, 41 USPQ2d 1369 (Fed. Cir. 1997); Pennsylvania Fashion Factory, Inc. v. Fashion Factory, Inc., 215 USPQ 1133 (TTAB 1982); International House of Pancakes, Inc. v. Elca Corp., 216 USPQ 521 (TTAB 1982); Heaton Enterprises of Nevada, Inc. v. Lang, 7 USPQ2d 1842 (TTAB 1988); and Space Base, Inc. v. Stadis Corp., 17 USPQ 1216 (TTAB 1990).

In reaching this conclusion, we obviously recognize Carol Woodstock's less than candid approach with her fellow boards of directors members and shareholders in not disclosing to them the filing of a trademark application in the name of the Oregon corporation; the facts surrounding the dismissal of Carol Woodstock as president of the California corporations in 1990; and the proposals to purchase the California businesses, with purchasers' placing importance on the unfettered right to continue to use the WOODSTOCK'S marks. Petitioner claims that Carol Woodstock "intentionally helped herself to a corporate opportunity at the direct expense of the California corporations which had placed her in a position of trust." (reply brief, p. 8) While it may be that Carol Woodstock rushed to the Office with the thought of shoring up her ownership position with respect to the mark at issue (and, consequently, her leverage and potential financial gain in any sale of the California restaurants), it does not necessarily follow that she lacked a good faith belief that respondent, as the senior user, was entitled to the registration then sought. Even assuming arguendo that petitioner's assertions are true, and that Ms. Woodstock may be culpable in some type of shareholder suit involving a breach of fiduciary duties, her actions do not taint her underlying good faith belief that Woodstock's Enterprises, Inc.-Oregon, as the undisputed senior user, was entitled to an unrestricted federal trademark registration.

In view of the above, the fraud claim must fail.

ABANDONMENT

Petitioner alleges that respondent has abandoned the registered mark as a result of respondent's failure to exercise control over the nature and quality of the restaurant services rendered by the California restaurants. Petitioner contends that there never was any trademark license between the parties, and that respondent simply gave the mark away (by permitting the mark's use without any kind of restriction or control) to each California corporation when it was founded. Petitioner maintains that it is the only one who is exercising control over the quality of the services rendered in California by the California restaurants under the WOODSTOCK'S marks. Petitioner again places importance on the fact that the California state trademark registration of WOODSTOCK'S PIZZA PARLOR, issued in 1983, is owned by petitioner. Petitioner also points to the fact that petitioner removed Carol Woodstock as president of the California corporations in 1990 due to poor job performance and that, since that time, Ms. Woodstock, in her capacity as president of respondent, has not even pretended to exercise control over the California operations.

Respondent contends, on the other hand, that it has exercised sufficient control over the nature and quality of the services rendered by the California restaurants.

Respondent points to its alleged control over recipes and advertising, as well as its preparation of certain documents such as cleaning lists, instructional guidelines, managers' reports, job descriptions, and guidelines for interviewing prospective employees. Respondent further asserts that it has been satisfied with the quality maintained by the California restaurants, and that it has had no problems with Jeff Ambrose's job performance in running the California operations; therefore, according to respondent, it has relied, by and large, upon the integrity of petitioner in rendering a quality product in California.

Section 45(2) of the Trademark Act provides, in relevant part, that a mark is deemed to be abandoned when the course of conduct of the owner of the mark causes the mark to lose its significance as an indication of origin.[4] This course of conduct includes acts of omission as well as acts of commission. The prevailing view is that since abandonment is in the nature of a complete forfeiture, it carries a strict burden of proof. P.A.B. Produits et Appareils de Beaute v. Satinine Societa, 670 F.2d 1031, 196 USPQ 801 (CCPA 1978); Girard Polly-Pig, Inc. v. Polly-Pig by Knapp, Inc., 217 USPQ 1338 (TTAB 1983); and The Nestle Company Inc. v. Nash-Finch Co., 4 USPQ2d 1085, 1089 (TTAB 1987).

[4]We are concerned in the present case only with this portion of the statutory definition of "abandonment", and not "abandonment" which results from nonuse as provided in Section 45(1).

We begin our analysis with the premise that maintenance of exclusivity of rights in a mark is not required in order to avoid a finding of abandonment, since "[f]ew longstanding trademarks could survive so rigid a standard." Wallpaper Manufacturers, Ltd. v. Crown Wallcovering Corp., 680 F.2d 755, 214 USPQ 327, 333 (CCPA 1982). Instead, so long as at least some purchasers identify respondent with the registered mark, it cannot be said that respondent's course of conduct has caused the registered mark to lose its significance as a mark. Id. at 335. As in Crown, it is necessary to remember the following:

> [There is a] distinction between conduct of a trademark owner which results in a loss of right to enjoin a particular use because of an affirmative *defense* available to that user and conduct which results in a loss of *all* rights of protection as a mark against use by anyone. Only when all rights of protection are extinguished is there abandonment. E. Vandenburgh, Trademark Law and Procedure 267-68 (2d ed. 1968). While this states only a conclusion without any guides as to when all rights are deemed to have been lost, it is helpful, nevertheless, to keep the distinction in mind.

Id. See also: University Book Store v. University of Wisconsin Board of Regents, 33 USPQ2d 1385 (TTAB 1994).

Thus, under Crown, whether petitioner in this case has a right to continue to use the registered mark is not determinative of the question of abandonment; rather, the focus must be on what rights, if any, respondent has in the registered mark. Id. Moreover, as emphasized by the court in Crown, "a mark becomes abandoned only when the mark loses its significance as an indication of origin, not the sole identification of source." Crown, supra at 336. In other words, regardless of whether petitioner has the right to use the WOODSTOCK'S mark, the fact that the registered WOODSTOCK'S PIZZA PARLOR and design mark identifies respondent as one of two sources of the restaurant services negates any inference of abandonment. Girard Polly-Pig, Inc. v. Polly-Pig by Knapp, Inc., supra.

Here, it is clear that members of the purchasing public identify respondent with the registered mark for restaurant services. Thus, respondent's mark has not lost its significance as an indication of origin.

Further, to the extent that petitioner urges that respondent has not exercised quality control over petitioner's operations, the claim must fail. In a licensing situation, the question to be determined is whether the licensor exercises sufficient control to guarantee the quality of the goods sold to the public under the mark. An uncontrolled license, that is, a licensing arrangement in which the licensor retains no quality control or supervision over the use of the mark by the licensees, results in an abandonment of rights in the mark. Whether, in fact, sufficient control is exercised is a question of fact in each case and the burden of proving lack of control or insufficient control is on the party claiming the abandonment.

In order to avoid abandonment of its mark, a licensor need not show that its quality control efforts are comprehensive or extensive. *Kentucky Fried Chicken Corp. v. Diversified Packaging Corp.,* 549 F.2d 368, 193 USPQ 649, 655 (5th Cir. 1978) ("Retention of a trademark requires only minimal quality control"); *Midwest Plastic Fabricators v. Underwriters Laboratories*, 906 F.2d 1568, 15 USPQ2d 1359 (Fed. Cir. 1990) (defining the control requirement to be "reasonable control, i.e. such control as is practicable under the circumstances of the case"). Sufficient control by a licensor may exist despite the absence of any formal arrangements for policing the quality of the goods sold or services rendered under the mark by its licensee(s). See *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 337 (TTAB 1980). Control may also be adequate where the licensor justifiably relies on the integrity of the licensee to ensure the consistent quality of the services performed under the mark. See *Taco Cabana International Inc. v. Two Pesos Inc.,* 19 USPQ2d 1253, 1259 (5th Cir. 1991), aff'd 505 U.S. 763, 23 USPQ2d 1081 (1993).

The rationale behind quality control is that the public has a right to expect a consistent quality of goods or services associated with a trademark or service mark. Here, so long as customers entering a WOODSTOCK'S pizza parlor in Oregon or a WOODSTOCK'S pizza parlor in California can expect a consistent level of quality, the WOODSTOCK's mark retains its source-indicating function. The rationale has been explained in the following terms:

> The purpose of the quality-control requirement is to prevent the public deception that would ensue from variant quality standards under the same mark or dress. Where the particular circumstances of the licensing arrangement persuade us that the public will not be deceived, we need not elevate form over substance and require the same policing rigor appropriate to more formal licensing and franchising transactions. Where the license parties have engaged in a close working relationship, and may justifiably rely on each parties' intimacy with standards and procedures to ensure consistent quality, and no actual decline in quality standards is demonstrated, we would depart from the purpose of the law to find an abandonment simply for want of all the inspection and control formalities. *See Embedded Moments, Inc. v. International Silver Co.,* 648 F.Supp. 187, 194 (E.D.N.Y. 1986) (license agreement without explicit provision for supervisory control and absence of actual inspection nevertheless no basis for abandonment where prior working relationship established basis for reliance on licensee's integrity and history of manufacture was "trouble-free").

Taco Cabana International Inc. v. Two Pesos Inc., supra at 1259. See also: Exxon Corporation v. Oxxford Clothes Inc., ___F.3d___, 42 USPQ2d 1417, 1424 (5th Cir. 1997) ["...if a trademark has not ceased to function as an indicator of origin there is no reason to believe that the public will be misled..."]

Both parties here agree that there is no formal, written agreement between them covering use of the WOODSTOCK'S marks. It is settled, however, that a license can be implied. See, e.g.: McCoy v. Mitsuboshi Cutlery Inc., 67 F.3d 917, 36 USPQ2d 1289, 1291 (Fed. Cir. 1995); University Book Store v. University of Wisconsin Board of Regents, supra at 1396; and Nestle Co. v. Nash-Finch Co., supra. We find that to be the case here; that is, rather than constituting uncontrolled use by petitioner in California which resulted in the registered mark losing all source indicating significance, the reality of the situation is akin to an informal, implied license from respondent to petitioner to use the registered mark in California. Given the circumstances that respondent lent money to the California corporations to start their restaurants under the WOODSTOCK'S mark, we find, as a result of the parties' course of conduct through the years, that respondent essentially gave petitioner and the other corporations permission to use the WOODSTOCK'S mark.[5]

We have paid particular attention to the common origins and history of the Oregon and California restaurants.

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[5]We so find notwithstanding the following remark in the minutes of respondent's July 20, 1980 meeting of its board of directors: "After a long examination of deciding how to expand to California, it was decided that the new pizza parlor to be built in California would be under a new corporation and would have nothing to do with the original Oregon corporation." At the same meeting, the board also resolved to lend money, if needed, to the new California corporation. Suffice it to say that, contrary to the statement in the minutes, subsequent events through the years show a close relationship between respondent and the California restaurants.

Although there was a falling out in 1990 when Carol Woodstock was removed as president, the restaurant operations have been conducted, as indicated earlier in this opinion, much like a chain. The restaurants' and their owners' close association warrant a relaxation of policing formalities. Some of petitioner's employees who remain to this day, including Jeff Ambrose, petitioner's president, received their training from the Oregon restaurant staff. Thus, it is not surprising that the Oregon and California restaurants use significantly similar procedures and products. Although there are specific differences between the Oregon and California restaurants to be sure, the operations are, by and large, very similar. The dough recipes are the same, and the same brand of pizza sauce is used, with the California restaurants using slightly less pepper. The restaurants' decors, while different, are, in several respects, very similar. Given the common roots and history of the restaurants, it is not surprising that a customer walking into the WOODSTOCK'S restaurant in Oregon and then into a WOODSTOCK'S restaurant in California would assume that they were related in some fashion. It is only natural that the two operations would draw on their mutual experience, which has resulted in success, to maintain the requisite quality consistency. In point of fact, all the evidence indicates that there has been no decline in the level of quality at any of the parties' restaurants. In this connection, we note that sales at the California restaurants have increased over the years, and that the restaurant in Chico has won an award for "best pizza in Chico." Further, Carol Woodstock testified that she is quite satisfied with the performance of Jeff Ambrose in running the California restaurants, and that he is very quality conscious. It bears repeating that Mr. Ambrose started as an employee at the Oregon restaurant in 1981, receiving training there on how to make pizzas. Later, Chuck Woodstock had Mr. Ambrose set up the San Diego restaurant.

While there was never a formal system of quality control over the California operations, it must be remembered that "the inference of abandonment is not drawn...[where] satisfactory quality was maintained, and, hence, no deception of purchasers occurred." Stockpot, Inc. v. Stock Pot Restaurant, Inc., 220 USPQ 52, 59 (TTAB 1983), ***aff'd***, 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984). Therefore, even without, essentially, a formal system of quality control over the restaurant services rendered by petitioner in California, the registered mark was not abandoned by respondent since respondent's mark has not ceased to function as an indicator of origin and the quality of the services has, by all accounts, remained at an acceptable level. Exxon Corporation v. Oxxford Clothes Inc., supra.

In summary, the fraud claim fails and the abandonment claim fails.

Decision: The petition for cancellation is dismissed.

J. E. Rice

R. F. Cissel

T. J. Quinn
Administrative Trademark Judges
Trademark Trial and Appeal Board