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THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB                      JULY 29, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re *Sanitary Couplers, Inc.*

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Serial No. 74/724,270

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R. William Graham for *Sanitary Couplers, Inc.*

Rita M. Odin, Trademark Examining Attorney, Law Office 109  
(Chris A. F. Pedersen, Acting Managing Attorney).

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Before *Hairston, Chapman and Wendel*, Administrative  
Trademark Judges.

Opinion by *Hairston*, Administrative Trademark Judge:

Sanitary Couplers, Inc. has appealed from the  
Trademark Examining Attorney's final refusal to register  
the mark PROTECTOR for "hose for sanitary transport,  
namely, flexible nonmetal hose for use in sanitary  
transport in the 3A, FDA and USDA regulated industry."<sup>1</sup>

Registration has been refused on the ground that

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<sup>1</sup> Application Serial No. 74/724,270, filed August 21, 1995,  
claiming first use and first use in commerce of March 1992.

applicant's mark, when applied to the identified goods, so resembles the mark THE PROTECTOR, which is registered for "nylon sleeves used to protect hoses,"<sup>2</sup> as to be likely to cause confusion, mistake or deception.

Turning first to the respective marks, we note that they are virtually identical. As noted by the Examining Attorney, the word "THE" in registrant's mark has little trademark significance. We focus our attention then, as have applicant and the Examining Attorney, on the respective goods.

It is the Examining Attorney's position that the involved goods are closely related and may be marketed to the same purchasers because sleeves used to protect hoses are obviously used with hoses. In order to show a relationship between sleeves and hoses, the Examining Attorney made of record, inter alia, several third-party registrations which indicate that entities have registered their marks both for hoses and sleeves. For example, the mark FLIGHTLINE is registered for metal and nonmetallic hoses and nonmetallic outer sleeves for hoses; the mark QUADION is registered for hoses and sleeves; a mark consisting a stylized letter "Q" is registered for hoses and sleeves; and the mark FLAMETITE is registered for hoses

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<sup>2</sup> Registration No. 1,825,135 issued March 8, 1994.

and sleeves. In addition, the Examining Attorney made of record several third-party registrations wherein the goods are described in such a manner that it is clear that hoses and sleeves are used together in a variety of industries.

Applicant, however, maintains that the involved goods are very different in nature, and that they travel in different channels of trade to different purchasers. In particular, applicant contends that its hose is especially designed for sanitary transport in the 3A, FDA and USDA regulated industry, which is a niche market of select purchasers. This is in contrast, argues applicant, to registrant's product which is a crush resistant hose protection sleeve designed to protect gas or oil lines or electrical cables. Applicant maintains that registrant's type of sleeve is not designed for use with hose for sanitary transport in the 3A, FDA and USDA regulated industry. In support of its position that the involved goods are not related, applicant submitted a patent and product information sheet for registrant's goods. According to applicant, the product information sheet was obtained from the owner of the cited registration.

We readily acknowledge that the respective goods are different and noncompetitive. However, as often stated, it is not necessary that the goods be similar or competitive,

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or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarities of the marks used therewith, give rise to the mistaken belief that they originate from or are in some way associated with the same producer. See: Hercules Inc. v. National Starch and Chemical Corp., 223 USPQ 1244, 1247 (TTAB 1984). In this case, the evidence made of record by the Examining Attorney establishes that hoses and sleeves are indeed used together and may well be assumed to emanate from the same source when very similar marks are used in connection therewith. See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993), and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 (TTAB 1988).

Although applicant stresses that the channels of trade for its goods are specifically limited in its application to sanitary transport in the 3A, FDA and USDA regulated industry, the Examining Attorney correctly observes that the cited registration has no limitations of any sort. Thus, the sleeves listed therein must be presumed to move

in all channels of trade normal for such goods, including the 3A, FDA and USDA regulated industry, and be available for purchase by all potential customers, including companies which use hose for sanitary transport. In re Elbaum, 211 USPQ 639, 640 (TTAB 1981). While we note that the product sheet for registrant's goods indicates that its sleeves protect hoses that supply compressed air, hydraulic fluid, acetylene and other gases and fluid, the sheet also indicates that "[registrant's product] is currently being successfully used by many companies in many industries, for a variety of applications." Further, as noted by the Examining Attorney, applicant has offered no evidence in support of its contention that registrant's sleeves would not be used to protect hoses used for sanitary transport in the 3A, FDA and USDA regulated industry. That is, there is no information in this record as to what is common practice in the industry or evidence regarding the applicable standards.

In view of the foregoing, we conclude that purchasers familiar with registrant's THE PROTECTOR mark for nylon sleeves used to protect hoses, would be likely to believe, upon encountering applicant's PROTECTOR mark for flexible nonmetal hose for use in sanitary transport in the 3A, FDA

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and USDA regulated industry, that such products emanate from or are otherwise associated with the same source.

In reaching our decision, we have not overlooked the suggestive significance of the word "Protector" when used in connection with the involved goods. Here, however, the marks are so close in appearance, meaning and impression, that when used on related goods, confusion is likely.

Finally, to the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must be resolved in favor of the prior registrant and against applicant. In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

**Decision:** The refusal to register is affirmed.

P. T. Hairston

B. A. Chapman

H. R. Wendel  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

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