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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Samsung Opto-Electronics America, Inc.

Serial No. 75/159,889

Eugene M. Lee of Foley & Lardner for Samsung Opto-Electronics America, Inc.

Mark Sparacino, Trademark Examining Attorney, Law Office 103
(Michael Szoke, Managing Attorney).

Before Wendel, Bucher and Rogers, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Samsung Opto-Electronics America, Inc. has filed an application to register "IMPAX" as a trademark for goods identified as "cameras, telescopes and binoculars," in International Class 9.¹

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The basis for the refusal is that the mark

¹ Serial No. 75/159,889, filed August 29, 1996, based on applicant's allegation of a *bona fide* intention to use the mark on or in connection with the goods in commerce.

"IMPAC" has already been registered for a variety of Class 9 goods including cameras², so that when applicant's mark is used on or in connection with the identified goods, it would be likely to cause confusion or mistake by consumers, or to deceive consumers as to the source of applicant's and registrant's respective goods.

Applicant appealed the refusal of registration and timely filed an appeal brief. The Examining Attorney then filed a brief within the time set by the Board; an oral hearing was not requested.

We affirm the refusal to register.

Our determination under Section 2(d) is based on analysis of all of the probative facts in evidence that are relevant to factors bearing on the issue of likelihood of confusion. See In re E.I. du Pont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the analysis of that issue in this case, key considerations are the similarities of the marks and the relatedness of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). We consider, first, the marks.

² Registration No. 1,532,724 issued April 4, 1989, for, *inter alia*, "radios, cameras and audio recording tape." §8 affidavit accepted and §15 affidavit acknowledged. The registration sets forth a date of first use of December 1986.

Applicant argues that registrant's mark, "IMPAC," has the connotation of a "pack" inasmuch as registrant's camera is sold with a sunshade and case.³ On the other hand, applicant argues that its arbitrary term has no suggestive meaning, and that its terminal letter "X" is a rarity in the English language, creating a very different impression.

In contrast, the Trademark Examining Attorney contends the marks are almost identical in sound and appearance, and create a similar commercial impression, i.e., IMPAC or "impact," versus IMPAX or "impacts."

The test, when comparing the involved marks, is not whether applicant's mark can be distinguished from registrant's mark when subjected to a side-by-side comparison but, rather, whether the marks are sufficiently similar in terms of their overall commercial impression that confusion is likely to result as to the source or sponsorship of the goods offered under the respective marks. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106 (TTAB 1975). Both marks appear to

³ In support of its arguments regarding the registrant's goods, along with its request for reconsideration, applicant submitted for the record a copy of registrant's 1992 catalogue and price list.

be variant spellings of the English-language formative "impact(s)." The first four letters of these two five-letter marks are identical and both end with a strong consonant. Hence, when compared in their entireties, we find the marks are similar in sound and appearance and are likely to create substantially similar impacts on the minds of prospective purchasers.⁴

We turn our analysis, then, to the relatedness of the involved goods. Applicant has argued that the involved cameras are quite different. Its cameras are sold in retail chains for more than one hundred dollars, while registrant's cameras are available via catalogue to distributors for \$7.⁷⁵ per camera.⁵ In fact, with regard to registrant's goods,

⁴ While registrant's 1992 catalogue does include a "case" in the description of the IMPAC camera, we do not place much significance in this showing. First, even if it was sold with a case by registrant in 1992, we cannot be sure that was always the case between 1986 and 1992, or since 1992, for that matter. Second, we disagree with applicant on how customers of registrant's camera with a case in 1992 would perceive this mark in relation to registrant's goods. We do not believe that consumers seeing the term "IMPAC" on cameras will construe the second syllable of registrant's mark (-pac) as being suggestive of a camera case. Finally, this "evidence" cannot support our construing the commercial impression of registrant's mark differently any more than it can be used artificially to restrict the identification of goods as listed in the registration, as discussed, *infra*.

⁵ According to registrant's 1992 catalogue and price list.

applicant asserts that the entire listing of goods in the cited registration⁶ points to "various inexpensive goods."

It is clear, however, that with regard to the relatedness of applicant's and registrant's goods, the issue of likelihood of confusion between marks must be determined on the basis of the goods as they are identified in the respective application and registration. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987), and In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).

Neither identification is restricted in any way as to the relative cost of the cameras, as to whether they are sold with a camera case or without one, or as to the channels of trade or classes of consumers. Applicant's allegations to the contrary notwithstanding, the Board must assume that registrant's cameras could well vary in price, may be sold without cases, and that the goods of applicant and of registrant could be offered through all normal channels of trade and to the usual classes of consumers for such goods. Hence, we are compelled to agree with the Trademark Examining Attorney's conclusion that these

⁶ In addition to the goods listed above in International Class 9, the cited registration also covers a variety of hand tools in International Class 8.

respective cameras travel in the same channels of trade to the same consumers.

In short, given the fact that quite similar marks would be used on identical goods, we find a clear likelihood of confusion among consumers.

Decision: The refusal of registration is affirmed.

H. R. Wendel

D. E. Bucher

G. F. Rogers

Administrative Trademark
Judges, Trademark Trial
and Appeal Board