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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Good Health Natural Foods, Inc.

Serial No. 75303187

Eric D. Paulsrud of Leonard, Street and Deinard for Good Health Natural Foods, Inc.

Linda M. King, Trademark Examining Attorney, Law Office 116 (Meryl Hershkowitz, Managing Attorney).

Before Hanak, Walters and Chapman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On June 4, 1997, Good Health Natural Foods, Inc. (a California corporation) filed an application to register on the Principal Register the mark QUILT for "crackers." The application was based on applicant's assertion of a bona fide intention to use the mark in commerce. On September 16, 2002, applicant filed an Amendment to Allege Use (asserting a date of first use of September 1997), which was accepted by the Examining Attorney.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its identified goods, so resembles the registered mark COOQIQUILT for "cookies, scones, crackers, biscuits, croissants, cakes, pies, bakery goods and honey,"¹ as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested.

We affirm the refusal to register. In reaching this conclusion, we have followed the guidance of the Court 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). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

¹ Registration No. 2362601, issued June 27, 2000.

Applicant explains its position as follows (reply brief, p. 1):

...Applicant focuses on the first DuPont factor, similarity or dissimilarity of the marks, because the Board has recognized that this factor alone is often controlling. Applicant acknowledges that the recitation of goods for the registered mark includes "crackers," which are identical to applicant's goods, and that there is no "channels of trade" limitation in the registered mark. Thus, applicant acknowledges that if the marks themselves (when properly considered in their entirety) are confusingly similar, applicant is unlikely to prevail solely on the basis of the remaining DuPont factors.

Applicant specifically contends that the marks should not be dissected, and when considered as a whole the registered mark COOQUILT is a unitary mark with no separable impression of the word "QUILT" alone; that the term "COOQUI" is not descriptive of crackers; that the marks, as a whole, are not similar in appearance, sound, connotation or commercial impression; and that this single DuPont factor is dispositive herein. (Applicant had argued in its opening brief that purchasing decisions about food are not "impulse" purchases, but rather are made by "health conscious" consumers who are sophisticated. See Brief, pp. 5-6.)

The Examining Attorney argues that the dominant feature of the registered mark is QUILT, which is arbitrary and distinctive in connection with the involved goods; that when considered in their entirety, the marks QUILT and COOQUIILT are similar in sound, appearance, connotation and commercial impression; that one item of the registrant's and applicant's respective goods ("crackers") is identical, and several others (e.g., cookies, scones, biscuits, bakery goods) are related snack food items; that the goods are sold to the same classes of purchasers through the same channels of trade; that there is no support in the record for applicant's assertion that the purchasers of these types of food items are "health conscious" and "sophisticated"; and that doubt is resolved in registrant's favor.

We turn first to a consideration of applicant's goods and those of the cited registrant. We find that applicant's goods are in part identical (crackers) and are otherwise related to the goods in the cited registration. Applicant did not argue to the contrary.

Likewise applicant did not argue, and we do not find, any differences in the channels of trade or purchasers. We must presume, given the identifications (neither of which is limited), that the goods travel in the same channels of

trade, and are purchased by the same classes of purchasers. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

"When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Turning then to a consideration of the marks, it is well settled that marks must be considered in their entirety because the commercial impression of a mark on an ordinary consumer is created by the mark as a whole, not by its component parts. This principle is based on the common sense observation that the overall impression is created by the purchaser's cursory reaction to a mark in the marketplace, not from a meticulous comparison of it to others to assess possible legal differences or similarities. See 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §23:41 (4th ed. 2001). See also, *Puma-Sportschuhfabriken Rudolf Dassler KG v. Roller Derby Skate Corporation*, 206 USPQ 255 (TTAB 1980). That is, the proper test in determining likelihood of confusion does not involve a side-by-side comparison of the marks, but rather must be based on the similarity of the

general overall commercial impressions engendered by the involved marks. Stated another way, the test involves the recollection of the average purchaser, who normally retains a general rather than specific impression of the many trademarks encountered; that is, a purchaser's fallibility of memory over a period of time must also be kept in mind. See *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); and *Spoons Restaurants Inc. v. Morrison, Inc.*, 23 USPQ2d 1735 (TTAB 1991), aff'd unpub'd (Fed. Cir. June 5, 1992). This is particularly true for goods such as those involved herein which are inexpensive and may be purchased on impulse.

In this case, the only word in applicant's mark is QUILT, which is identical to the second part of registrant's compound word mark, COOQUIILT. The word "quilt" is an arbitrary word in the context of applicant's and registrant's respective food products. There is no indication in the record that the strength of the arbitrary term "quilt" is at all compromised by third-party use of the same or similar terms.

While registrant's mark includes another term, which is the first term in its mark, it is likely that purchasers will assume that applicant's mark QUILT is simply a variation of the registrant's mark, COOQUIILT, and, thus,

that applicant's QUILT crackers are one variety of registrant's COOQIQUILT crackers, or vice versa. See *In re Dixie Restaurants Inc.*, supra.

When considered in their entirety, we find that the respective marks are sufficiently similar in overall commercial impression that, when used on the identical goods involved herein, confusion as to source is likely. See *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999).

The cases cited by applicant do not persuade us of a different result herein. (For example, the case of *Mr. Hero Sandwich Systems, Inc. v. Roman Meal Co.*, 781 F.2d 884, 228 USPQ 364 (Fed. Cir. 1986) involved an inter partes cancellation, the involved marks were ROMAN with a design and ROMANBURGER, the channels of trade were specifically different, and the marks had co-existed for almost 20 years with no evidence of actual confusion; and the case of *Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459 (Fed. Cir. 1998) involved an inter partes opposition wherein the marks CRISTAL and CRYSTAL CREEK were found to have different meanings.)

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.