

**THIS DISPOSITION
IS NOT CITABLE AS
PRECEDENT OF THE T.T.A.B.**

Hearing:
July 25, 2000

Paper No. 15
BAC

12/6/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hunter Associates Laboratory, Inc.

Serial No. 75/467,518

Robert W. Adams of Nixon & Vanderhye P.C. for Hunter Associates Laboratory, Inc.

Rodney Dickinson, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

Before Quinn, Chapman and Bucher, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Hunter Associates Laboratory, Inc. has filed an application to register on the Principal Register the mark for "spectrophotometers" in International Class 9.¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used on its identified

¹ Application Serial No. 75/467,518, filed April 14, 1998, based on a claimed first use date of September 9, 1997.

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goods, so resembles the registered mark COLORTREND for "color charts and instructions for mixing colorants" in International Class 16,² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, and an oral hearing was held before this Board on July 25, 2000.

Upon consideration of the pertinent factors set forth by the Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), for determining whether a likelihood of confusion exists, we find that confusion is not likely.

It is obvious that the marks are identical. However, the mark COLORTREND is certainly highly suggestive in relation to both registrant's color charts and instructions for mixing colorants and applicant's spectrophotometers. Thus, the scope of protection of such marks is not as broad. See *Sure-Fit Products Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 117 USPQ 295 (CCPA 1958). See also, 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:73 (4th ed. 2000).

² Registration No. 938,124, issued July 18, 1972, Section 8 affidavit accepted, Section 15 affidavit acknowledged, renewed. The claimed date of first use is September 28, 1956.

Turning to the involved goods, as argued by the Examining Attorney, the Board must determine the issue of likelihood of confusion on the basis of the goods as identified in the application and the registration. See *Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). In discussing applicant's goods, first we take judicial notice of The American Heritage Dictionary definition of "spectrophotometer" as "n. Physics. An instrument used to determine the distribution of energy in a spectrum of luminous radiation." Applicant's specimens of record clearly indicate that applicant's goods are used for making continuous electronic measurements of the color of many types of items, such as food products (e.g., breads, rolls, fruit and vegetable products), or building products (e.g., fiberboard, roofing granules, cement), or industrial minerals (e.g., dry organic chemicals, paper additives, fillers). The registrant's goods are in International Class 16 covering paper products and printed matter. Therefore, registrant's "color charts and instructions for mixing colorants" are presumably simply paper color charts and instructions.³ Even though neither

³ Applicant argues that the record shows registrant's goods are used only in the selection of the color of paint. In support

applicant's nor registrant's goods, as identified, are limited in purpose or function, nonetheless, it is clear that these goods are certainly disparate products, one being a machine and one being a paper color chart and instructions.

In support of his position as to the relatedness of the respective goods, the Examining Attorney argues that the respective goods, "though not the same" (brief, p. 3), are closely associated by the purchasing public because both products perform the same function of identifying specific color values in paint and other color sensitive items, and because they are commonly used together to identify color values (i.e., spectrophotometers are used to read and measure color charts).

The fact that the two products may have a tangentially similar purpose (in this case involving color) is not sufficient to establish the relatedness of these otherwise disparate goods. Rather, it must be shown that a commercial or technological relationship exists between

thereof, applicant refers to the specimens of record in the cited registration and to an "attached" complete copy of the file history of cited Registration No. 938,124. Applicant is advised that the file history of the cited registration (including the specimens) is not currently of record in this application. In any event, registrant's identification of goods is not limited to use in connection with paint. In view of our decision herein, we need not consider a copy of the file history of the cited registration.

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goods such that the use of the trademark is likely to produce opportunities for purchasers or users to be misled about their source or sponsorship. See *In re Cotter and Company*, 179 USPQ 828 (TTAB 1973). See also, *General Electric Company v. Graham Magnetics Incorporated*, 197 USPQ 690 (TTAB 1977); and *Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517 (TTAB 1975).

We have carefully reviewed the entire record, and in particular, the Nexis evidence submitted by the Examining Attorney, but we are not convinced on this ex parte record of the relatedness of these goods. Applicant has coherently argued that these goods, as identified, relate to specific and completely different types of products, which are sold through differing channels of trade to different purchasers, with applicant's goods being industrial in nature and sold to sophisticated purchasers such as manufacturers of color chemical pigmented products seeking a color profile of each production run, and registrant's goods being in the domestic field available to the ordinary consumer. The Examining Attorney has not made a prima facie showing establishing the relatedness of the goods, or the similarity of trade channels and purchasers.

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Decision: The refusal to register under Section 2(d)
is reversed.

T. J. Quinn

B. A. Chapman

D. E. Bucher
Administrative Trademark Judges,
Trademark Trial and Appeal Board