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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Food Venture Capital Group, Ltd.

Serial Nos. 75/573,200 and 75/573,202

Christine S. Kim and Raphael Golb of Rabinowitz, Boudin, Standard, Krinsky & Lieberman for applicant.

Michael L. Engel, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Simms, Walters and Bucher, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Food Venture Capital Group, Ltd. has filed two applications to register the marks SERAFINA FABULOUS GRILL and SERAFINA FABULOUS PIZZA for "restaurant services," in International Class 42.[1] The applications contain disclaimers of the terms FABULOUS GRILL and FABULOUS PIZZA, respectively.

[1] Serial Nos. 75/573,200 and 75/573,202, respectively, both filed October 20, 1998, based on allegations of a bona fide intention to use the marks in commerce.

The Trademark Examining Attorney has finally refused registration in each application under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the stylized mark SERAFINI'S, shown below and previously registered for restaurant services,[2] that, if used on or in connection with applicant's services, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed in each application. In both appeals, applicant and the Examining Attorney have filed briefs, but oral hearings were not requested. Because both appeals present the same issue and similar facts, we have considered the appeals together and issue a single opinion. We affirm the refusals to register in each application.

[2] Registration No. 1,112,499, issued January 30, 1979, in International Class 42. The current owner of record is Serafini's Restaurant, Inc. [Sections 8 and 15 affidavits accepted and acknowledged, respectively. The registration has been renewed for a period of ten years from May 13, 1999.]

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See, In re E. I. du Pont de Nemours and Co*., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the analysis of likelihood of confusion in this case, two key considerations are the similarities between the marks and the similarities between the services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc*., 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Applicant's recited services in the two applications are identical to those recited in the cited registration. Although applicant argues about differences in the nature of applicant's and registrant's restaurant services and their geographic locations, these purported differences are immaterial to our consideration because neither the applications nor the cited registration contain any such limitations to the recitations of services. "The question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-à-vis the goods and/or services recited in [the] registration, rather

than what the evidence shows the goods and/or services to be." *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). *See also, Octocom Systems, Inc. v. Houston Computer Services, Inc.,* 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

Moreover, neither applicant's nor registrant's recitation of services contains any limitations as to channels of trade or classes of customers. Thus, we must presume that the services of applicant and registrant are offered in all of the normal channels of trade to all of the usual customers of restaurant services. *See Canadian Imperial Bank v. Wells Fargo*, *supra*. In other words, we conclude that the channels of trade and class of customers of the parties' services are the same.

Turning to the marks, we note that "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).

The Examining Attorney contends that SERAFINA is the dominant portion of each of applicant's marks because the

additional material in each mark is merely descriptive; and that SERAFINA and SERAFINI'S are substantially similar in sound, appearance, connotation and overall commercial impression.

Applicant contends, on the other hand, that the marks must be viewed in their entireties; that, as such, SERAFINA is not the dominant portion of either of its marks; that the Examining Attorney has improperly dissected its marks; and that the marks are further distinguished by the stylized format of the registered mark. Moreover, applicant contends that the registered mark, SERAFINI'S, is likely to be understood as a surname; whereas, SERAFINA is likely to be understood as the name of a Biblical angel. In support of its position, applicant submitted an excerpt purportedly from *The Oxford English Dictionary* of "seraphim" and four declarations of residents of New York City.[3]

Our consideration of the marks is based on whether each of applicant's marks and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression.

[3] These declarations indicate the opinions of the declarants regarding likelihood of confusion, which is immaterial to our determination. In addition, they indicate the declarants' opinions regarding the connotations of Serafini and Serafina.

The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the services offered under the respective marks is likely to result. 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). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark.[4] *See, In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Considering applicant's marks, SERAFINA FABULOUS GRILL and SERAFINA FABULOUS PIZZA, both the words GRILL and PIZZA are merely descriptive, if not generic, of significant aspects of restaurant services; and the term FABULOUS is a laudatory term describing, respectively, GRILL and PIZZA.

[4] As the Examining Attorney correctly points out, the mere fact that the SERAFINA portion of applicant's marks is not identical to the word SERAFINI'S in registrant's mark, does not render this principle inapposite.

SERAFINA as the first word in each mark, followed by merely descriptive matter, is likely to be perceived by customers as the dominant portion of each mark.

Registrant's mark appears in a stylized script and in the possessive form. It further differs from the dominant portion of applicant's marks in the final vowel. However, we find these differences to be inconsequential. Rather, we are persuaded that the dominant first word of each of applicant's marks is substantially similar in appearance and sound to the word SERAFINI because it differs by only the final letter. Regarding the connotation of the marks, neither the few declarations nor the dictionary excerpt defining "seraphim" establish that consumers are likely to understand either SERAFINA or SERAFINI to mean seraphim or angel; or that SERAFINA would be more likely than SERAFINI to be so understood; or that SERAFINI would be understood as a surname.

Given the fallibility of consumers' memories and the fact that they are unlikely to encounter the marks at the same time or side-by-side, we find that applicant's two marks and registrant's mark, considered in their entireties, are substantially similar in overall commercial impression.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's marks, SERAFINA FABULOUS GRILL and SERAFINA FABULOUS PIZZA, and registrant's stylized mark, SERAFINI'S, their contemporaneous use in connection with the identical services involved in this case is likely to cause confusion as to the source or sponsorship of such services.

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

R. L. Simms

C. E. Walters

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