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

Paper No. 8
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sovitech Corporation

Serial No. 75/578,649

Douglas J. McEvoy of Gifford Krass Groh Sprinkle Anderson & Citkowski for Sovitech Corporation.

William G. Breckenfeld, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney).

Before Seeherman, Bucher and Holtzman, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Sovitech Corporation has appealed the refusal of the Trademark Examining Attorney to register the mark depicted below



with the word "System" disclaimed, for "metal locks for doors and doorways," in International Class 6.¹ Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark, if applied to

¹ Serial No. 75/578,649 filed on October 28, 1998, asserting a *bona fide* intent to use the mark in commerce.

applicant's identified goods, would so resemble the previously registered mark MACLOCK registered for "mechanical metal door edge retractable blade locks," also in International Class 6,² as to be likely to cause confusion, to cause mistake or to deceive.

The case has been fully briefed but applicant did not request an oral hearing.

We affirm the refusal of registration.

In the course of rendering this decision, we have followed the guidance of In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973). This case sets forth the factors that should be considered, if relevant, in determining likelihood of confusion. In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. Federated Food, Inc. v. Fort Howard Paper Co., 554 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

As to the goods, applicant has conceded that the goods identified in the cited registration and recited in the instant application are "substantially related." There is nothing in the record to suggest these respective goods would not move through identical channels of trade, or would not be marketed to the same class of ordinary purchasers. Hence, applicant's use

² Reg. No. 2,155,325 issued on May 5, 1998.

of a confusingly similar mark on its goods is likely to cause confusion.

We turn next to a consideration of the similarity or dissimilarity of the marks. 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 impression that confusion as to the source of the goods offered under the respective marks is likely to result. See Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be compared 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. See In re National Data Corp., 753 F.2d 1f056, 224 USPQ 749 (Fed. Cir. 1985).

Registrant's mark is MACLOCK. We find that the dominant feature in applicant mark is the term MAXLOK. The disclaimed word SYSTEM in applicant's mark is obviously descriptive. As to the remaining elements of applicant's mark, the word THE and the black background device are devoid of any source-indicating significance.

When spoken, the first syllable of registrant's mark (Mac-) and of applicant's mark (Max-) begin with the letters M-A-

followed by a similar, hard consonant sound, and the second syllables of MACLOCK and MAXLOK are pronounced the same way. Hence, the marks are extremely similar in pronunciation.

As to appearance, MAXLOK is visually the largest element in applicant's mark, and as noted above, it is also the element with source-indicating significance. However, applicant asserts that there is no likelihood of confusion because of the cumulative differences in the two marks, and specifically the differences between MACLOCK and MAXLOK, and the addition of the black background in its mark. Applicant argues that even if we were to find that MAXLOK is the dominant term in applicant's mark, it differs from the cited mark, MACLOCK, by two letters - i.e., replacing the letter "C" in the first syllable with the letter "X," and dropping the letter "C" from the second syllable. However, under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections. Dassler KG v. Roller Derby Skate Corporation, 206 USPQ 255 (TTAB 1980). As a result, consumers are not likely to note or remember these minor differences in appearance.

As to meaning, the term "lock," and its phonetic equivalent, "lok," are descriptive of these goods. While there may well be some difference in connotation between the respective first syllables, this difference is more than

outweighed by the similarities noted above in sound and appearance. Hence, when compared in their entireties, these two marks have a similar overall commercial impression.

Finally, as to the du Pont factor that directs our attention to the strength of registrant's mark, we note that there is no evidence of third-party registrations for this type of product, or even in related fields.

Accordingly, when applicant applies its confusingly similar mark to closely related goods, we find that there will be a likelihood of confusion.

Decision: The refusal to register is affirmed.