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Paper No. 10  
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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re **Forrester Laboratories**

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Serial No. 75/605,331

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Keith A. Vogt of Niro, Scavone, Haller & Niro for Forrester Laboratories.

Maureen L. Dall, Trademark Examining Attorney, Law Office 110  
(Chris A.F. Pedersen, Managing Attorney).

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Before Quinn, Walters and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Forrester Laboratories to register the mark RE-GEN for "non-medicated skin care preparations."<sup>1</sup>

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when used in connection with applicant's goods,

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<sup>1</sup> Application Serial No. 75/605,331, filed December 14, 1998; alleging dates of first use on November 15, 1997.

so resembles the registered mark REGENERATION for "skin moisturizing creams and lotions" as to be likely to cause confusion.<sup>2</sup>

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

In any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Turning first to the goods, since registrant's skin moisturizing creams and lotions are fully encompassed by applicant's broadly described non-medicated skin care preparations, the goods must be considered legally identical, directly competitive products. As such they are deemed to travel in the same channels of trade to the same purchasers. See *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994). Applicant does not dispute the identity of the goods but, instead, essentially argues that because of the dissimilarity of the marks and the

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<sup>2</sup> Registration No. 1,853,990; issued September 13, 1994; combined Sections 8 & 15 affidavit accepted and acknowledged, respectively.

sophistication of the purchasers, confusion is not likely to occur.

We disagree that the purchasers of skin creams are sophisticated. While some of these consumers may care about the products they are purchasing or exercise a certain degree of care in selecting these products, they are not necessarily sophisticated purchasers or likely to exercise a high degree of care in terms of examining the trademarks. In addition, the respective goods are relatively inexpensive and the types of products which are likely to be purchased casually and on impulse, thus increasing the risk of confusion. *Kimberly-Clark Corp. v. H. Douglas Enter., Ltd.*, 774 F.2d 1144, 1146, 227 USPQ 541, 542 (Fed. Cir. 1985).

Thus we turn our attention to the marks. The Examining Attorney argues that the marks RE-GEN and REGENERATION sound alike because applicant's mark is the phonetic equivalent of the first two syllables of registrant's mark. The Examining Attorney points to a dictionary definition of "re," of which we take judicial notice, as a prefix meaning "again; anew: rebuild" and relies on excerpts of articles taken from the NEXIS database to support her contention that "gen" is a recognized abbreviation for "generation" "in a wide variety of industries and commercial activities." Representative examples of these stories are set forth below (emphasis added):

The Internet is producing a new type of consumer, predominantly made up of young people. The Net generation, or **N-Gen**, demands more options.... *The Des Moines Register* (January 1, 2000).

The current generation [of night-vision technology] - called Generation 3 or "**Gen 3**" - image intensifier tube consists of a vacuum "envelope" holding three active components:.... *The Richmond Times Dispatch* (March 16, 2000).

And so did the sewage treatment plant's backup co-generation, or "**co-gen**," system, which relies on methane to keep all waste water flowing smoothly.... *Albuquerque Journal* (March 20, 2000).

The Examining Attorney has also relied on the following NEXIS and Internet references to "regen" (emphasis added):

Just like the gen-x'ers of the last decade, the "**re-gens**" will not go unnoticed. That's what the creator of a new radio show believes. "**'Re-gen' stands for Re-Generation....**" *PR Newswire* (April 7, 2000).

Welcome to our online list of projects, undergoing environmental analyses on the Beaverhead-Deerlodge National forest.... Some commonly used abbreviations in this column are:... **REGEN** (regeneration).... [www.fs.fed.us/rl/b-d/quarterly.htm](http://www.fs.fed.us/rl/b-d/quarterly.htm) 6/28/00.

Knowledge and Innovation in Chemical Waste Destruction.... Building on our pioneering developments and world leadership in sulfuric acid regeneration (**regen**), Rhodia has developed techniques of co-processing a wide range of hazardous wastes in our regeneration facilities. [www.ecoservices.us.rhodia.com](http://www.ecoservices.us.rhodia.com) 6/28/00.

Water Softeners from Freshwater Systems Ltd...A **regen** or regeneration is when the softener recharges its self by using salt. E.g. a TT or TR10 softener will regenerate every two days for a favour, using 1.4kg salt each regen. [www.watersoft.freeserve.co.uk/water...htm](http://www.watersoft.freeserve.co.uk/water...htm) 6/28/00.

Finally, the Examining Attorney has made of record NEXIS and Internet articles "showing the highly suggestive use of the term

'REGENERATION' for skin care products." The Examining Attorney maintains that consumers of skin care products are familiar with the word "regeneration" in relation to those products and would therefore be likely to interpret RE-GEN as REGENERATION.

Examples of these articles appear below (emphasis added):

...quickly launched into the skin care regiment for me, including a French-milled soap,...at prices ranging from \$ 18 to \$ 36. She didn't mention any of the special treatment items such as Lift Serum or the skin **regeneration** treatment...The skin **regeneration** treatment, she explained, is a "nourishing formula of almost pure protein designed to...stimulate cell **regeneration**,...." *WWD (Women's Wear Daily)* (March 13, 1987).

Clarins claims its Anti-Aging Total Skin supplement addresses **regeneration**, nutrition, hydration, oxygenation and protection of the skin. *WWD (Women's Wear Daily)* (July 26, 1985).

Both Chanel and Clinique are expanding present product lines. At Chanel these include an eye cream, a moisture mask, a hand cream,...and a skin-**regeneration** treatment. *The New York Times* (December 9, 1984).

The Examining Attorney also notes the use of the word "regeneration" in a product called "Alpha-Hydroxy Regeneration Creme Cleanser" as advertised on the website of "*Makeup Artist's Choice*."

Applicant, on the other hand, argues that the marks are visually and phonetically dissimilar. Applicant argues that the marks create different commercial impressions and disputes the Examining Attorney's contention that "gen" is a shortened form of the word "generation" or that it would be recognized as such in

the context of skin care products. Applicant points to a dictionary entry for "gen," of which we take judicial notice, showing it to be an abbreviation for words including "gender," "genus" and "genitive," but not "generation."

We agree with applicant that the marks, REGENERATION and RE-GEN, when considered in their entireties, are dissimilar in sound, appearance and meaning. Although there are some similarities in the marks, the similarities are outweighed by their differences. Registrant's mark consists of a single, five-syllable word whereas applicant's mark is a two-syllable term separated by a hyphen. Moreover, the principle that there is no correct pronunciation of a trademark is particularly applicable where, as here, the mark is not a dictionary word. See, e.g., *In re Belgrade Shoe*, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969). In this case, the term RE-GEN is just as likely to be pronounced with a hard "G" sound as a soft "G," thereby making RE-GEN even less similar to REGENERATION when spoken. Nevertheless, regardless of the particular pronunciation, the two marks are dissimilar in terms of sound.

Moreover, the marks are not similar in meaning. The cited mark REGENERATION is a dictionary word which, as the Examining Attorney points out and the evidence shows, is highly suggestive of products such as applicant's and registrant's skin creams, whose purpose is to regenerate cells of the skin thereby

improving its appearance. The question is whether RE-GEN would convey that meaning to the purchasers of applicant's skin creams. The evidence does not convince us that it would. RE-GEN is not a dictionary word, and the evidence submitted by the Examining Attorney does not persuade us that the term would otherwise be perceived or recognized by the consumers of the identified products as an abbreviated form of "regeneration."

As noted earlier, the purchasers of applicant's and registrant's skin care products are ordinary consumers. However, apart from one newswire story, the evidence relied on by the Examining Attorney shows use of "regen" or "re-gen" in highly technical or specialized fields, such as water softeners or sewage treatment, none of which remotely relates to consumer products. It is not likely that the average consumer of applicant's skin care products would be familiar with or even aware of such usage. The newswire story is of little value because it refers to "re-gen" in the unrelated context of an age demographic rather than skin restoration, and because there is no indication that the newswire story has appeared in any publication available to the consuming public. See *In re Urbano*, 51 USPQ2d 1776 (TTAB 1999).

Nor is the evidence persuasive that "gen" would necessarily be recognized as a shortened form of "generation." Applicant points out that the term "gen" has a number of dictionary

meanings, none of which is "generation." Several articles submitted by the Examining Attorney show use of the basic term "gen" with other prefix designations such as "Co-gen," "N-Gen" or "Net-Gen" and with suffixes such as "gen A" or "gen 3." The term "gen" in each of these articles refers to "generation" in the context of an age group or a level of technology. Because those other arguably accepted meanings of "gen" have no inherent relation to the skin care products herein, it cannot be presumed, on the basis of this evidence, that purchasers would associate the word "generation" with the term "GEN" in applicant's mark.

Even if we assume that purchasers would make that association and that the two marks would therefore convey the same meaning, in view of the highly suggestive nature of that meaning in relation to the goods herein, the differences in sound and appearance would be sufficient to distinguish the marks. It is settled that highly suggestive marks are weak and are generally accorded a more limited scope of protection than an arbitrary mark. See *The Drackett Company v. H. Kohnstamm & co., Inc.*, 160 USPQ 407 (CCPA 1969) ["The scope of protection afforded such highly suggestive marks is necessarily narrow and confusion is not likely to result from the use of two marks carrying the same suggestion as to the use of closely similar goods."]; and *Sure-Fit Products Company v. Saltzson Drapery Company*, 117 USPQ 295 (CCPA 1958).

**Ser No.** 75/605,331

In view of the foregoing, notwithstanding the identity of the goods in this case and the nature of the purchasers of those goods, we conclude that the differences in **the respective marks makes confusion unlikely.**

**Decision:** The refusal to register is reversed.