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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Northland Seed & Grain Corporation

Serial No. 75/643,321

Jana L. France of Fish & Richardson for Northland Seed & Grain Corporation.

Christopher S. Adkins, Trademark Examining Attorney, Law Office 101 (Jerry Price, Managing Attorney).

Before Seeherman, Hanak and Walters, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Northland Seed & Grain Corporation has filed an application to register the mark NORTHLAND SEED & GRAIN on the Principal Register for, as amended, "agricultural soybean seeds and unprocessed grains for consumption," in International Class 31, "wholesale distributorship featuring oils, agricultural seeds and unprocessed grain for consumption," in International Class 35, and "brokerage in

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the field of oils, agricultural seeds and unprocessed grain," in International Class 36.¹ The application includes a disclaimer of "SEED & GRAIN" apart from the mark as a whole.

The Trademark Examining Attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark NORTHLAND, previously registered for "seeds,"² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

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

¹ Serial No. 75/643,321, filed February 17, 1999, based on use, alleging first use and use in commerce as of June 1, 1998. The application included services in International Class 39 that have been divided out of this application into "child" application Serial No. 75/980,346.

Additionally, after applicant filed its brief in this appeal, the application was remanded, upon the request of the Examining Attorney, who required an amendment to the identification of services on the ground that the services specified in one class should be in two classes. Applicant made the required amendment. Because the goods and services as presently identified in three classes encompass those previously identified in two classes, we have considered the refusal to register to apply to all three classes. Neither the Examining Attorney nor applicant have indicated otherwise.

² Registration No. 104,566 issued in International Class 31 on June 1, 1915, and was renewed for the fourth time in 1995 for a period of ten years. The current owner is NK Lawn & Garden Co.

confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *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.

The Examining Attorney contends that NORTHLAND is the dominant portion of applicant's mark and this term is identical to the registered mark; that the marks, viewed in their entirities, are similar in terms of appearance, sound and connotation; and that NORTHLAND is not a weak mark, despite applicant's list of third-party registrations of the term in connection with unrelated goods and services, because there are no such third-party registrations for NORTHLAND in connection with goods or services that are similar or related to those of applicant. The Examining Attorney contends, further, that applicant's goods are identical to registrant's goods, and identical to the goods that are the subject of applicant's services; that registrant's goods are broadly identified and encompass applicant's goods; and that the channels of trade and class

of purchasers of applicant's and registrant's goods are identical. In support of his position, the Examining Attorney submitted copies of third-party registrations containing identifications of goods that include numerous different types of seeds, including lawn and agricultural seed, in relation to a single mark.

Applicant argues against likelihood of confusion by contending that the marks are not similar when considered in their entireties; that NORTHLAND is a weak mark; that applicant sells its goods to sophisticated professional and commercial buyers; and that applicant's wholesale distribution of its commodities is in large quantities resulting in large, expensive purchases that are made with care; and that most purchases involve face-to-face meetings between applicant's and purchasers' representatives. Applicant contends, further, that the registrant sells only lawn seed and, therefore, applicant's seeds are different from registrant's seeds; that applicant's services are sufficiently different from registrant's goods precisely because they are services; that the trade channels of applicant's goods and services differ from those of registrant's goods; and that there has been no actual confusion over an eight-year period of contemporaneous use.

In support of its position, applicant submitted a list of third-party registrations wherein the marks contain the

term "north"³; the declaration of Peter Shortridge, applicant's president, to the effect that, *inter alia*, applicant has used its mark on seeds since 1992, and there has been no actual confusion. The declaration also lists applicant's annual advertising expenses and sales for 1997 through 1999. With its request for reconsideration, applicant submitted a definition from *Merriam-Webster's Collegiate Dictionary* (10th ed. 1998) of "northland" as "land in the north"; and a list of third-party registrations for marks containing the term "northland" for a wide variety of goods and services unrelated to those involved herein.⁴

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entirety, are similar in terms of appearance, sound, connotation and commercial impression. 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 goods or

³ In order to make these registrations properly of record, soft copies of the registrations themselves, or the electronic equivalent thereof, i.e., printouts of the registrations taken from the electronic records of the Patent and Trademark Office's (PTO) own data base, should have been submitted. See, *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992). However, because the Examining Attorney did not object to, or otherwise address, this submission, we have considered it for whatever probative value it may have. We note that, for the third-party marks including the term "North," applicant has not even listed the identified goods and services, so this evidence is of little, if any, probative value.

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 entirety, 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 1056, 224 USPQ 749 (Fed. Cir. 1985).

The mark in the cited registration is, in its entirety, the term NORTHLAND. Applicant's mark is the term NORTHLAND followed by the generic phrase SEED & GRAIN. Because NORTHLAND appears first in the mark and SEED & GRAIN is generic, we agree with the Examining Attorney that NORTHLAND is the dominant portion of applicant's mark. We find that the overall commercial impressions of applicant's mark and the registered mark are substantially similar. The dictionary definition of "northland" and the list of third-party marks that include the term "northland" lead us to conclude that "northland" is not an arbitrary term and may

⁴ As previously stated, a list of third-party registrations is not the proper way to make this evidence of record. We have, however, considered the evidence for whatever probative value it may have.

be slightly suggestive of geographical locale. However, even considering the list of third-party marks, none of the goods and services listed in connection therewith is even remotely related to the goods and services involved in this case. Thus, there is no basis for concluding that "northland" is a weak mark in connection with the seed industry.

Turning to consider the goods and services involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *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). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise,

because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

Despite applicant's arguments that registrant allegedly limits its products to lawn seed, the goods, "seeds," identified in the cited registration encompass all types of seeds, including those identified in the application. Thus, applicant's goods are encompassed by, and identical to, the goods in the cited registration. Applicant's brokerage and distributorship services pertain to the identified seeds. Clearly, applicant's services in this regard are integrally tied to the goods such that purchasers of the goods and services identified by the same or substantially similar marks are likely to believe that the source or sponsorship of the goods and services is the same. We are not persuaded otherwise by applicant's contentions regarding the purchasers and the circumstances surrounding the purchase of its goods and services. We note that knowledgeable business purchasers are not immune from confusion when the marks are as similar as these marks, the goods are identical and the services pertain to the sale of those goods. *See In re General Electric Company*, 180 USPQ 542 (TTAB 1973).

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Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, NORTHLAND SEED & GRAIN, and registrant's mark, NORTHLAND, their contemporaneous use on the same goods and closely related services involved in this case is likely to cause confusion as to the source or sponsorship of such goods and services.

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