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**THIS DISPOSITION
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Paper No. 9
EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re La Femme Cosmetics, Inc.

Serial No. 75/656,218

Michael A. Painter for La Femme Cosmetics, Inc.

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Before Seeherman, Hanak and Chapman, Administrative
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

La Femme Cosmetics, Inc. (applicant) seeks to register
in typed drawing form LA FEMME for the following goods:
cosmetics, namely, skin cleansing lotion, concealer, cuticle
remover preparation, eye shadow, eye liner, eyebrow pencil,
facial scrub, false eyelashes and adhesive therefor, hand
and body lotion, lipstick, lip gloss, lip liner, liquid and
cream foundation, loose and pressed powder,
facial masques, skin moisturizing lotion, nail

Ser. No. 75/656,218

decals, nail polish, nail polish remover, replenishing cream, rouge and toner. The application was filed on March 8, 1999 with a claimed first use date of August 1957. At page 2 of a paper dated December 29, 1999 applicant stated that "the English translation of the words LA FEMME is 'the woman' or 'the wife.'"

The examining attorney has refused registration pursuant to Section 2(d) of the Trademark Act on the basis that applicant's mark LA FEMME, as applied to applicant's goods, is likely to cause confusion with the mark FEMME, previously registered in typed drawing form for "cosmetic and toilet preparations; namely, perfume and cologne." Registration No. 1,825,704. This registration contains a statement that two of the English translations of the word FEMME are woman and wife.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the examining attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services.

Ser. No. 75/656,218

Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The 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.").

Considering first the marks, we find that applicant's mark LA FEMME is almost identical to the cited mark FEMME in terms of visual appearance, pronunciation and meaning. The similarities in visual appearance and pronunciation are obvious. In addition, we find that there is no meaningful distinction in meaning between "the woman" and "woman" or between "the wife" and "wife."

Moreover, it must be remembered that applicant seeks to register LA FEMME in typed drawing form. Thus, in our likelihood of confusion analysis, we must consider all reasonable manners in which applicant could depict its mark. Phillips Petroleum v. C. J. Webb, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). One reasonable manner of depiction would be to place the LA portion of applicant's mark on one line and the FEMME portion of applicant's mark on a second line, and further to place the LA portion of applicant's mark in slightly smaller lettering than that used for the

Ser. No. 75/656,218

FEMME portion of applicant's mark. When so depicted, applicant's mark would be virtually identical to the registered mark FEMME. Thus, the first Dupont "factor weighs heavily against the applicant" because the two word marks are virtually identical. In re Martin's Famous Pastry Shoppe Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Turning to a consideration of applicant's goods and registrant's goods, we note that because the marks are virtually identical, their contemporaneous use can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically related." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

However, in this case we find that applicant's goods and registrant's goods are very closely related. Even if we accept for the sake of argument applicant's contention that technically perfume and cologne (registrant's goods) are not cosmetics, nevertheless, perfume and cologne are very closely related to many if not most of the goods for which applicant seeks to register LA FEMME. As applicant itself acknowledges at pages 4 and 5 of its brief, goods can be

Ser. No. 75/656,218

related if "they are capable of conjoint use" or if "they can be purchased and used by the same end users." Clearly, perfume and cologne could be used in conjunction with many of applicant's goods including, simply by way of example, lipstick, eye shadow, rouge and skin cleansing lotion. Moreover, it is quite obvious that the same consumers who purchase perfume and cologne would purchase many if not all of the goods for which applicant seeks to register LA FEMME. In this regard, we note that the predecessor to our primary reviewing Court held that cologne and shampoo are related goods in that both are "toilet articles purchased by members of the same general class." Daggett & Ramsdell, Inc. v. Proctor & Gamble Co., 275 F.2d 955, 125 USPQ 236, 238 (CCPA 1960). If cologne and shampoo are related goods, then clearly cologne and skin cleansing lotion (one of applicant's goods) are related. Shampoo serves to cleanse the hair and the scalp, the latter being part of the skin. Skin cleansing lotion also serves to cleanse the skin.

Given the fact that applicant's mark and registrant's mark are virtually identical and the fact that the marks are used on clearly related goods, we find that there exists a likelihood of confusion.

Ser. No. 75/656,218

Decision: The refusal to register is affirmed.

