

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB**

Mailed: November 21, 2002

Paper No. 12
ejs

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Porpoise Pool & Patio, Inc.

Serial No. 75/832,078

H. William Larson of Larson & Larson, P.A. for Porpoise Pool & Patio, Inc.

Brian D. Brown, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Cissel, Seeherman and Hohein, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Porpoise Pool & Patio, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register SUNCOAST GOLD as a trademark for "swimming pool chlorine."¹ Registration has been refused pursuant to

¹ Application Serial No. 75/832,078, filed October 26, 1999, and asserting a bona fide intention to use the mark in commerce.

Ser No. 75/832,078

Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark SUNCOAST, previously registered in Class 20 for "outdoor pools and patio furniture"² that, if used on applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). As applicant has acknowledged, in any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

With respect to the goods, the complementary nature of outdoor pools and swimming pool chlorine is obvious. The chlorine is designed for use in such pools. If a similar mark is used on both, consumers are likely to think that

² Registration No. 1,878,683, issued February 14, 1995; Section 8 affidavit accepted; Section 15 affidavit received.

the maker of the outdoor pools has sponsored or approved the chlorine for use in its pools. The Examining Attorney has also submitted evidence that such goods may be sold by a single party under a single mark. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See **In re Albert Trostel & Sons Co.**, 29 USPQ2d 1783 (TTAB 1993). Although the Examining Attorney has submitted only three such registrations, they serve to reinforce the relatedness of the goods.

Moreover, as applicant has acknowledged at page 4 of its brief, the goods or services of the parties need not be identical or even competitive in order to determine that there is a likelihood of confusion. It is sufficient that the goods or services of the applicant and the registrant are related in some manner or that the circumstances surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that would give rise, because of the marks used thereon, to the mistaken belief that they originate from or are in some way associated with the same producer.

The marks are very similar. The cited mark is SUNCOAST; applicant's mark is SUNCOAST GOLD. Obviously the words SUNCOAST in both marks are identical in appearance, pronunciation and connotation. The addition of the word GOLD in applicant's mark is not sufficient to distinguish them. Again, as applicant has pointed out, a likelihood of confusion is not avoided between otherwise confusingly similar marks merely by adding or deleting matter that is descriptive or suggestive of the named goods or services. Brief, p. 9. In this case, the word GOLD has a laudatory suggestiveness, indicating the superior nature of the product. As such, it is the word SUNCOAST in applicant's mark which is the dominant element, and the commercial impressions of the marks must be considered to be substantially the same.

Applicant also has acknowledged that its goods are a low-cost product, costing "just a few dollars." Response filed April 28, 2000. Purchasers of such products are not likely to undergo extensive deliberations with respect to whether the additional word GOLD in applicant's mark identifies a different source from the source of SUNCOAST outdoor pools, even if they were to note the inclusion of this word. As applicant has also recognized, the test of likelihood of confusion is not whether the marks can be

distinguished when subjected to a side-by-side comparison. Brief, p. 7.

Applicant also argues that applicant's goods would be sold in different sections of retail stores from the goods identified in the cited registration. Even if that were true, it does not avoid a likelihood of confusion. Because swimming pool chlorine is used in outdoor pools, the consumers for the products are the same, and they will encounter both goods and marks even if they are in different sections of a retail store or in a pool supply store and a pool showroom.

Nor are we persuaded that confusion is not likely by applicant's argument that the registrant's goods are expensive, particularly as compared with applicant's goods. The fact that outdoor pools are purchased with care and deliberation does not mean that the purchase of chlorine for those pools would involve a similar degree of care. On the contrary, because of the inexpensive nature of this product, chlorine is not likely to be purchased with care. Moreover, in view of the similarity of the marks, and the complementary nature of the goods, even careful purchasers would be likely to assume that they emanate from the same source.

Ser No. 75/832,078

Finally, applicant points to the fact that two registrations were issued to it despite the existence of the cited registration. Those registrations are for SUNCOAST CHEMICALS COMPANY and SUNCOAST CHEMICAL CO. for chemicals used in the treatment of swimming pools.³ We do not know what occurred when the applications for those marks were examined, but we do note that the marks are different from the mark at issue here. In any event, we are not bound by decisions of Examining Attorneys in other files.

Decision: The refusal of registration is affirmed.

³ Registrations Nos. 2,002,324 and 2,136,462.