

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB

Mailed: June 17, 2004  
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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 Pursell Technologies, Inc.

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Serial No. 75916274

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Request for Rehearing, Reconsideration and  
Modification

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Theodore A. Breiner of Breiner & Breiner, L.L.C. for  
Pursell Technologies, Inc.

Yong Oh (Richard) Kim, Trademark Examining Attorney, Law  
Office 115 (Tomas Vlcek, Managing Attorney).

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Before Simms, Quinn<sup>1</sup> and Hairston, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

On April 21, 2004 applicant filed a request for  
rehearing, reconsideration and modification of the Board's  
decision issued March 19, 2004, wherein the Board affirmed

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<sup>1</sup> Judge Quinn has been substituted for Judge Cissel who has  
retired from government service.

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the refusal to register applicant's mark FARMLINKS for "golf club services" in view of Registration No. 1,547,559 for the mark THE FARM for "recreational services, namely golf and country club services."

In particular, applicant argues that the Board gave insufficient weight to: (1) the existence of Registration No. 2,466,349 for the mark THE OLDE FARM for "golf club services", which is owned by a third party, and (2) the fact that the owner of the cited registration (THE FARM) consented to registration of THE OLDE FARM. Applicant argues that this is evidence that the cited registration is entitled to a limited scope of protection.

Further, applicant contends that the Board erred in finding that applicant's mark FARMLINKS and the cited mark THE FARM have similar commercial impressions.

At the outset, we note that the Board generally does not grant rehearing in connection with a request for reconsideration/modification. Thus, applicant's request for rehearing is denied.

As the Board indicated in its decision, the existence of a single third-party registration does not justify the registration of a confusingly similar mark. It is well settled that third-party registrations are not evidence of use of the marks therein or that the relevant consumers

have been exposed to them. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992) and *AMF Inc. v. American Leisure Products, Inc.* 474 F.2d 1403, 1406, 177 USPQ 268, 269 (CCPA 1973). Compare also *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to (applicant's) application, the PTO's allowance of such prior registrations does not bind the Board or this Court."]

We recognize that the owner of the cited registration (THE FARM) consented to registration of THE OLDE FARM mark. Relying on 1 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §18.25 (3rd ed. 2001) and cases cited therein, applicant argues "when a party gives a consent to another this limits the scope of protection to be accorded the trademark and the registration." (Brief, p. 4). The section of McCarthy's relied on by applicant discusses the effect of consents in infringement actions and inter partes proceedings before the Board; not ex parte cases, as is the case before us. Thus, we are not persuaded from McCarthy's and the cases referenced therein that the cited mark in this case is entitled to a limited scope of protection. Moreover, our primary reviewing court rejected a similar

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argument by the applicant in *In re Majestic Distilling Company, Inc.*, 315 F.23d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In that case, the applicant (Majestic) argued that the owner of the cited registration (Stroh) had entered into agreements with third-parties regarding use of the mark RED BULL. The Court noted that "no presumption can be made that Stroh consents to Majestic's use of the mark or that Stroh has determined or admits that confusion of the public by Majestic's concurrent use of the mark is unlikely." Majestic Distilling, 65 USPQ2d at 1205.

With respect to the commercial impressions created by the marks, applicant argues that we have dissected the marks and that there is no evidentiary basis for our statement that purchasers may believe that the golf club services offered by applicant under the FARMLINKS mark represents a new golf course from the same source as THE FARM golf club services.

The purpose of reconsideration is to point out errors made by the Board in making its decision, not to merely reargue the case as applicant has done. The basis for the finding that the involved marks create similar commercial impressions is clearly articulated therein and we do not find any error in reaching that finding.

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In view of the foregoing, applicant's request for reconsideration and modification of the Board's decision is denied, and the decision of March 19, 2004 stands.