

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re TWN Sons, LLC

Serial No. 76/010,402

Thelma E. Naval for TWN Sons, LLC.

Jeffrey C. Coward, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Hanak, Bottorff and Drost, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge.

TWN Sons, LLC (applicant) seeks to register BIDET
FRENCH MILLED SOAP and design in the form shown below for
"bar soap." The application was filed on March 27, 2000
with a claimed first use date of March 19, 2000.

Citing Section 2(d) of the Trademark Act, the
Examining Attorney has refused registration on the basis

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that applicant's mark, as applied to bar soap, is likely to cause confusion with the mark BIDETTE and design, previously registered in the form shown below for "disposable fibrous pads impregnated with a skin cleansing antiseptic and deodorizing preparation." Registration No. 813,590.

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. 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.").

Marks are compared in terms of visual appearance, pronunciation and meaning. In terms of visual appearance, the two marks are quite distinct. The registered mark is depicted in conventional, easy to read script. In stark contrast, the large, non-descriptive word in applicant's mark (BIDET) is depicted in a unique, elongated script. Indeed, applicant's script is so unique that one could easily read the initial letter in BIDET not as a "b" but rather as an "l." In this regard, we note that applicant has disclaimed the descriptive wording FRENCH MILLED SOAP. In addition, the design portions of both marks are quite different. Applicant's mark features a fountain of water whereas registrant's mark features a flower.

In terms of pronunciation, applicant's four word mark is clearly distinct from registrant's one word mark. Even if we were to focus simply on the BIDET portion of applicant's mark, we are of the belief that given the fact that this is a word in the English language (albeit of French origin), it would be pronounced in a clearly different manner than would registrant's arbitrary mark BIDE~~TTE~~.

Finally, in terms of meaning, applicant's mark BIDET is a word which means "a low, bowl-shaped bathroom fixture, with running water, for bathing the crotch." Webster's New

World Dictionary (1996). In contrast, registrant's mark would be viewed as an arbitrary term, or perhaps as a feminine first name.

In sum, we find that the marks are extremely different in terms of visual appearance. Moreover, they also have significant differences in terms of pronunciation and meaning.

Turning to a consideration of the goods, in an attempt to show that bar soaps are related to disposable fibrous pads impregnated with a skin cleansing antiseptic and deodorizing preparation, the Examining Attorney has made of record third-party registrations. We have two concerns with these third-party registrations.

First, the third-party registrations made of record by the Examining Attorney cover anywhere from fifteen to well over fifty types of goods. For example, third-party Registration No. 2,516,797 covers over 100 different types of goods including such diverse products as nail tips, eye pencils, sun blocks and the like. It appears that the third-party registrations made of record involve house marks and thus are of minimal value in showing that applicant's bar soaps are related to registrant's disposable fibrous pads impregnated with a skin cleanser antiseptic and deodorizing preparation.

Second, the vast majority of the third-party registrations made of record by the Examining Attorney do not cover registrant's particular type of goods, but rather cover soaps and the very broad category of "skin cleansers." While registrant's goods could be considered "skin cleansers," so could many other types of products including those that consist simply of liquids that do not involve any pads, fibrous or otherwise.

In sum, given the clear differences in the marks and the fact that on this particular record we can simply say that applicant's goods and registrant's goods are related only to the extent that they clean the body, we find that there exists no likelihood of confusion.

Decision: The refusal to register is reversed.

Drost, Administrative Trademark Judge, dissenting:

I would affirm the refusal to register for the following reasons.

First, I believe that the marks are similar in sound, appearance, meaning, and commercial impression.

The majority finds that the visual appearance is "quite distinct" with applicant's mark depicted in "a unique, elongated script."



In this admittedly somewhat subjective determination, I would find that the script of both marks seems to be a similar cursive or longhand style of presenting the marks. While registrant's style is crisper, I do not see any significant difference in the style of the script.

Another difference is that applicant begins its mark with a small letter "b," while registrant's mark is

capitalized. This difference in capitalization is not unusual, and while the majority observes that applicant's initial letter may be viewed as an "l," this is also not unusual when the letters "b" and "l" are written in cursive.

Besides the word BIDEET or BIDEETTE, the only other differences between the marks are the different designs in the marks (a small flower in registrant's mark and a fountain of water design in applicant's mark) and applicant's inclusion of the words "French Milled Soap." Disclaimed matter is often "less significant in creating the mark's commercial impression." In re Code Consultants Inc., 60 USPQ2d 1699, 1702 (TTAB 2001). In this case, applicant's design mark shows the disclaimed terms in smaller type below the term "bidet" making it less likely that prospective purchasers would use this highly descriptive or generic terminology to distinguish the marks. See In re Azteca Restaurant Enterprises Inc., 50 USPQ2d 1209, 1211 (TTAB 1999) ("On applicant's menus, which are the specimens of record, the [disclaimed] words appear on a line below the term AZTECA and are in smaller type than the term AZTECA. Certainly, when applicant's mark is viewed as a whole, it is the term AZTECA which is the dominating and distinguishing element thereof"). In

addition, applicant's specimens emphasize the "bidet" portion of the mark by using that word several other times ("Bidet Pour Femme," "BidetSoap," and www.bidetsoap.com).

I also believe that the words could, and likely would be pronounced similarly. Normally "there is no correct pronunciation of a trademark." In re Belgrade Shoe Co., 411 F.2d 1352, 162 USPQ 227, 227 (CCPA 1969). See also Interlego AG v. Abrams/Gentile Entertainment Inc., 63 USPQ2d 1862, 1863 (TTAB 2002). In this case, while the term "bidette" may not have an established dictionary pronunciation, it is not clear why prospective purchasers would not pronounce it in a manner similar to applicant's word "bidet." The pronunciation of "bidet" itself is not entirely uniform. See Funk & Wagnalls New "Standard" Dictionary of the English Language (1952) (bi-det³ or bi-dēt'); Webster's Third New International Dictionary of the English Language Unabridged (1986) (bɪ'det or bē-, 'dā); and The Concise Oxford-Hachette French Dictionary (1995) ('bi:det, US bi:'det).¹ If the pronunciation of "bidet" can vary, there is no reason why registrant's mark, which is not in the dictionary, "would be pronounced in a clearly

¹ We, of course, can take judicial notice of dictionary definitions. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

different manner." The examining attorney's argument that the "marks in question clearly could be, and likely would be, pronounced the same" is reasonable.

In terms of meaning, I would find that prospective purchasers would view registrant's mark as "an unconventional spelling" of the word "bidet" as the examining attorney suggests. Office Action dated September 19, 2000, p. 2. The meaning of the marks would, therefore, be very similar. Purchasers are much more likely to view the mark "bidette" as a misspelling of the word "bidet" than they would be to view it as a feminine first name.

Overall the marks are similar in sound, appearance, and meaning, and their commercial impressions are also similar. The similarities of the mark outweigh their differences.

As to the goods, I would likewise find that they are similar. Registrant's goods are "disposable fibrous pads impregnated with a skin cleansing antiseptic and deodorizing preparation." Applicant's specimens make clear that its "bar soap" is "formulated for a woman's most intimate body areas" and it is used "to clean and deodorize." Indeed, applicant itself concedes that "registrant['s] and applicant's products are used/applied to women's intimate parts." Brief at 2. Applicant

distinguishes the goods only on the basis that "applicant's packaging states that its products are also 'good for the whole body.' Registrant['s] pads cannot be intended for the whole body." Id. While there is no doubt that the goods are not identical, purchasers of registrant's pads for cleaning and deodorizing "women's intimate parts" would likely overlap with the purchasers of applicant's bar soap that does the same thing. To the extent that this point is contested, the examining attorney has present at least some evidence that the same source sells soap and wipes under a common mark. See Registration No. 2,336,126 ("hand soap; hand and body lotion; and disposable hand wipes impregnated with a cleansing solution"); No. 1,866,677 ("Antibacterial cleansing soap and impregnated wipes for cleaning"); and No. 2,225,948 ("pre-moistened disposable wipes impregnated with compounds for personal hygiene, skin care products for the human body, namely liquid and powdered soap, hair and body shampoo, hand and body creams and lotions, non-medicated moisture barrier skin treatment"). This evidence rebuts applicant's unsupported argument that the fact that registrant's goods do not require water and applicant's do is significant.

Because the marks are similar and the goods are sold to the same purchasers for the same or related purposes, I

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would find that potential purchasers are likely to believe that the source of the goods are associated in some way. Therefore, I would hold that there is a likelihood of confusion in this case.