

Hearing:
September 19, 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Safeguard Self Storage, Inc.

Serial Nos. 76/004,339; 76/066,280; and 76/066,281

Bryan Haynes of Locke Liddell & Sapp LLP for Safeguard Self Storage, Inc.

Leslie L. Richards, Trademark Examining Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).

Before Seeherman, Hanak and Hairston, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Safeguard Self Storage, Inc. (applicant) seeks to register SAFEGUARD SELF STORAGE (Serial No. 76/004,339), SAFEGUARD SELF STORAGE and design (Serial No. 76/066,280, below left) and THE SAFEGUARD GUARANTEE and design (Serial No. 76/066,281, below right). The first application was filed on March 20, 2000, and the latter two applications were filed on June 7, 2000. The first two applications claimed a first use date of January 1992, and the third

Ser. Nos. 76/004,339; 76/066,280; 76/066,281

application claimed a first use date of May 1997. In each of the applications, the services are identified as "providing secure self-storage facilities for lease to the public." At the request of the Examining Attorney, applicant disclaimed the exclusive rights to the words SELF STORAGE and the word GUARANTEE.

Citing Section 2(d) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's marks, as applied to applicant's services, are likely to cause confusion with the mark SAFE-GUARD, previously registered in typed drawing form to United Van Lines, Inc. for "moving, trucking, hauling, and storing special shipments, including missile components, electronic equipment, aircraft, exhibitors and convention exhibits and fragile and high value equipment." Registration No. 702,716. When the refusal to register was made final,

applicant appealed to this Board. On February 27, 2002 applicant filed a motion to consolidate the three applications. This motion was granted by the Board on May 7, 2002. Applicant and the Examining Attorney filed briefs and were present at a hearing held on September 19, 2002.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the goods or services and the similarities of the marks. 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 [or services] and differences in the marks.").

Considering first the marks, they are similar to the extent that applicant's three marks and the registered mark all contain the word "safeguard." However, as applied to applicant's self storage services and registrant's specialized moving services, this word is highly suggestive. Applicant has made of record an excerpt from Webster's Ninth New Collegiate Dictionary (1985) wherein this word is defined as follows: "convoy, escort ... to make safe." It has been held that the mere presence of a common, highly suggestive word is often insufficient to support a finding of likelihood of confusion. Tektronix,

Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693, 694 (CCPA 1976). Nevertheless, despite the highly suggestive character of the word "safeguard" as applied to applicant's and registrant's services, we would find that there exists a likelihood of confusion if the services were identical or closely related.

Turning next to a consideration of applicant's services and registrant's services, while registrant's recitation of services contains the word "storing," this word must be considered in the context of the overall recitation of services. As previously noted, that recitation of services reads as follows: "moving, trucking, hauling, and storing special shipments, including missile components, electronic equipment, aircraft, exhibitors and convention exhibits and fragile and high value equipment." (Emphasis added). It is apparent from registrant's recitation of services that registrant's "storing" services are but a part of registrant's "moving, trucking and hauling" services. One does not separately "store" shipments. In other words, registrant is not offering storage services by themselves, but rather is simply offering storage services as part of its moving, trucking and hauling services. A customer could have registrant move its special shipment from, for example, New York to

Chicago, and if the customer was not ready to immediately receive the shipment, registrant would store the shipment on a temporary basis in the Chicago area.

Moreover, applicant has properly made of record a brochure entitled "Safe-Guard Moving Service" put out by registrant United Van Lines, Inc. This brochure makes clear that registrant's storing services are but an ancillary service to its moving services. In making of record this brochure, applicant was not improperly attempting to limit registrant's recitation of services, but rather was presenting extrinsic evidence in an effort to clarify the nature of registrant's services. In re Trackmobile, 15 USPQ2d 1152, 1153-54 (TTAB 1990).

In addition, the brochure made of record makes clear that registrant's moving, trucking, hauling and storing services are limited to special shipments, a limitation contained in the very recitation of services itself. These special shipments include missile components, electronic equipment, aircraft, convention exhibits and high value equipment. In other words, registrant's own recitation of services has limited its services in a manner that they involve only special shipments, that is, the type of shipments that would involve customers exercising great care. As our primary reviewing Court has made clear, there

Ser. Nos. 76/004,339; 76/066,280; 76/066,281

is less likelihood of confusion where the goods "are purchased after careful consideration." Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992).

In sum, given the highly suggestive nature of the only component common to applicant's marks and registrant's mark; the fact that applicant's self-storage services and registrant's specialized moving and ancillary storing services are only tangentially related; and the fact that registrant's specialized moving and tangential storing services are purchased with great care, we find on this record that there exists no likelihood of confusion resulting from the use of any of applicant's marks and registrant's mark.

Decision: The refusal to register is reversed.