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Paper No. 9
Mailed on:
March 6, 2003
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Angelo Brothers Company

Serial No. 76/088,062

Arthur H. Seidel of Drinker Biddle & Reath LLP for Angelo Brothers Company.

William T. Verhosek, Trademark Examining Attorney, Law Office 114 (Margaret K. Le, Managing Attorney).

Before Bucher, Bottorff and Rogers, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Angelo Brothers Company seeks registration for the mark ADVANTAGE PLUS for "ceiling fans," in International Class 11.¹ This case is now before the Board on appeal from the final refusals of the Trademark Examining Attorney to register this mark (1) under Section 2(d) of the Trademark Act (15 U.S.C. §1052(d)) on the ground that applicant's

¹ Application Serial No. 76/088,062 was filed on July 13, 2000, based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

mark, when applied to applicant's goods, so resembles ADVANTAGE, a trademark owned by NSI Enterprises, Inc., previously registered on the Principal Register and used in conjunction with "electric lighting fixtures," also in International Class 11,² as to be likely to cause confusion, to cause mistake, or to deceive; and (2) that applicant has failed to comply with the requirement to disclaim the word "Plus" apart from the mark as shown.

Applicant and the Trademark Examining Attorney have fully briefed the case, but applicant did not request an oral hearing.

We affirm both refusals to register.

Responsive to the refusals to register, applicant argued: that the term "Advantage" is commonly used as a source indicator, and, hence, the cited mark is relatively weak and entitled to only a narrow scope of protection; that the courts have held the word "Advantage" is lacking in originality and uniqueness; that despite the common elements of the two marks, the marks are not confusingly similar when compared in their entireties; and, that the goods are relatively expensive rational purchase goods that

² Registration No. 1,623,522 issued to National Service Industries, Inc. on November 20, 1990; Section 8 affidavit accepted and Section 15 affidavit acknowledged; renewed.

will be bought with the utmost care. Applicant also argues that there is no evidence that the word "Plus" needs to be disclaimed for goods such as applicant's in International Class 11.

On the other hand, the Trademark Examining Attorney argues: that applicant's mark is highly similar to the cited mark; that ADVANTAGE is not a weak mark as applied to household fixtures such as electric lighting and ceiling fans; that electric lighting and ceiling fans are closely related items; and that the word "Plus" is merely descriptive, and hence must be disclaimed herein.

The evidence of record includes: (1) the Trademark Examining Attorney's submission of copies of the data from dozens of federal registrations purporting to show a relationship between electric lighting fixtures and ceiling fans; (2) the Trademark Examining Attorney's submission of copies of applicant's webpages as well as the webpages of third-parties in the field of household fixtures, particularly those selling electric lighting and ceiling fans; (3) the Trademark Examining Attorney's submission of copies of the data from federal registrations where third parties disclaimed the word "Plus," specifically stressing examples of registrations covering goods in International Class 11; and (4) applicant's submission of copies of data

on third party registrations containing the word "Advantage," in support of applicant's argument that this is a weak term in the field of household fixtures.

Likelihood of Confusion

In the course of rendering this decision, we have followed the guidance of In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973). The du Pont decision sets forth the factors that should be considered, if relevant, in determining likelihood of confusion.

Turning first to the similarities/dissimilarities in the marks, we agree with the Trademark Examining Attorney that the marks of registrant and applicant are highly similar. The word "Advantage" is the whole of registrant's mark and the dominant term in applicant's mark. Despite the fact that the word "Advantage" may be suggestive of household fixtures, even suggestive marks are entitled to protection against registration of a substantially similar mark used in connection with closely related goods. See In re Textron Inc., 180 USPQ 341 (TTAB 1973).

As to the respective sounds of the two marks, "Advantage" makes up the first three of four syllables of "Advantage Plus." As to the appearance of the two marks,

"Advantage" makes up the first nine of the thirteen letters of registrant's "Advantage Plus" mark.

As to the connotation of the two marks, the word "Plus" in applicant's mark follows the leading word, "Advantage," and is lauditorily descriptive³ of applicant's goods. The two marks have the same basic connotation of a product with an advantage over competitive products. Applicant's addition of the word "Plus" to registrant's mark does not alter the connotation. Applicant's composite mark is akin to "added advantage" or "extra advantage."

Accordingly, we find that these two marks are quite similar as to overall commercial impression.

We turn next to the number and nature of similar marks in use on similar goods. Applicant argues that "there are over 2,000 subsisting United States trademark registrations and pending applications for a mark which includes 'ADVANTAGE'" (applicant's appeal brief, p. 2).

On the other hand, the Trademark Examining Attorney correctly points out that of the four third-party registrations explicitly pointed out by applicant, only one is at all close, but even then, that "commercial food refrigerators" are still quite different from the household

³ **Plus:** (adj) ... (2) Added or extra ... The American Heritage Dictionary of the English Language (3rd Ed. 1992).

fixtures of registrant and of applicant.⁴ Although applicant argues that "[t]he courts have frequently held 'ADVANTAGE' as a mark component to be inherently weak ..." (applicant's appeal brief, p. 2), the two district court cases cited by applicant are not persuasive in the instant case. For example, the fact that "the word 'Advantage' is used in the scoring of tennis" was most relevant to a discussion of marks for tennis glasses and tennis rackets, but is largely irrelevant to the instant determination.

Turning next to the relationship of the goods, the Trademark Examining Attorney contends that ceiling fans and electric lighting fixtures are frequently sold under the same mark. He demonstrates this by including copies of dozens of third-party registrations where applicant's goods and registrant's goods are sold under the same mark. This is buttressed by copies of websites showing ceiling fans

⁴ While the Trademark Examining Attorney did not object to applicant's Exhibit A, attached to its response of July 23, 2001, we note that these four alleged third-party registrations in International Class 11 where the marks contained the word ADVANTAGE were not properly made of record. In order to make third-party registrations of record, soft copies of the registrations or photocopies of the appropriate United States Patent and Trademark Office electronic printouts should be submitted. See Weyerhaeuser Co. v. Katz, 24 USPQ2d 1230 (TTAB 1992).

Moreover, even if these registrations had been properly made of record, such registrations are not evidence of commercial use of the marks shown therein, or of the state of the marketplace for the goods identified in the registrations. Olde Tyme Foods Inc. v. Roundy's Inc., 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992).

and electric lighting fixtures featured alone on the same page, including examples where they are sold as a single unit. In fact, applicant's own webpages show that it is involved in marketing both ceiling fans and electric lighting fixtures. Hence, we find that these goods are closely related.

Similarly, as to a related du Pont factor, as noted above, the Internet evidence placed into the record by the Trademark Examining Attorney shows that these goods often move in the same channels of trade.

As to the conditions under which and buyers to whom sales are made, applicant argues that "[i]t has long been recognized that relatively expensive rational purchase goods, namely goods purchased with care, such as ceiling fans and lighting fixtures, minimize a likelihood of confusion" (applicant's brief, p. 6). However, the Internet evidence includes claims of "Low Prices Guaranteed," "Unbeatable Prices," and "Satisfaction Guaranteed." Additionally, the cheapest fans and the least expensive lighting fixtures are inexpensive enough that we do not find this argument persuasive of a contrary result herein. Hence, we find that these goods are directed to all consumers, including those who are no more than "reasonably prudent."

Disclaimer requirement

The Trademark Examining Attorney has placed a dictionary entry into the record containing definitional listings for the word "Plus." These include "added" or "extra." In addition to the fact that we earlier found this term to be lauditorily descriptive, it is also relevant in the context of the instant case that as seen above in the Internet evidence of record, many of the websites use the combined term "lighting and ceiling fans." Hence, to the consumer who is acquainted with registrant's use of ADVANTAGE for lighting fixtures, the use of ADVANTAGE PLUS may be seen as the addition of a new line of ceiling fans to registrant's extant line of lighting fixtures. It is also clear from the data contained within third-party registrations that, contrary to applicant's position, the word "Plus" is indeed disclaimed for a variety of durable goods in International Class 11. Accordingly, we find that the word "Plus" in the context of applicant's mark is merely descriptive and must be disclaimed apart from the mark as shown.

Decision: The refusals to register (1) under Section 2(d) of the Trademark Act, and (2) because applicant has failed to disclaim the word "Plus," are hereby affirmed.