

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

Hearing:  
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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 A.C.E. International Company, Inc.

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Serial No. 76/120,896

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John H. Pearson, Jr. and Daniel J. Mansur of Pearson & Pearson, LLP for A.C.E. International Company, Inc.

Douglas M. Lee, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

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Before Seeherman, Walters and Rogers, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

A.C.E. International Company, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register COBRA in the stylized form shown below for "protective helmets for welding."<sup>1</sup>

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<sup>1</sup> Application Serial No. 76/120,896, filed September 1, 2000, and asserting a bona fide intention to use the mark in commerce.



Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark COBRA, previously registered for "protective gloves for industrial use"<sup>2</sup> that, if used on applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Both applicant and the Examining Attorney filed appeal briefs, and both appeared at an oral hearing before the Board.

We affirm the refusal of registration.

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). 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).

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<sup>2</sup> Registration No. 2,462,645, issued June 19, 2001.

Turning first to the marks, they are virtually identical. They are identical in pronunciation, and nearly so in appearance, since the protection for the cited mark, which is depicted in typed form, extends to the type of stylization in which applicant's mark is shown.

We also find that they have the same connotation, despite applicant's argument that, when used in connection with protective helmets, the commercial impression created by the mark "is that the goods create a hood or a helmet," and that "the use of Applicant's mark COBRA AND DESIGN in relation to welding helmets creates a commercial impression of something that covers the head." Brief, p. 8. In connection with this argument, applicant has requested that we take judicial notice of the dictionary definition of "cobra" as "any of several very venomous snakes of Asia and Africa that when excited expand the skin of the neck into a broad hood," a request we hereby grant.<sup>3</sup>

To the extent that applicant is asserting that its mark COBRA does not have the connotation of the snake, but of something that covers the head, we most definitely disagree. The word COBRA in applicant's mark will clearly

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<sup>3</sup> The Merriam-Webster Dictionary. The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

be understood by customers as referring to the snake, rather than to "something that covers the head." Further, even if we accept that the connotation of applicant's mark, when considered in relation to the goods, is of the cobra and its broad hood, registrant's mark COBRA also has the connotation of that snake with its distinctive hood.

Thus, we find that the commercial impressions of the two marks are the same.

With respect to the goods, we accept applicant's statement that "any purchaser would know the difference between welding helmets for heads and gloves for hands." Brief, p. 5. However, the question is not whether consumers think the goods are the same, but whether they are likely to believe that the source of the goods is the same. It is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken

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belief that they originate from the same producer. In re Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

In order to demonstrate that the goods are related, the Examining Attorney has made of record many third-party registrations showing a single mark has been registered for both protective helmets and protective gloves, including Registration No. 2,527,915 for, inter alia, safety products namely helmets and protective gloves; Registration No. 2,394,824 for, inter alia, welding helmets and protective leather welding gloves; Registration No. 2,488,134 for, inter alia, industrial safety articles namely protective work gloves and gauntlets for industrial use, protective helmets and protective gloves; Registration No. 1,554,447 for, inter alia, safety equipment, namely protective helmets, gloves for use in welding; Registration No. 2,378,050 for, inter alia, welding helmets and protective gloves for industrial use; and Registration No. 2,187,124 for, inter alia, protective helmets and protective gloves. 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).

The Examining Attorney has also submitted excerpts from various websites which show listings for both protective helmets and protective gloves. For example, one page of the website for Galeton Gloves and Safety Products lists both welding helmets and welding gloves ([www.galeton.com](http://www.galeton.com)); a page of the website for Magid Glove and Safety Manufacturing lists industrial work gloves and welding helmets ([www.magidgloves.com](http://www.magidgloves.com)); an excerpt from A&A Glove & Safety Co.'s website bears the slogan "Glove & Safety Supplies at The Best Prices," and includes both welding helmets and an extensive list of gloves ([www.aaglove.com](http://www.aaglove.com)); a page of the website for welding-direct.com lists both welding helmets and welders gloves ([www.welding-direct.com](http://www.welding-direct.com)); and a page of the website for Corp Brothers Inc. Safety Equipment lists both welding gloves and welding helmets ([www.corpbrothers.com](http://www.corpbrothers.com)).

In addition, applicant has acknowledged that its identified protective helmets for welding and the protective gloves for industrial use are not only protective gear, but that welders can use both helmets and gloves.

Applicant argues that the mere fact that its goods and those identified in the cited registration are protective clothing is not sufficient to show that the goods are

related, contending that there would be no point in requiring applicants to specify the type of protective equipment that they sell if protective equipment is automatically considered to be related. Applicant claims that the determination of likelihood of confusion must be based "upon the realities of how products are sold or marketed." Brief, p. 13. Even if we accept that equipment which protects the head and equipment which protects the hands are not intrinsically related, in this case we have far more evidence of the relatedness of the goods. They are complementary items which can be used by the same individuals for the same purpose, namely, for protection (in the case of applicant's goods, protection of the head, and in the case of the registrant's goods, of the hands). The third-party registrations indicate that both types of products may emanate from a single source, and be sold under a single mark. Further, the Internet evidence indicates that both types of products may be sold through the same outlets.

With respect to the latter point, applicant asserts that "the websites merely demonstrate that large retail establishments or mail-order houses sell every conceivable type of protective equipment, tools, etc." Brief, p. 10. Applicant goes on to assert that protective gloves and

welding helmets are normally sold in separate sections of stores, and "as evidence that the protective gloves and welding helmets are sold in different sections of large stores, the Applicant refers to the websites attached to Examining Attorney's final office action." Brief, p. 11. However, the evidence applicant relies on does not support its point; on the contrary, most of the website excerpts show both protective gloves and welding helmets listed on the same page.

We find that the Office has met its burden of showing that applicant's goods and the goods identified in the cited registration are related, and may be sold through the same channels of trade.

Applicant has also asserted that the purchasers of the involved goods are sophisticated, and use great care. Applicant points out that the skilled purchasing agents for welding shops "know the difference between protective gloves for industrial use and Applicant's welding helmets to be used on the heads of welders." Brief, p. 5.

Although we have no doubt that the purchasers of these goods will be able to tell the difference between the goods, as we stated previously, the issue is whether they will be confused as to the source of the goods. Even careful and sophisticated purchasers, upon seeing the

virtually identical COBRA marks involved herein on closely related goods, are likely to believe that both the gloves and helmets emanate from the same source.

Finally, applicant has argued that "the United States Patent and Trademark Office has established a policy of allowing the registration of the similar marks in the same class if the goods or services are slightly different." Brief, p. 14. In support of this position, applicant has pointed to four registrations for INTELLISENSE, which is obviously a totally different mark from COBRA.<sup>4</sup> Although the number and nature of similar marks in use on similar goods is a duPont factor, and third-party registrations for similar marks may indicate that a term has a particular significance within an industry, the fact that there are third-party registrations for the mark INTELLISENSE is totally irrelevant to our consideration of whether COBRA in stylized form for protective helmets for welding is likely

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<sup>4</sup> The Examining Attorney has objected to consideration of these registrations because they were not properly made of record. It is true that applicant submitted only a list showing the mark, registration number and goods, and this is not the proper manner to make third-party registrations of record. See *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1978). However, applicant did submit this list in its response to the first Office action, and the Examining Attorney never advised applicant that this was not an acceptable way to make the registrations of record. Accordingly, we deem the Examining Attorney to have waived any objection to the registrations, and we will consider the list for whatever probative value it may have.

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to cause confusion with COBRA for protective gloves for industrial use. Based on the record before us, COBRA is an arbitrary mark for the registrant's protective gloves, and the registration is therefore entitled to a broad scope of protection, protection which certainly extends to prevent the registration of applicant's virtually identical mark COBRA for protective helmets for welding.

Decision: The refusal of registration is affirmed.