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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Alfa Manufacturing Industries, Inc.

Serial No. 76194428

Vangelis Economou of Ladas & Parry for Alfa Manufacturing
Industries, Inc.

Raul F. Cordova, Trademark Examining Attorney, Law Office
114 (Leslie Bishop, Acting Managing Attorney).

Before Hairston, Walters and Bucher, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Alfa Manufacturing Industries, Inc. seeks registration
on the Principal Register of the stylized mark ALFA TOOLS
MEGACUT as shown below:

**ALFA TOOLS
MEGACUT**

for goods identified in the application, as filed, as follows:

"abrasive cutting and grinding wheels, diamond cutting blades and diamond core bits," in International Class 7.¹

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has held that applicant's mark, when used in connection with the identified goods, so resembles three registered trademarks owned by two different entities, as follows:



for "hand held tools for grinding, abrading, polishing and cutting ceramic tile, marble, granite, stone, and masonry, and accessories and replacement parts therefor, namely, grinding, abrading, polishing and cutting disks and wheels," in International Class 8;²

¹ Application Serial No. 76194428 was filed on January 16, 2001 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. The word TOOLS is disclaimed apart from the mark as shown.

² Reg. No. 2430979 issued to NAO Enterprise, Inc. dba Alpha Professional Tools Corporation on February 27, 2001, based upon an allegation of use in commerce at least as early as May 1987.

ALPHA

for "powered tools for grinding, abrading, polishing and cutting ceramic tile, marble, granite, stone, and masonry, and accessories and replacement parts therefor namely, grinding, abrading, polishing and cutting disks and wheels" in International Class 7;³

and

ALPHA

for "power operated machine tools, namely, drills for cutting metal in industrial applications," in International Class 7.⁴

The Trademark Examining Attorney and applicant have fully briefed the case. Applicant did not request an oral hearing before the Board.

We affirm the refusal to register in connection with each of the cited registrations.

In arguing for registrability, applicant contends that when these respective marks are considered in their entireties, applicant's mark creates an entirely different commercial impression from those of the cited marks for the following reasons, including the fact that given the nature of the goods, the Trademark Examining Attorney has

³ Reg. No. 2431014 issued to NAO Enterprise, Inc. dba Alpha Professional Tools Corporation on February 27, 2001, based upon an allegation of use in commerce at least as early at May 1987.

⁴ Reg. No. 2606248 issued to Sandvik AB, a Swedish corporation, on August 13, 2002 based upon an allegation of use in commerce at least as early at March 1983.

incorrectly placed a disproportionate emphasis on the phonetic similarity of these marks:

- Applicant's mark will be seen visually by the customer at the point of purchase. It will not be encountered by a listener in the auditory form.
- Customers will not confuse the graphic or special-form drawing of ALFA TOOLS MEGACUT (utilizing stylized letters contained within a rounded banner) with the typewritten ALPHA marks.
- When the words "Alpha" and "Alfa" are viewed as a whole, they are not at all similar in appearance, sound or meaning.
- Phonetic similarity as emphasized by the Trademark Examining Attorney is merely one element to consider; by contrast, the Trademark Manual of Examining Procedure says that "similarity of the marks in one respect - sight, sound or meaning - will not automatically result in a finding of likelihood of confusion ... " TMEP §1207.01(b)(1) [emphasis supplied by applicant]. Rather, any similarity in pronunciation must be weighted against the dissimilarity in appearance, connotation and all other factors.
- The term MEGACUT is the most significant portion of applicant's composite mark.
- The connotation of the marks is different inasmuch as "Alpha" is the first letter of the Greek alphabet whereas "Alfa" is a "communications code word for the letter 'a'."
- ALFA in the applicant's mark is fanciful, and might well be considered by consumers to be an acronym or a letter combination that is totally independent of any definable word.
- None of the cited reference marks include any equivalent of the term MEGACUT.
- Both the ALFA TOOLS portion of mark and the MEGACUT portion of mark are the subject of extant U.S. Trademark Registrations.

As to the goods, applicant also argues that applicant's industry-specific goods are different from the goods of the cited registrations and travel in different channels of trade, specifically contending that:

- Applicant's goods are not similar to the goods of the registrations, i.e., the cited goods are specialty tools directed to ceramic tile layers engaged in using grinding wheels and related goods (tools for polishing granite and stone in the masonry fields), while applicant's goods are sold to the general consumer in hardware stores, home improvement and utility outlets, etc.

As to other du Pont factors, applicant argues, *inter alia*, that applicant's customers are sophisticated purchasers, and that ALPHA-formative marks are not that strong in International Class 7. Applicant's arguments can be summarized as follows:

- All the cited goods are relatively expensive, that they are specialty tools directed to sophisticated customers and that this combination suggests "care in purchasing," which precludes "impulse" buying and minimizes likelihood of confusion herein.
- The ALFA TOOLS portion of applicant's mark is a house mark, used with all of applicant's goods, but each of its separate lines have a unique product mark, e.g., the ALFA TOOLS MEGACUT mark is not used in conjunction with its construction and masonry tools (as implied by the Trademark Examining Attorney). Rather, applicant uses other product marks for identifying those goods.

- The ALPHA or ALFA terms comprise weak marks, and both are incorporated into many different composite marks (e.g., 1522 separate trademark using ALPHA, ALFA and variants thereof) used in connection with tools and machinery, including fifty-five registrations and applications of the ALPHA, ALFA and variant marks covering goods classified in International Class 7 alone.
- When a word mark is relatively weak, the identical literal element, when displayed in a different visual format, can be enough to avoid a likelihood of confusion.

By contrast, the Trademark Examining Attorney takes the position that the marks are phonetically identical; that the nuanced differences in connotation argued by applicant will elude most consumers; that the involved marks create nearly the same overall commercial impressions; third-party registrations generally are of little value, and the three specific examples offered herein by applicant covered goods in different but highly specialized trades; that as to the relatedness of the goods, when compared with the goods of the first cited registrant, N.A.O., applicant's "cutting wheel" and "blades" could be seen as "cutting machines and replacement parts," and both applicant and N.A.O. "engage in manufacturing metal components for working tool machines"; that as to the relatedness of the goods, when compared with the goods of the second cited registrant, Sandvik AB, it

appears as if applicant's goods are closely related if not identical (e.g., drills and bits are similar and have same function); and the applicant's goods would move through the same channels of trade as do registrants' goods to the same classes of consumers.

Our determination under Section 2(d) is based upon an analysis of all of the facts in evidence that are relevant to the factors bearing upon the issue of likelihood of confusion. 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 relationship of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Accordingly, we turn first to the du Pont factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound and connotation.

Applicant has conceded that the ALFA portion of its mark, when spoken, has an identical pronunciation to the ALPHA portions of the cited marks. However, applicant argues, in the circumstances of this case, that this similarity in the sound of the respective marks should not be determinative:

With regard to the similarity in sounds of the Applicant's ALFA TOOLS MEGACUT Mark and of the ALPHA Marks, it should be understood that Applicant's mark is most commonly observed by the customer in its graphic form at the point of purchase. It is not, as a matter of course, heard in the auditory form. It is respectfully suggested that a customer is not likely to confuse the graphic ALFA TOOLS MEGACUT with the written word mark of ALPHA Marks.

...
Applicant respectfully submits that "phonetic similarity is merely one element to consider in laying out a mosaic of pieces which may or may not add up to a likelihood of confusion as to overall impression." J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION §23:22, at 23-77 (4th ed. 2003), [citations omitted] ... [T]he *Trademark Manual of Examining Procedure* is clear that regarding "word marks", "(s)imilarity of the marks in one respect - sight, sound or meaning - will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related." TMEP §1207.01(b)(i) (emphasis added), citing *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987).

Applicant's appeal brief, pp. 8 - 9.

As noted by the Trademark Examining Attorney, it seems unquestionable that ALPHA, which comprises the totality of two of the cited marks, has an identical pronunciation to the leading word and the most distinctive portion of applicant's mark, the word ALFA. The third of the cited marks, where the literal, spoken portion is ALPHA

PROFESSIONAL TOOLS, the use of both words ALPHA and TOOLS adds to the similarity in pronunciation of the cited mark and applicant's involved mark. In short, there is no meaningful way to distinguish ALPHA and ALFA phonetically, and applicant's mark is highly similar in pronunciation to each of the cited marks.

Applicant then goes on to make arguments for why these marks are easily distinguishable when compared as to connotation and appearance:

Even such similarity as there may be construed in the pronunciation of the marks must be weighted against the dissimilarity in appearance, connotation and all other factors, before reaching a conclusion on likelihood of confusion as to source. See, e.g., In re Sarkli, Ltd., 721 F.2d 353 (Fed. Cir. 1983). Accord, In re Electrolyte Laboratories, Inc., 929 F.2d 645 (Fed. Cir. 1990) (spoken or vocalized element of design mark taken without design need not itself serve to distinguish the goods; both visual and oral indicia must be weighed in context in which they occur in determining likelihood of confusion). Thus, even where the mark sought to be registered is for almost identical goods, where the only similarity between the marks is in connotation, a much closer approximation is necessary to justify refusal to register on that basis alone. *Id.* This holding is especially pertinent in cases where the marks do not have identical connotations, as in this case; see discussion below.

Further, any similarity is negated and outweighed by the differences in the overall sounds and appearances of the marks. Esso

Standard Oil Co. v. Sun Oil Co., 229 F.2d 37 (D.C. Cir.), cert. denied, 351 U.S. 973 (1956). The marks, when considered in the entirety, make entirely different commercial impressions and thus avoid customer confusion. In considering the appearance, sound and meaning of mark, the Court will employ a "subjective eyeball test". Barnes Group, Inc. v. Connell Ltd. Partner Shop, 793 F.Supp. 1277 (D. Del. 1992).

Applicant's appeal brief, pp. 9 - 10.

While applicant's mark does contain the additional term MEGACUT,⁵ a term not found in any of the cited marks, we do not find that difference to be determinative herein. As to the connotation of the term MEGACUT, judging only by

⁵ Applicant argues as follows:

Applicant respectfully disagrees with the contention made in the Office Action that the salient feature of the mark is the ALFA portion. Applicant respectfully suggests that the MEGACUT portion of the mark is equally as, if not more, significant ...

Moreover, Applicant respectfully disagrees with the Examining Attorney's characterization that ALFA represents the salient portion of the mark. Applicant respectfully posits that the MEGACUT portion of the mark is as distinctive and as significant as the ALFA portion of the mark. Applicant thus respectfully disagrees that the salient feature of the mark is solely ALFA. These features being both significant, it is respectfully noted that none of the cited reference marks include any equivalent of MEGACUT, together with the marks therein of ALPHA.

Applicant's appeal brief, p. 10.

dictionary meanings of the words "mega" and "cut,"⁶ it must be deemed to be at least suggestive of applicant's goods as shown in the record, to include cut-off wheels for industrial applications, high speed blades for cutting large metal objects, concrete, asphalt and brick, and street saw blades for walk-behind machines ideal for cutting stone, marble, brick, concrete or asphalt. Several of these specific applications have large, or "mega-" cutting blades up to sixteen inches in diameter. See more extensive discussion of applicant's goods, *infra*.

Hence, despite applicant's argument that the MEGACUT portion is the most significant portion of this composite mark, given all the observations made above (e.g., inherent distinctiveness of the word ALFA and suggestiveness of

⁶ We take judicial notice of the definitions of both components of the term, Megacut:

Mega- 1a. Great; large <megapore> 1b. Greatly surpassing others of its kind <megahit> ... Merriam-Webster's Collegiate Dictionary, Tenth Ed. ©1996, 723.

Cut [TRANSITIVE VERB] 1a. to penetrate with or as if with an edged instrument ... 4a. to divide into segments ... 5a. to make by or as if by cutting: as 5a.(1) CARVE (cut stone) ... [INTRANSITIVE VERB] 1a. to function as or as if as an edged tool ... 1c. to perform the operation of dividing, severing, incising, or intersecting ... [NOUN] 1. a product of cutting: as ... 1.b(1) an opening made with an edged instrument ... 2. The act or an instance of cutting: as ... 2.c a stroke or blow with the edge of a knife or other edged tool ... Merriam-Webster's Collegiate Dictionary, Tenth Ed. ©1996, 286.

MEGACUT), we agree with the Trademark Examining Attorney that ALFA is the dominant portion of applicant's mark.

In making further arguments as to the dissimilar appearance of applicant's mark when compared with the cited marks, applicant also emphasizes that its applied-for mark is shown in a special form:

... Applicant's trademark utilizes a design or stylized angled letter format for lettering in the mark, and is disposed in a pattern showing a rounded banner.

Applicant's appeal brief, p. 10.

However, these "stylized, angled" letters presented in a "rounded banner" do not create a prominent feature susceptible of being articulated or easily remembered. Moreover, this rounded lettering could even be seen as suggestive of an arc of a large circular saw blade.

Applicant's dominant word ALFA differs from the sole or dominant portions of the cited marks with a change from the letters "PH" to an "F." Applicant argues that the ALPHA and ALFA portions of the respective marks have different meanings:

The meaning or connotation of the marks also is not identical. As defined in the Merriam-Webster Dictionary, "alpha" is the first letter of the Greek alphabet and has other similar meanings, as set forth in Exhibit A, attached. In contradistinction,

"Alfa" is defined as a "communications code word for the letter 'a', 'a' being different from the Greek letter 'alpha'." ALFA as used in the Applicant's mark is to some degree arbitrary or fanciful, and even may be considered by consumers to be an acronym or a letter combination that is totally independent of any word connotation.

Applicant's appeal brief, p. 10.

It is not clear what prospective consumers' initial perceptions may be when encountering applicant's ALFA designation. We certainly cannot assume they will all be acquainted with the dictionary definition of the term. We do acknowledge that as to the connotation of the respective marks, dictionary excerpts defining "alpha" and "alfa" do point to a nuanced difference in meaning. However, we find that both meanings have a similar reference to the first letter of the Greek or Arabic alphabet, or in the minds of the average consumer, both ultimately point to the letter "a" in our alphabet. In addition to having identical sounds, we find the nuanced differences in meaning between ALFA and ALPHA, as argued by applicant, to be largely inconsequential. Rather, we are persuaded that the term ALFA, the dominant first word of applicant's mark, is substantially similar in appearance and connotation to the word ALPHA.

In any event, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Accordingly, after carefully considering the arguments of applicant and of the Trademark Examining Attorney, we find that applicant's mark and the registered marks, when viewed in their entireties, are similar in terms of the trilogy of sight, sound and meaning, and that as a result,

the marks, when considered in the entirety, create the same overall commercial impressions.

We turn next to the du Pont factor focusing on the relatedness of applicant's goods to the goods in the cited registrations. Applicant argues that its goods are not similar to the goods of the registrations. Specifically, applicant takes the position that the goods in the cited registrations are specialty tools directed to the stone, masonry and ceramic industries, while applicant's goods are sold to the general consumer in hardware stores, home improvement and utility outlets, etc.

The reference registrations for ALPHA and Design is for the goods including hand held tools for grinding, abrading, polishing and cutting ceramic tiles in Class 8 and for powered tools for grinding, abrading, polishing and cutting ceramic tiles in Class 7, respectively.

The reference application for ALPHA is for the goods including power operated machine tools, namely drills for cutting metal in industrial applications in Class 8. These are specialized uses which create a demand in those customers engaged in using grinding wheels and related goods.

It is noted that each of the goods in the cited reference are specialty tools in the tool industry that have specific and distinct uses, and are not household tools for sale to and use by the general consumer.

All of these uses are distinct from that of Applicant's use for tools, such as abrasive cutting and grinding wheels, diamond cutting blades and diamond core

bits. Applicant's goods are utilized in tools that rotate or are turned in a circular motion during use. As discussed below, the tools are sold to different end users, the Applicant's goods sold essentially to the general consumer in hardware stores, home and utility outlets, etc. and the cited goods to concerns that provide specialty services such as ceramic tile layers, etc.

The application for ALPHA is for the goods including manual tools in Class 8 for ceramic tile cutting. This is a specialized use, which creates a demand in those few customers who know their suppliers on an individual basis.

... Although not perceived as being different by a layman, the sophisticated users of the goods used for abrading masonry and metals, respectively, that is by the cited prior registrant's uses and those of the present Applicant's, quickly note significant differences in the goods themselves. This sophistication of both the Applicant's and the prior registrant's customers results in confusion being unlikely. The respective parties' goods are also both of the kind that suggests "care in purchasing" which will "minimize likelihood of confusion". See TMEP §1207.01(d)(vii).

All of these uses are distinct from that of Applicant's use for cutting and grinding wheels, diamond drill bits etc., which are for sale to the consumer in hardware stores, home and utility outlets, etc. Moreover, Applicant's goods are tools which can be utilized about the home, or other non-specialty and non-commercial use or by metal workers.

Applicant's appeal brief, pp. 11 - 12.

The Trademark Examining Attorney argues that when compared with the goods of registrant, N.A.O., applicant's

"cutting wheel" and "blades" could be seen as "cutting machines and replacement parts," and both applicant and N.A.O. "engage in manufacturing metal components for working tool machines." Next, the Trademark Examining Attorney argues that when compared with the goods of registrant, Sandvik AB, it appears as if applicant's goods are closely related if not identical (e.g., drills and bits are similar and have same function).

We find that applicant's identification of goods is broad enough to encompass goods for professional use, and that, in fact, applicant's online catalog shows that applicant markets such goods under the MEGACUT mark. That is, as described in the identification of goods, and as confirmed by the Trademark Examining Attorney's submission of applicant's online catalog, applicant's goods include industrial abrasives. Although applicant argues that its goods are "sold essentially to the general customer in hardware stores, home and utility outlets," and this online catalog does indeed list blades for regular consumer circular saws (7" to 10"), it is important to note that applicant's goods sold under the applied-for mark also clearly include: depressed center wheels for grinding metal and concrete (from 4" to 9" in diameter); cut-off

wheels for body shops, muffler shops, automotive, general dry cutting (2" to 5"); chop saw blades for cutting metal pipes, studs, steel structures, and bar stock (10" to 16"); portable high speed saw blades for castings, steel fabrication, stainless steel, ferrous and non ferrous metals, concrete, asphalt and brick (12" to 14"); and street saw blades for walk-behind machines ideal for cutting stone, marble, brick, concrete or asphalt (12" to 16").

These goods are closely related to, if not interchangeable with, the goods involved in NAO's two cited registrations, ALPHA and ALPHA PROFESSIONAL TOOLS and design, for stone industry tools, their accessories and replacement parts, such as polishing discs.

That is, applicant's goods, as identified, without limitations as to channels of trade or potential applications, could clearly include replacement blades for registrant's industrial power tools, and applicant's diamond cutting blades could well be competitive with registrant's own replacement blades, as used with this power equipment, in the shop or in the field.

In a related du Pont factor, namely, the conditions under which and buyers to whom sales are made, applicant argues as follows:

Similarly, the cost of goods sold by the reference registrants ... are relatively expensive ... so that ... for the cited goods, impulse buying is not a consideration.

The customers for the goods and services covered by the cited registrations are easily ascertainable. The registrations are narrowed in their identifications by mention of the intended customers and the specific applications. The customers for the goods covered by Reg. Nos. 2,431,014 and 2,430,979 both relate to tools for polishing granite and stone in the masonry fields. While Applicant may also sell such goods, the evidence supplied in the Office Action, that is, the listing of several of Applicant's marks in conjunction with a listing of goods which are sold under one or more of the listed marks that have been used in the past by Applicant. However, there is no specific correlation as to which marks are used with which listed goods, and the evidence presented as to use in the field of masonry is respectfully considered to be non-probative of the issue of confusion. As set forth below, the ALFA TOOLS portion of the mark is a house mark, used with all of Applicant's goods, but each of its separate lines have an additional trademark use of another mark. It is Applicant's position that the ALFA TOOLS MEGACUT mark is not used in conjunction with the construction and masonry tools, as implied in the Office Action, but other mark(s) are used for identifying those goods.

While the customers for the goods mentioned in the cited ALPHA Group of registrations are probably themselves also sophisticated, they would certainly be

trained in, and focused on, disciplines that do not match those of the Applicant's customers. This sophistication of both those of Applicant's customers using the abrading tools in industry and the prior registrant's customers means that confusion is unlikely.

Applicant's appeal brief, pp. 12 - 13. Applicant contends that given the expense and the specialty nature of the goods in the cited registrations, it would preclude the possibility of any "impulse" buying.

By contrast, the Trademark Examining Attorney argues that applicant's goods would move through the same channels of trade as do registrants' goods to the same classes of consumers and that even sophisticated consumers might confuse the source of the respective goods under these circumstances.

We agree with applicant that NAO's goods appear to be expensive enough not to fall into the category of "impulse items." We acknowledge that this registrant's power tools (e.g., polishers, grinders, saws, profilers, etc.) used in connection with hard materials (e.g., granite slab, hard marble, cured concrete, natural stones like limestone, and manufactured stones, masonry products, ceramic tile, porcelain, travertine, etc.), as well as their replacement blades (including diamond abrasives made with the highest

quality diamond grit, router bits, etc.) are specialized and costly items. As to the sophistication of NAO's customers, we accept the premise that professional stone fabricators and others in the stone industry such as masons and mounmentalists, tile contractors and installers, those in the glass trades and general contractors, are all generally sophisticated consumers.

As to the relationship of applicant's goods to the goods identified in Reg. No. 2606248, applicant's high speed saw blades for castings, steel fabrication, stainless steel, and for ferrous and non ferrous metals, and its diamond core bits, must be construed broadly when comparing them to Sandvik AB's rock tool systems. While we have no reason to believe they are in any way competitive or perhaps even complementary, they appear to be related goods. We have to assume they might well move through the same channels of trade to the same classes of consumers. We agree with applicant that Sandvik AB's involved goods are clearly limited to industrial applications, and must be deemed to be specialized goods marketed to sophisticated consumers.

However, when marks very similar in connotation, appearance and pronunciation are used on or in connection

with closely-related goods, even sophisticated purchasers may be confused. See Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990). Moreover, given that some of the goods, as identified, may be competitive, others may well be viewed as complementary, and the balance are closely related, even sophisticated consumers may not notice the differences in the marks when used on such goods, or may view the marks as variations on a theme intended to differentiate related products having a common source or sponsorship.

As to the related du Pont factor focusing on the variety of goods on which a mark is or is not used (house mark, "family" mark, product mark, etc.), the fact that applicant owns a registration for the mark ALFA TOOLS for goods having different descriptive properties (e.g., "accessories" for "general purpose" drills and "reciprocating saw blades and saber saw blades")⁷ is largely irrelevant to the question of likelihood of confusion involved herein.⁸

⁷ Reg. No. 2194484 issued on October 13, 1998 for ALFA TOOLS.

⁸ Applicant argues as follows:

It is further noted that both the ALFA TOOLS portion of mark and the MEGACUT portion of mark are the subject of U.S. Trademark Registration Nos. 2,101,591 and 2,194,484, respectively, both of which marks are registered

We turn next to the number and nature of similar marks in use. Applicant argues that based upon a search report of the federal trademark register, ALFA and/or ALPHA are relatively weak terms:

A great number of marks are in use for ALFA or ALPHA. As evidence, Applicant herewith submits a search result page from the U.S. Trademark Register (database) indicating registrations and applications for 1522 separate trademark use of ALPHA, ALFA and variants, including 55 registrations and applications of the ALPHA and variants mark, classified only in International Class 7. The ALPHA (ALFA) mark is a weak one generally, and is used in many different contexts together with tools and machinery different than those sold by Applicant, as shown. However, it must again be emphasized that none of the other marks in Class 7 or to Applicant's knowledge, anywhere else, utilize the MEGACUT portion of the mark, which provides a more distinctive feature to Applicant's mark for which registration is sought herein.

If a word mark is relatively weak, a significantly different display of the same word can avoid a likelihood of confusion. See First Sav. Bank, F.S.B. v. First Bank System, Inc., 101 F.3d 645, 40 USPQ2d 1865 (10th Cir. 1996) (because FIRST BANK was held to be relatively weak, defendant's display of the word in a different visual format was found not to be likely to cause confusion). The court in that case stated "[w]hen the primary term is weakly protected to begin with, minor alterations may effectively

by Applicant herein and which have been used with other goods for significant periods of time by the Applicant.

negate any confusing similarity between the two marks." *Id.*, at 655. [p. 13]

Additionally, marks for ALPHA have been registered despite almost identical goods in Class 7. ...

By contrast, the Trademark Examining Attorney contends that these third-party registrations should be accorded no value (or very limited probative value) in this case as the goods identified in the three highlighted registrations are significantly different from the goods identified in the application and registrations in this case.

We agree with the Trademark Examining Attorney that the registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, and the existence on the register of confusingly similar marks cannot aid an applicant in its effort to register another mark which so resembles a registered mark as to be likely to cause confusion. AMF Inc. v. American Leisure Products, Inc., 474 F.2d 1403, 177 USPQ 268 (CCPA 1973); and Lilly Pulitzer, Inc. v. Lilli Ann Corp., 376 F.2d 324, 153 USPQ 406 (CCPA 1967).

Moreover, inasmuch as the three specific examples offered herein by applicant are registered for goods in other significantly different and highly-specialized trades, we can draw no conclusions from this evidence

regarding the strength or weakness of ALFA (or ALPHA) in connection with specialized industrial blades, abrasives and polishing discs.⁹

Therefore, after carefully balancing all the relevant du Pont factors, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, ALFA TOOLS MEGACUT and design, and two marks owned by NAO Enterprise, Inc. dba Alpha Professional Tools Corporation, ALPHA and ALPHA PROFESSIONAL TOOLS and design, as well as Sandvik AB's ALPHA mark, the contemporaneous use of applicant's mark on closely-related goods to both registrants' goods involved in this case, namely specialized industrial blades, abrasives, polishing discs, and industrial drills, is likely to cause confusion as to the source or sponsorship of such goods.

Decision: The refusal to register in connection with each of the cited registrations based upon a likelihood of confusion under Section 2(d) of the Act is hereby affirmed.

⁹ In addition to an earlier submission of the summary of a search applicant completed on the federal trademark register, applicant also submitted with its request for reconsideration copies of three specific registrations from the Office's electronic records for marks covering, *inter alia*, specialized engines, automobiles and auto parts.