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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Agriprocessors Corporation

Serial No. 76364894

Jennifer D. Silverman for Agriprocessors Corporation.

Christopher S. Adkins, Trademark Examining Attorney, Law
Office 113 (Odette Bonnet, Managing Attorney).

Before Hanak, Holtzman and Rogers, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Agriprocessors Corporation (applicant) seeks to register in typed drawing form SAMSON'S KOSHER for "Kosher beef." The intent-to-use application was filed on January 30, 2002. At the request of the Examining Attorney, applicant disclaimed the exclusive right to use KOSHER apart from the mark in its entirety.

Citing Section 2(d) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's mark, as applied to applicant's goods, is

likely to cause confusion with the mark SAMSON'S SAUCE previously registered in typed drawing form for "sauces, excluding cranberry sauce and applesauce." Registration No. 2,370,420.

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.").

Considering first the marks, we are obligated to compare the marks "in their entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 750 (Fed. Cir. 1985). The only arbitrary portion of both marks is the name SAMSON'S. Indeed, both registrant and applicant depict this arbitrary portion in the exact same manner, that is to say, with an apostrophe. The SAUCE portion of registrant's mark is obviously descriptive of sauces. It

has been disclaimed. Likewise, the KOSHER portion of applicant's mark is descriptive of Kosher beef. It too has been disclaimed. Hence, in comparing the two marks, we have given limited weight to the words SAUCE and KOSHER. National Data, 224 USPQ at 751 ("That a particular feature is descriptive ... with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of the mark.")

Moreover, both marks are depicted in typed drawing form. This means that the marks are not limited to being "depicted in any special form," and hence we are mandated "to visualize what other forms the mark[s] might appear in." Phillips Petroleum Co. v. C.J. Webb Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). See also INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992). For example, registrant is perfectly free to depict the arbitrary portion of its mark SAMSON'S in large lettering on one line, and the descriptive portion of its mark (SAUCE) on a second line in smaller lettering. Likewise, applicant would be free to depict its mark in a similar manner, namely, with SAMSON'S in large lettering on one line, and the descriptive term KOSHER in smaller lettering on a second line. When so depicted, the marks would be extremely similar. Thus, the first Dupont "factor weighs

heavily against applicant" because applicant's mark could be depicted in a manner such that it was extremely similar to the registered mark. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Turning to a consideration of applicant's goods and registrant's goods, we note that because the marks could be depicted in extremely similar fashions, their contemporaneous use can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically related." In re Shell Oil Co., 922 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). However, in this case we find that applicant's goods and registrant's goods are clearly related. Registrant's identification of goods is broad enough to include sauces of all types, with the exception of cranberry sauce and applesauce. Thus, registrant's identification of goods is broad enough to include meat sauces, and applicant does not contend to the contrary.

Obviously, meat sauces and beef, including Kosher beef, are complementary items. The Examining Attorney has made of record dozens of third-party registrations showing that the same marks are registered for both beef and sauces. Moreover, the Examining Attorney has conducted an

Internet search and located articles demonstrating that there are, in particular, Kosher meat sauces. An article appearing in the June 17, 2002 edition of Kosher Today Newsletter contains the following sentences: "Kosher food distributors say that sauces are a major source of growth in the kosher industry. Many of the small kosher food companies have greatly expanded their line of kosher sauces, including many that are kosher for Passover. Kosher sources say that a large number of sauces produced by companies all over America have also opted for kosher certification. ... The sector accounted for nearly \$3 billion in sales in 2001 and is poised to continue strong growth for the next five years." A Google search for "kosher sauces" turned up dozens of different brands of Kosher sauces including "gourmet barbecue sauces." Finally, an article appearing in the September 1, 2003 edition of About Judaism is entitled "Sauces, Spices and Condiments." This article states that "Jewish food doesn't have to be bland," and that there are sauces for various types of meats.

Given the fact that the marks are extremely similar and are used on closely related goods, we find that there exists a likelihood of confusion.

Decision: The refusal to register is affirmed.