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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 Masco Corporation of Indiana

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Serial No. 76371083

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Edgar A. Zarins, Esq. for Masco Corporation of Indiana.

John Yard, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

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Before Quinn, Grendel and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Masco Corporation of Indiana (applicant) to register the mark TREVI (in standard character format) for goods ultimately identified as "plumbing fixtures namely faucets and replacement parts therefor" in Class 11.<sup>1</sup>

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that

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<sup>1</sup> Serial No. 76371083, filed February 19, 2002, based upon an allegation of a bona fide intention to use the mark in commerce.

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applicant's mark, when applied to applicant's goods, so resembles the registered mark TREVISO (in typed form) for the following goods as to be likely to cause confusion.<sup>2</sup>

Plumbing fittings and fixtures, namely, valves, faucets, aerators for faucets, spouts, shower heads, handles, pop-up drains, single lever fixtures for lavatories and sinks, flush levers and drains, faucet filters, bath fixtures in the nature of sinks, bathtubs and toilets, and electric lighting fixtures (in Class 11).

When the refusal was made final, applicant appealed. Briefs have been filed.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, however, two key considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the goods. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

The goods are, in part, identical. Applicant's faucets and replacement parts are fully encompassed within registrant's identification of goods which includes faucets and faucet parts. Because there are no limitations in the application or registration, we must assume that the respective products are

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<sup>2</sup> Registration No. 2849199, issued June 1, 2004.

sold through all normal channels of trade for those goods, and that the goods reach all the usual purchasers. In other words, we must assume that the channels of trade and the purchasers for the goods would be the same. See *Interstate Brands Corp. v. McKee Foods Corp.*, 53 USPQ2d 1910 (TTAB 2000); and *In re Smith & Mehaffey*, 31 USPQ2d 1531 (TTAB 1994).

We turn then to the marks. The examining attorney argues that the marks are similar in sound as each mark consists of the same initial sound "TREVI" to which applicant has merely added an additional syllable "SO"; and that the marks are similar in appearance because they each contain the same root, TREVI. In terms of commercial impression, the examining attorney argues that both terms, and particularly TREVI, are the names of somewhat obscure small towns in Italy.<sup>3</sup> The examining attorney submitted a listing from The American Heritage Dictionary of the English Language (Third Edition 1992) describing "Treviso" as "A city of northeast Italy north-northwest of Venice. An ancient Roman town, it was later the seat of a Lombard duchy and passed to Venice in the 14<sup>th</sup> century. Population, 87,089." In addition, the examining attorney conducted a search of the dictionaries contained in the database, onelook.com, which returned an entry

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<sup>3</sup> "Trevi" apparently is also an obscure surname. The record contains the results of a search of the PowerFinder database indicating only ten listings for that name in the United States.

for "Trevi" in a 1911 edition of the Encyclopedia Britannica as follows:

a town of the province of Perugia, Italy, 30 m. S.E. of Perugia and 5 m. S. of Foligno by rail. Pop. (1901), 5708.  
...

Applicant, on the other hand, argues that the marks differ in meaning in that while TREVISO identifies a geographic location, applicant's mark has no such geographic connotation but instead would be associated with the famous Trevi fountain in Italy, giving consumers the impression that applicant's faucets provide a fountain-like water flow. Applicant concludes that the different connotations of the marks combined with the differences in their sound and appearance are sufficient to avoid confusion.

As to applicant's contention that Trevi is a famous fountain, the examining attorney states that the onelook.com database, which he notes contains over 5 million words in 900 online dictionaries, returned only one relevant hit for this term and none referencing a fountain.<sup>4</sup> However, the examining attorney did obtain one reference to the Trevi fountain from the website *www.wordtravels.com* which states:

The tiny Piazza di Trevi has been immortalised [sic] through this fountain built for Pope Clement XII.  
...Tossing a coin into the fountain is supposed to guarantee a return trip to Rome.

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<sup>4</sup> The database also turned up a source identified as *AbbreviationZ* ("The A to Z of Acronyms & Abbreviations on the Net") providing what appears to be an obscure, or at least irrelevant acronym meaning for Trevi in the context of the goods.

In determining the similarity or dissimilarity of marks, we must consider the marks in their entireties in terms of sound, appearance, meaning and commercial impression. See *du Pont*, supra. See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). It is true that TREVISO and TREVI both appear to identify obscure geographic locations in Italy, and if this were simply a matter of comparing marks with meanings that would be unfamiliar to most Americans, we might agree that the marks are confusingly similar. However, that is not the case. We find that the term "Trevi" would be understood by consumers as the name of the famous fountain located in Rome.<sup>5</sup> In addition to the website printout submitted by the examining attorney, we take judicial notice of

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<sup>5</sup> While the onelook.com database may contain over 900 dictionaries, apart from the Encyclopedia Britannica, we have no information as to the nature of the dictionaries contained in the database or the reliability of those sources, and whether, for example, they are general or specialized, mainstream or obscure. Consequently, we have no way of knowing the extent to which these sources would accurately reflect consumer understanding of the term (and in the case of the 100-year-old encyclopedia, whether it reflects current understanding of the term) or conversely, the lack of any understood meaning. Further, while the examining attorney produced one website referencing Trevi fountain, he does not say whether that was the only reference his search retrieved.

the following additional references to Trevi as a famous fountain in Rome (emphasis added).<sup>6</sup>

The New Oxford American Dictionary (Second Edition 2005)

defines "Trevi Fountain" as follows:

the largest and most famous of the fountains of Rome, situated at the intersection of three roads, built in 1735 by architect Nicola Salvi (1697-1751), and decorated by artists of the Bernini School. ...

In The Columbia Encyclopedia (Columbia University Press 2004), the fountain is mentioned under the heading "Landmarks and Institutions" of Rome, and is described under the entry for "Fountains" as follows:

The theatrical trend of the baroque period found expression also in fountains. In keeping with the animated postures of the sculptured nymphs, sea horses, and dolphins, the water issued splashing over the rims of the uppermost bowls and down upon artificial rocks and shells. A colossal figure of Neptune was a favorite motif, as in famous examples at Florence, Bologna, and Rome. Bernini designed one such fountain in Rome. .... In 1762 **one of the most famous and elaborate examples was completed, the fountain of Trevi.** ...

The Encyclopædia Britannica (2007) (Encyclopædia Britannica Online at <http://search.eb.com>), a more recent edition of the publication relied on by the examining attorney, under the entry for "Fountain," states:

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<sup>6</sup> The Board may take judicial notice of entries in dictionaries and other standard reference works. See, e.g., *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); and *In re Hartop & Brandes*, 311 F.2d 249, 135 USPQ 419 (CCPA 1962).

...Rome is noted for its many fountains of baroque design, notably the Fountain of the Rivers (1648-51) in the Piazza Navona by Giovanni Bernini and the **Trevi fountain** (completed 1762) by Niccolo Salvi. ...

The fountain is further discussed under the entry for "Rome Monuments of the city - The fountains":

Rome is as much a city of fountains as it is of churches or palaces, antiquities or urban problems. The more than 300 monumental fountains are an essential part of Rome's seductive powers. ...

Every fountain has its history and many have legends, the best known of which guarantees a return to Rome to those who toss coins into the **Trevi Fountain**. Restored after 1,000 years of silence by Pope Nicholas V in 1485, the fountain was renewed in the 17th century and then transformed from a handy source of household water into a scenic wonder. The huge fountain bulges into most of a tiny square and takes up the entire end of an abutting palace. Niccolò Salvi won a 1732 competition by designing a late Baroque marble mass of rocks and rills, rush and gush, beards and buttocks, all very allegorical and damp. ...

The fame of Trevi fountain is also noted in other reference works. For example, Cassell's Dictionary of Classical Mythology (Sterling Publishing Company, Inc. 1998), at 657, states:

...[fig]ures prominently in sea-triumphs with his wife Amphitrite and is a natural subject for fountain-figures, such as on **the famous Trevi Fountain** at Rome. ...

We agree with applicant that the marks have different connotations and that they create different commercial impressions. The only meaning associated with TREVISIO, at least on this record, is the name of an obscure town in Italy.

Consumers may or may not be familiar with this meaning, and those who are not may assume TREVISO is a coined or invented term with no known meaning. The term TREVI, on the other hand, would have a specific meaning to consumers. We believe that purchasers who are familiar with Trevi fountain will understand TREVI to be a reference to the fountain, particularly given the nature of applicant's goods - faucets. When viewed in connection with faucets, TREVI would evoke an association with the famous fountain, conveying the fanciful impression of fountain-like water flow or styling. Although TREVI is applicant's entire mark, in our view, it forms only an incidental part of registrant's mark as a whole. The term is so integrated into TREVISO that the commercial impression created by TREVISO is different from that created by TREVI alone, and makes it dissimilar to TREVI in sound and appearance. See, for example, *Castle & Cooke, Inc. v. Oulevay, S. A.*, 370 F.2d 359, 152 USPQ 115, 115 (CCPA 1967) (FARENDOLE not confusingly similar to DOLE for related food products; DOLE "is so merged into" FARANDOLE "that it loses its individual identity therein"); and *J. P. Stevens & Co. Inc. v. Farbenfabriken Bayer Aktiengesellschaft*, 124 USPQ 432, 433 (TTAB 1960) (RAMA not confusingly similar to CUPRAMA, "a coined, unitary expression which only incidentally includes the term, 'RAMA.'"). We find that the differences in the two marks are sufficient to distinguish the marks as a whole.

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Notwithstanding the identity of the goods, we conclude that the dissimilarity of the marks in this case makes confusion unlikely.

**Decision:** The refusal to register is reversed.