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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Masco Corporation of Indiana

Serial No. 76413647

Edgar A. Zarins for Masco Corporation of Indiana.

Won T. Oh, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney).

Before Seeherman, Quinn and Hairston, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Masco Corporation of Indiana has appealed from the final refusal of the Trademark Examining Attorney to register SAXONY as a trademark for "plumbing products, namely kitchen faucets and replacements parts therefor."[1] Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that

[1] Application Serial No. 76413647, filed May 30, 2002, and asserting a bona fide intention to use the mark in commerce.

applicant's mark so resembles the mark THE SAXONY, previously registered for "plumbing fixtures; namely sinks"[2] that, if used on applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney filed appeal briefs. Applicant did not request an oral hearing.

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). See also, In re Majestic Distilling Company, Inc., 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In this case, applicant itself acknowledges that the marks “are similar.” Brief, p. 2. Indeed, we agree with

[2] Registration No. 1849845, issued August 16, 1994; Section 8 affidavit accepted; Section 15 affidavit received.

the Examining Attorney that the marks are virtually identical, with the only difference being the non-distinctive word THE added to applicant's mark. See In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985) (there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties).

As for the goods, applicant asserts that there are specific differences, contending that they travel through different channels of trade and are purchased under different scenarios. Specifically, applicant argues that "faucets are a relatively inexpensive product that can be purchased off the retail shelf by consumers looking to replace a worn or dated faucet," and that this upgrade "can be accomplished in a few hours by even the novice do-it-yourselfer." Brief, p. 2. On the other hand, applicant contends that "the purchase and replacement of a sink amounts to a remodeling construction project"; that "the consumer will choose the desired sink from a catalog or other display and then order the sink for delivery and installation at a later date by the contractor"; and that typically "the sink is replaced in connection with

remodeling of the entire kitchen or bath," which is "not a small undertaking considered lightly by the consumer and therefore will be carefully scrutinized prior to purchase." Brief, p. 2.

It is true that there are specific differences between faucets and sinks. However, as the Board stated in In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978), 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 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 belief that they originate from the same producer.

Here, faucets and sinks are obviously complementary goods which may be purchased together. Further, the Examining Attorney has made of record a number of third-party registrations which show that entities have adopted a single mark for both types of goods. See, for example, Reg. No. 2697870 for PILLOW TALK for, inter alia, sinks and faucets; Reg. No. 2590001 for MARIELLE for, inter alia,

faucets and bath fixtures in the nature of sinks; Reg. No. 2694460 for SANIBATH for, inter alia, faucets and sinks. 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).[3]

Even if we accept that sinks are installed by professional contractors, such professionals are also likely to install faucets as part of the same remodeling project. Given the near identity of the marks, as well as the complementary nature of the goods and the third-party registration of a single mark for both types of goods, even these professionals are likely to assume that faucets sold under the mark SAXONY and sinks sold under the mark THE SAXONY emanate from the same source.

Moreover, the general public are also purchasers of the goods. Even if such purchasers buy sinks only as part of a remodeling project (a proposition for which there is no support in the record), applicant has acknowledged that in such circumstances the purchasers would be exposed to

[3] We have not considered those third-party registrations which were based on Section 44 of the Trademark Act, and therefore do not reflect use in commerce.

the mark as they choose and order a sink. If such consumers, familiar with the mark THE SAXONY for sinks, subsequently decide to purchase faucets as part of a do-it-yourself project, they are likely to assume that SAXONY faucets and THE SAXONY sinks come from the same source. As applicant has stated, faucets are an inexpensive purchase that will not be the subject of great deliberation or care.

Decision: The refusal of registration is affirmed.