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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dreamous Corporation USA

Serial No. 76431779

Scott C. Tips of Tips & Associates for Dreamous Corporation USA.

Verna Beth Ririe, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

Before Quinn, Hohein and Holtzman, Administrative Trademark  
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Dreamous Corporation USA  
to register the mark COVITAL for the following goods, as amended:  
"cold processed cosmetics, namely, skin creams, hair shampoo and  
conditioner, and eye gels" in International Class 3.<sup>1</sup>

<sup>1</sup> Application Serial No. 76431779, filed July 18, 2002, based on an  
allegation of first use and first use in commerce on May 25, 2001. The  
application was originally filed in Classes 3 and 5. The goods in  
Class 5, which were identified as "cold processed vitamins, minerals,  
herbs amino acids, hormones, and other nutrients," were subsequently  
deleted from the application.

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to applicant's goods, so resembles the registered mark COVITOL for "liquid and dry vitamin E concentrate for pharmaceuticals, medicines and feeds" as to be likely to cause confusion.<sup>2</sup>

When the refusal was made final, applicant appealed. Briefs have been filed. An oral hearing was not requested.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the similarity 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 the differences in the marks").

Applicant does not dispute the similarities in applicant's mark COVITAL and registrant's mark COVITOL and, indeed, they are strikingly similar in all respects. There is only one letter difference in the marks, and that one letter does little to

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<sup>2</sup> Registration No. 766621, issued March 17, 1964; renewed.

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distinguish one mark from the other in sound or appearance. Moreover, the marks appear to be coined terms with no inherent meaning, and therefore have no difference in meaning to distinguish them. It is clear that these nearly identical marks, if used on similar goods, would be likely to cause confusion.

The greater the degree of similarity in the marks, the lesser the degree of similarity that is required of the products on which they are used in order to support a finding of likelihood of confusion. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); and *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983). However, the goods must still be related in some viable manner such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from or are associated with the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

The examining attorney argues that the respective goods are in part identical and otherwise closely related in that cosmetic preparations and vitamins are used for the same purposes. In support of her position, the examining attorney has submitted a number of third-party registrations which show, in each instance, a mark which is registered by the same entity for both vitamins and cosmetic products. The examining attorney has also submitted

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Nexis evidence and excerpts from third-party websites which show, she contends, that "liquid Vitamin E concentrate, such as is offered by the registrant, is, like the applicant's goods used as a cosmetic skin cream or eye gel." The examining attorney points, in particular, to several of the third-party registrations which, according to the examining attorney, "identify Vitamin E as a type of cosmetic cream, lotion or gel or as a principal component of such cosmetic preparations." Noting that applicant itself had originally applied for registration for goods in Class 5 that included cold processed vitamins, the examining attorney concludes that not only is it commonplace in the market for the same company to provide both cosmetic and vitamin products, but applicant, by its own admission, provides both products.

We disagree with the examining attorney's analysis. Applicant's goods are cosmetic products. Registrant's goods are identified as "liquid and dry vitamin E concentrate for pharmaceuticals, medicines and feeds." There may be an inherent relationship between vitamin E and cosmetics in the sense that vitamin E may often be used as a component or ingredient of cosmetic products, such as moisturizers or body oils or skin creams, or it may even be the cosmetic product itself, such as "vitamin E sticks for lips and around eyes" or liquid vitamin E for use as a moisturizing product. However, the product

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identified in the registration is not vitamin E, per se, but instead is a "vitamin E concentrate." The third-party registrations submitted by the examining attorney are lacking in probative value because they do not show that the same companies have adopted the mark for cosmetics and the same type of product identified in the registration, that is, "vitamin E concentrate." Nor do the Nexis references and website materials show that the latter is produced or sold, even as a component of other products, by the same companies who produce cosmetics.

Moreover, we have no evidence that registrant's products, even if they were identified as just vitamins, would be encountered in the same channels of trade by the same purchasers, and it appears unlikely that they would. As identified, registrant's goods are "for pharmaceuticals [and] medicines," signifying that registrant's vitamin E concentrate is for use as an ingredient in pharmaceuticals and medicines. Registrant is not providing an end product containing or consisting of vitamin E, such as hand creams with vitamin E or vitamin E eye sticks. Registrant is providing the component of a product. It is reasonable to assume that the vitamin component or ingredient of, for example, hand cream, would be marketed to manufacturers of the hand cream, in this case pharmaceutical companies, while the hand cream containing the component would be sold to ultimate consumers. There is nothing in the record to indicate that the

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purchasers of hand cream containing a vitamin component, let alone a vitamin concentrate component, would ever be exposed to or be aware of a separate mark for the component, or that the mark for a component would even be used in the retail market or appear on the end product at all.

Thus, we find, notwithstanding the near identity of the marks, that in view of the differences in the respective goods and the channels of trade and purchasers for those goods, there is no likelihood of confusion.

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