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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re World Wide Food Products, Inc.

Serial Nos. 76457957; 76457958; 76457959; 76457960;
76457961; and 76458326

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(Odette Bonnet, Managing Attorney).

Before Seeherman, Quinn and Hairston, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

On October 7 and 8, 2002 Worldwide Food Products, Inc. filed six applications to register the following composite marks (each in special form):

1. The words GEISHA, A TRADITION OF QUALITY SINCE 1907 and FLOUNDER, informational matter, and the designs of a Geisha and flounder, as shown below,

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for "flounder."

2. The words GEISHA, A TRADITION OF QUALITY SINCE 1907 and WHITING, informational matter, and the designs of a Geisha and whiting, as shown below,

for "whiting."

3. The words GEISHA, A TRADITION OF QUALITY SINCE 1907 and RAW SQUID, informational matter, and the designs of a Geisha and squid, as shown below,

for "raw squid."

4. The words GEISHA, A TRADITION OF QUALITY SINCE 1907 and SNOW CRAB, informational matter, and the designs of a Geisha and snow crab, as shown below,

for "snow crab."

5. The words GEISHA, A TRADITION OF QUALITY SINCE 1907 and SEAFOOD MIX, informational matter, and the designs of a Geisha and various seafood, as shown below,

for "seafood mix, namely, frozen entrees consisting primarily of seafood."

6. The words GEISHA, A TRADITION OF QUALITY SINCE 1907 and RAW WHITE SHRIMP, informational matter, and the designs of a Geisha and white shrimp, as shown below,

for "raw white shrimp." [1]

Each composite mark is essentially the front of the packaging for the goods. The drawings do not reproduce well.

The trademark examining attorney, inter alia, refused registration in each application under Section 2(d) of the Trademark Act in view of several previously registered GEISHA (in standard character form) and "Geisha design" marks. Further, the examining attorney maintained that each drawing was unacceptable because the details of the drawing page were not clear, and therefore, required that applicant submit a substitute drawing. The examining attorney also required that applicant delete the informational matter and the design of the particular seafood item (hereinafter "seafood design") in each drawing, and disclaim certain wording.

Applicant complied with the disclaimer request in each application. With respect to the requirements for a substitute drawing and the deletion of the informational matter and the "seafood design" in each drawing, applicant responded by stating that "the informalities of the drawing

[1] Application Serial Nos. 76457957; 76457958; 76457959; 76457960; 76457961; and 76458326, respectively. All six applications allege first use dates of June 7, 1997.

will be corrected upon receipt of a NOTICE OF PUBLICATION." Thus, the drawing for each application is as we have reproduced them in this opinion, and each mark still contains the informational matter.

After a number of Office actions and responses, the examining attorney finally refused registration of each of applicant's marks under Section 2(d) of the Trademark Act in view of the following previously registered marks, all owned by Kawasho Foods Corporation: (1) GEISHA (in standard character form) for, inter alia, "canned and frozen fish and shell fish" (Registration No. 991,554 issued August 20, 1974; first renewal); (2) GEISHA in stylized letters for, inter alia, "canned crabs, canned tuna, and canned clams" (Registration No. 306,862 issued October 3, 1933; third renewal); (3) the design of a Geisha for, inter alia, "canned fish and shellfish-namely, canned crabmeat, shrimp, oysters, clams, tuna, sardines, kippers, mackerel, salmon; and frozen fish" (Registration No. 1,162,935 issued July 28, 1981 with the statement that "The drawing is lined for the colors blue, green, red, orange and yellow"; first renewal); and (4) GEISHA in stylized letters for, inter alia, "canned fish and shellfish-namely, canned crabmeat, shrimp, oysters, clams, tuna, sardines,

kippers, mackerel, salmon; and frozen fish" (Registration No. 1,162,936 issued July 28, 1981; first renewal).

In addition, the examining attorney made final the requirements for (1) a substitute drawing and (2) the deletion of the informational matter and "seafood design" in the drawing in each application.

In each instance, applicant has appealed. Both applicant and the examining attorney have filed briefs. In view of the common questions of law and fact that are involved in these six applications, and in the interest of judicial economy, we have consolidated the appeals. Further, we note that the registrations which form the basis of the Section 2(d) refusals in each of the involved applications are the same registrations cited by the examining attorney in refusing registration under Section 2(d) of applicant's companion application Serial No. 76457962. In the companion application, the examining attorney also required that applicant delete the "seafood design" from the drawing. The Board, in an opinion issued on May 23, 2006 in the companion application, inter alia, affirmed the Section 2(d) refusals and reversed the requirement for the deletion of the "seafood design" from the drawing.

In view of the Board's opinion in the companion case, the examining attorney has withdrawn the specific requirement, in each application, that applicant delete the "seafood design" in the drawing. However, the examining attorney maintained the requirements for a substitute drawing and the deletion of the informational matter in the drawing in each application.

We first turn to the Section 2(d) refusals in each of the involved applications. With respect to the similarity/dissimilarity of the marks, in particular, based upon the rationale of our opinion in the companion application, we find that each of the marks in the involved applications is similar to each of the four cited marks. With respect to the relatedness of the goods, again, for the reasons stated in our opinion in the companion application, we find that the seafood items in each of the involved applications and the seafood items in each of the cited registrations are legally identical in part (e.g., "flounder" and "frozen fish"; "snow crab" and "canned crabs") or otherwise closely related (e.g., "raw squid" and "frozen fish"). Moreover, with respect to those seafood items which are not legally identical, the examining attorney has submitted, in each application, a large number of use-based third-party registrations that include such

types of seafood. Although these registrations are not evidence that the marks shown therein are in use, they serve to suggest that these seafood items are the type of goods which may emanate from a single source. See In re Mucky Duck Mustard Co., 6 USPQ2d 1467 (TTAB 1988). See also In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993). Also, it is obvious that all of the goods at issue are seafood items which would be sold in the same channels of trade to the same class of purchasers. In short, purchasers familiar with any of registrant's GEISHA word or "geisha design" marks for seafood items, upon encountering any one of applicant's applied-for-marks for identical and closely related seafood items, would be likely to believe that the goods originated with or were somehow sponsored by the same source.

As was the case in the companion application, applicant submitted in each of the involved applications a copy of a document entitled "Trademarks Sublicense Agreement" and argues that this agreement reflects a "consent agreement" between it and the registrant. Based upon the rationale in our prior opinion, we find that this agreement is not a consent to register by the owner of the cited registration, but rather a license which authorizes applicant to use product packaging. Such a license does

not constitute a consent by the registrant to applicant's registration of the involved marks, and therefore has no probative value in our likelihood of confusion determination.

In view of the foregoing, we affirm the Section 2(d) refusals in each application.

We next turn to the requirements, in each application, for a substitute drawing and the removal of the informational matter from the drawing. Applicant has not argued against these requirements but, instead, states in its brief, at 1-2, that it will comply with these requirements "upon withdrawal of the Section 2(d) refusal[s]." Trademark Rule 2.142(c) states that "[a]ll requirements made by the Examiner and not the subject of appeal shall be complied with prior to the filing of an appeal." In view of applicant's failure to comply or to argue against the requirements, we affirm the refusals of registration on the basis of these requirements. See In re Big Daddy's Lounges, Inc., 200 USPQ 371 (TTAB 1978). We should add that the requirements are, in any event, well taken. Each drawing is in the nature of a photocopy of product packaging; the lines therein are extremely blurry, rather than clean and sharp. Moreover, as is apparent in this decision, the drawings do not reproduce well. In

short, the drawings do not comply with Trademark Rule 2.54(e).

Further, such matter as "NATURALLY FAT FREE", "KEEP FROZEN", and "ENLARGED TO SHOW QUALITY SERVING SUGGESTION" is clearly informational in nature and should not appear in the drawing. Such matter is not part of applicant's composite mark and its removal will not alter the commercial impression. Also, the "TM" symbol, the registration notice "®", and "NET. WT." should not appear in the drawing. See TMEP §807.14(a) (4th ed. 2005).

Decision: The refusals to register under Section 2(d), and the requirements for a substitute drawing and the removal of the informational matter from the drawing are affirmed with respect to each application.