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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Primary Investments Group Limited

Serial No. 76537869

Thomas W. Cook for Primary Investments Group Limited.

Alicia P. Collins, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Bucher, Zervas and Cataldo, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Primary Investments Group Limited seeks registration on the Principal Register of the mark **LIBIDO-MAX** for goods identified in the application as "vitamins; nutritional supplements" in International Class 5.[1]

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register applicant's mark based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining

[1] Application Serial No. 76537869 was filed by Primary Investments Group Limited, a British Virgin Islands corporation, on August 15, 2003 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles the mark **LIBIDO**, which is registered for "vitamin and mineral supplements"[2] also in International Class 5, as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney submitted briefs, but applicant did not request an oral hearing. We affirm the refusal to register.

Applicant argues that the cited mark should be accorded a narrow scope of protection inasmuch as the word "libido" has strong descriptive characteristics when applied to vitamins and nutritional supplements marketed as compounds to enhance the user's libido; that especially in light of the narrow scope of protection that should be accorded the registrant's non-distinctive mark, the differences in appearance, sound, connotation, and commercial impression between the two marks obviate any likelihood of confusion with registrant's mark; that the Trademark Examining Attorney has failed in her efforts to show that

[2] Registration No. 2040060 issued to Lifesource International Inc., on February 25, 1997, claiming first use anywhere and first use in commerce at least as early as July 26, 1994; Section 8 (six-year) affidavit accepted and Section 15 affidavit acknowledged.

manufacturers often use the term "max" to designate the "maximum" or "maximal" version of a base product.

By contrast, the Trademark Examining Attorney argues that the marks of the applicant and the registrant are confusingly similar in appearance, sound, and commercial impression; that the goods of the parties are closely related; that the term "max" means "the maximum" or "maximal," and that third-party registrations and Internet excerpts demonstrate that the term MAX is an extremely weak term in this field, used to suggest that the goods in question provide the maximum or maximal benefit to consumers.

Analysis: Likelihood of Confusion

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

The goods

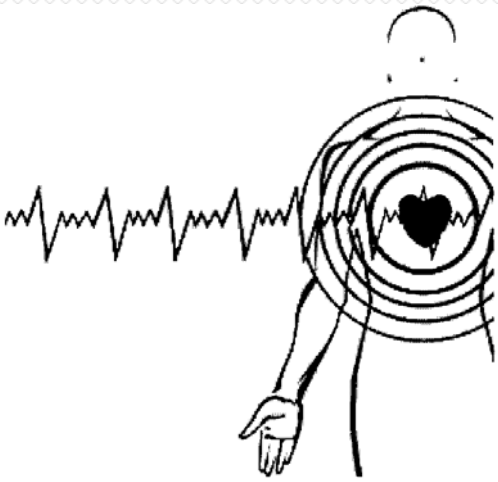
We turn first to the *du Pont* factor focusing on the relationship of the goods as identified in the application and cited registration. The Trademark Examining Attorney argues that the goods are very closely related:

> First, as identified in the application and registration, the goods of the parties are virtually identical, in part. The Applicant's mark is intended to be used in connection with "vitamins," while the registered mark is used in connection with "vitamin supplements."
>
> Second, as identified in the application and registration, the Applicant's "nutritional supplements" wholly incorporate the registered goods, "vitamin and mineral supplements." …
>
> Third, … copies of third-party registrations … illustrate that the goods of the parties are likely to be offered by common sources…

Trademark Examining Attorney's appeal brief, unnumbered pages 9 – 10.

In this case, applicant's goods (vitamins and nutritional supplements) and registrant's goods (vitamin and mineral supplements) are, despite differences in terminology, essentially identical. In fact, at no time has applicant ever disputed the fact that the goods are closely related. We agree with the Trademark Examining Attorney that for purposes of our legal analysis, these respective goods are essentially interchangeable. Furthermore, it is

clear from copies of third-party registrations and Internet excerpts that even those goods not deemed to be identical are closely related, as they are know to emanate from a single source under the same mark:

FIBER-PSYLL	for "vitamin supplements; dietary supplements; herbal supplements; and nutritional supplements" in International Class 5;[3]
WN PHARMACEUTICALS	for "nutritional supplements; dietary supplements; herbal supplements; vitamins; multi-vitamins; mineral supplements; vitamin and mineral supplements; and dietary and herbal supplements …" in International Class 5;[4]
	for "dietary supplements, nutritional supplements, food supplements, herbal supplements, vitamin and mineral supplements" in International Class 5;[5]

[3] Registration No. 2525276 issued on January 1, 2002 claiming first use anywhere and first use in commerce at least as early as May 29, 2001.

[4] Registration No. 2906140 issued on November 30, 2004 claiming first use anywhere at least as early as August 19, 1996 and first use in commerce at least as early as September 21, 2000.

[5] Registration No. 2871386 issued on August 10, 2004 claiming first use anywhere and first use in commerce at least as early as February 12, 2001. The mark consists of a silhouette of a man's partial body with a heart, heartbeat waves and aura radiating from his chest.

ENDOBIOGENIC CONCEPT	for *inter alia* "Herbal supplements, homeopathic supplements, Nutraceuticals for use as dietary supplements, nutritional supplements, vitamin and mineral supplements …" in International Class 5;[6]
PHYTO-AROMATHERAPY SEASONAL CONCEPTS	for *inter alia* "Herbal supplements, homeopathic supplements, Anthracitic for use as dietary supplements, nutritional supplements, vitamin and mineral supplements …" in International Class 5;[7]
heightmax	for "food, herbal and dietary supplements; vitamin and mineral supplements; dietary supplements for augmentation of human growth" in International Class 5;[8]
FOOD ORIGINS	for "nutritional supplements; herbal supplements; mineral supplements; vitamins; vitamin supplements; minerals; herbs and herbal tinctures" in International Class 5;[9]

[6] Registration No. 2915086 issued on December 28, 2004 claiming first use anywhere and first use in commerce at least as early as January 1, 2003.

[7] Registration No. 2882933 issued on September 7, 2004 claiming first use anywhere and first use in commerce at least as early as February 1, 2003.

[8] Registration No. 2795040 issued on December 16, 2003 claiming first use anywhere and first use in commerce at least as early as August 2002. The mark consists of stylized human figures on a multi-color arch with the literal elements of the mark appearing below.

[9] Registration No. 2902434 issued on November 9, 2004 claiming first use anywhere and first use in commerce at least as early as March 30, 2004.

Body of CONFIDENCE	for *inter alia* "nutritional products, namely, dietary supplements, nutritional supplements, nutritionally fortified drinks, vitamin supplements" In International Class 5;[10]
ALAND	for " … vitamins; vitamin and mineral supplements; vitamin drops; nutritional supplements; … medicated chewing gum for supplying vitamins …" in International Class 5;[11]
LIVE SMARTER	for *inter alia* "… nutritional substances to promote physical health, mental health, and general well being, namely nutritional supplements, vitamins, mineral supplements, neutraceuticals, dietary supplements, herbal supplements …" in International Class 5;[12]
TOOLS FOR WELLNESS	for *inter alia* "… nutritional substances to promote physical health, mental health, and general well being, namely nutritional supplements, vitamins, mineral supplements, neutraceuticals, dietary supplements, herbal supplements …" in International Class 5;[13]

[10] Registration No. 2920639 issued on January 25, 2005 claiming first use anywhere and first use in commerce at least as early as July 25, 2000.

[11] Registration No. 2899607 issued on November 2, 2004 claiming first use anywhere at least as early as February 14, 1996 and first use in commerce at least as early as May 7, 1996.

[12] Registration No. 2912840 issued on December 21, 2004 claiming first use anywhere at least as early as June 4, 2003 and first use in commerce at least as early as June 18, 2003.

[13] Registration No. 2910580 issued on December 14, 2004 claiming first use anywhere at least as early as December 8, 1999 and first use in commerce at least as early as February 1, 2000.

UMCKA COLDCARE	for "vitamins, mineral supplements, dietary supplements …" in International Class 5;[14]
BEACHBODY	for *inter alia* "meal replacement protein bars, dietary supplements and diet aids, namely vitamins and mineral supplements" in International Class 5;[15]
CARB SELECT	for "nutritional supplements, herbal supplements, vitamin supplements, mineral supplements, vitamin and mineral supplements, dietary supplements, dietary food supplements and food supplements, all in bar form" in International Class 5;[16]
E-LYTE SPORT	for *inter alia* "dietary supplements, vitamin supplements, mineral supplements, nutritional supplements, vitamins, nutritionally fortified water, dietary food supplements" in International Class 5;[17]
YOUTH FLEX	for "vitamins and mineral supplements" in International Class 5;[18]

[14] Registration No. 2925923 issued on February 8, 2005 claiming first use anywhere and first use in commerce at least as early as August 1, 2003.

[15] Registration No. 2862904 issued on July 13, 2004 claiming first use anywhere and first use in commerce at least as early as May 10, 1999.

[16] Registration No. 2918189 issued on January 11, 2005 claiming first use anywhere and first use in commerce at least as early as December 1, 2003.

[17] Registration No. 2891450 issued on October 5, 2004 claiming first use anywhere and first use in commerce at least as early as January 1, 2000.

[18] Registration No. 2920099 issued on January 18, 2005 claiming first use anywhere and first use in commerce at least as early as October 7, 2004.

Detoxx Box	for "nutraceuticals for the treatment of toxicity; dietary supplements, vitamin supplements, mineral supplements, nutritional supplements, vitamins, nutritionally fortified water, dietary food supplements" in International Class 5;[19] and
	for "vitamins; nutritional supplements; mineral supplements; nutraceuticals for use as a dietary supplement; diet capsules; diet pills; dietary drink mix for use as a meal replacement; dietary food supplements; food for medically restricted diets; meal replacement and dietary supplement drink mixes; herbal supplements; appetite suppressants; dietary supplements; meal replacement drinks; meal replacement powders; nutritional drink mix for use as a meal replacement; and herbal and nutritional supplements" in International Class 5.[20]

These third-party registrations, which are based on use in commerce, and which individually cover a number of different items, provide some support for the Trademark Examining Attorney's position that vitamins and a variety of dietary/mineral supplements are related because they show that these goods have been registered by the same source under the same mark. *See* *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) [Although third-party registrations "are not evidence that the marks shown therein

[19] Registration No. 2883426 issued on the Supplemental Register on September 7, 2004 claiming first use anywhere and first use in commerce at least as early as August 1, 2002.

[20] Registration No. 2912951 issued on December 21, 2004 claiming first use anywhere and first use in commerce at least as early as March 29, 2003. The mark consists of a stylized eye design.

are in use on a commercial scale or that the public is familiar with them, [they] may have some probative value to the extent that they may serve to suggest that such goods or services are the type which may emanate from a single source"]. *See also In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993).

The Trademark Examining Attorney also found a variety of websites having listings for vitamins, vitamin supplements, herbs, herbal remedies, herbal supplements, mineral supplements, nutritional supplements, health supplements and dietary supplements.[21]

As a result, we find that this *du Pont* factor clearly favors the position taken by the Trademark Examining Attorney herein.

Channels of trade

We turn next to the related *du Pont* factor focusing on the similarity or dissimilarity of established, likely-to-continue trade channels. It is clear from the third-party registrations that some of the same manufacturers apply the same mark to vitamins and dietary supplements. On this record, we presume that they move in all appropriate

[21] www.earlychildhoodlinks.com, www.greatestherbsonearth.com, www.meganutrition.com, www.pharmj.com and www.baby-place.com.

channels of trade and to all appropriate customers for those goods as identified, and hence could be sold in the same retail establishments, e.g., health food outlets, drugstores, etc., and would be purchased by the same ordinary classes of consumers. If these purchasers were to encounter the products under the same or similar marks, it would not be unreasonable for them to assume, mistakenly, that they originate from the same source. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Hence, this factor too favors the position taken by the Trademark Examining Attorney.

Conditions Under Which Sales are Made

As to the *du Pont* factor focusing on the conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing, there is nothing in this record showing that customers of vitamin supplements, mineral supplements, nutritional supplements and vitamins are anything other than ordinary consumers. Suffice it to say that generally where such goods are sold at relatively low costs, purchasers are assumed to exercise a lower standard of purchasing care and attention. See *Wincharger Corp. v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289, 292 (CCPA 1962). *See also In re Decombe*, 9 USPQ2d 1812, 1814-15 (TTAB 1988); and *In re Pellerin Milnor Corp.*, 221

USPQ 558, 560 (TTAB 1983). Even if we were to assume that such consumers are conscious of health and nutritional matters, it does not mean that they are necessarily knowledgeable and sophisticated when it comes to discriminating as to the source or sponsorship of goods directed principally to the health and nutritional field.

Accordingly, this *du Pont* factor appears to be a neutral factor in our likelihood of confusion determination.

The number and nature of similar marks

As to the *du Pont* factor focusing on the number and nature of similar marks in use on similar goods, applicant argues that the cited mark is merely descriptive and hence should be accorded a narrow scope of protection, i.e., that even slight differences in the form of a later-adopted, LIBIDO-formative mark are sufficient to overcome a finding of likelihood of confusion with the cited mark.

To support its position that the word "libido" describes the purpose of vitamins and mineral supplements for enhancing libidos, applicant searched the "health & personal care" products tab on www.amazon.com for the word "libido," and obtained 781 items, of which the record contains the first twenty-four items, including Sativol's *extra libido* for men and women, Avlimil *libido enhancer* for

women, Motivator ("Motivate-Her") all-natural *libido enhancer* for women, Magna-Rx's Lava *libido enhancer* for women, and Emerita/ProGest's *libido formula* for women. Similarly, applicant searched for the word "libido," on www.drugstore.com and obtained forty-one items, of which the record contains all of these items, including Lioness women's sexual *libido enhancer*, Emerita *libido formula* for women, Vahard men's sexual *libido enhancer*, Applied Nutritions' *Libido-Max*,[22] and Irwin Naturals' Steel-*Libido* for women.[23] Applicant also submitted web pages about Super *Libido Formula* for men, Pyramid Nutritions Testosterol *Max Libido formula*, Gaia Herbal's women's *libido* liquid phyto-caps, Emerita's *libido formula*, Fountain of Youth's *libido lift* lotion, Christopher's Herbal *libido formula*, Hbee's Lusty *Libido* for her, Sensua's women's *libido formula*, Avlimil's female *libido enhancer*, Emerita/ProGest's *libido formula* dietary supplement for women, as well as a number of similar products from www.lifesvigor.com and www.naturalwellbeing.com.

Consistent with this common usage in naming such products, applicant argues that the cited mark is "weak"

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[22] Applicant does not explain the relationship between itself and Applied Nutritions.

[23] Again, Applicant does not explain the relationship between itself and Irwin Naturals. *See* Registration No. 3080315, footnote 24, *infra*.

inasmuch as there are a number of third-party registrations for identical or similar goods which composite marks include the word "Libido." Applicant properly made of record copies of registrations covering the following marks, from which applicant argues that the word "Libido" is descriptive or so commonly used that members of the public will look to other elements to distinguish the source of the goods:

STEEL-LIBIDO	for "vitamins; nutritional supplements; food supplements; nutritional drink mixes; nutritional drink mixes for use as a meal replacement" in International Class 5;[24]
DOCTOR'S LIBIDO LIFT	for "topical preparation, namely, a testosterone enhanced product to enhance and promote sexual performance, endurance, and desire" in International Class 5;[25]
TESTOSTERONE Maximum LIBIDO COMPLEX	for "nutritional supplements, vitamins, and herbal supplements in tablet, capsule, powder and liquid forms, namely testosterone complex used to

[24] Registration No. 3080315 issued to Primary Investments Group Limited (applicant herein) on April 11, 2006 claiming first use anywhere and first use in commerce at least as early as April 30, 2002; no claim is made to the word "libido" apart from the mark as shown.

[25] Registration No. 2648867 issued on November 12, 2002 claiming first use anywhere and first use in commerce at least as early as May 18, 2001.

	enhance human libidos" in International Class 5;[26]
TESTOSTEROLE Maximum LIBIDO COMPLEX	for "nutritional supplements, vitamins, and herbal supplements, in tablet, capsule, and liquid forms" in International Class 5;[27] and
LIBIDO 2	for "energy drinks, namely sports drinks enhanced with vitamins, minerals, caffeine, nutrients, amino acids or herbs and aerated water" in International Class 32.[28]

However, we find that none of these marks is as close to the registered mark as is applicant's involved mark. These registrations all contain other seemingly arbitrary, or at the very least, suggestive, matter, and several of these composite marks have the word "libido" disclaimed – presumably in those specific contexts appearing as non-distinctive matter. Certainly the record is devoid of any

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[26] Registration No. 2645869 issued to Maximum International Nutrition Inc. on November 5, 2002 claiming first use anywhere and first use in commerce at least as early as September 24, 2001; no claim is made to the words "testosterone" and "libido complex" apart from the mark as shown.

[27] Registration No. 2691948 issued to Maximum International Nutrition Inc. on March 4, 2003 claiming first use anywhere and first use in commerce at least as early as May 2000; no claim is made to the words "maximum libido complex" apart from the mark as shown.

[28] Registration No. 2962592 issued on June 14, 2005 claiming first use anywhere and first use in commerce at least as early as May 27, 2004.

marks in this field, other than registrant's cited mark, consisting of nothing distinctive beyond the word "Libido."

We note that in support of its position, applicant has also included in the record dozens of third-party registrations where the word "libido" is used in the identification of goods for vitamins and supplements not unlike those being marketed by the cited registrant and the other third-party merchants and manufacturers of alleged libido-enhancing products.

In view of all of this evidence, we conclude that "Libido" is a well-recognized term in the field of vitamins and supplements that suggests to the prospective users the promise of enhanced sexual drive and performance. We therefore find that it is a highly suggestive term and that the registration is entitled to a very narrow scope of protection, but nonetheless one that is entitled to the presumptions of Section 7(b) of the Trademark Act. After a careful reading of their respective briefs, it seems that perhaps the Trademark Examining Attorney and applicant are simply disagreeing about just how limited this zone of protection should be in the instant case.

In this context, applicant argues that the -MAX suffix added to the end of LIBIDO in its mark is sufficient to distinguish its mark from the cited mark. If LIBIDO is

accorded a narrow scope of protection, it would appear that any distinctive term added to registrant's mark obviates a likelihood of confusion. In that regard, then, our attention turns to the strength of the suffix that applicant has added.

The Trademark Examining Attorney has placed into the record several definitions showing that "max" is a shortened from of "maximum" or "maximal." She has also included websites for EcdyMax HP muscle-building supplements, Max Stamina libido booster, BarleyMax – "A dietary supplement for maximum nutrition," SecretaMax HGH stimulator, as well as third-party registrations for ULTRA MAX vitamins, ESTRO MAX nutritional and dietary supplements, VIRIL MAX nutritional and dietary substances, BIO-MAX vitamin, mineral and nutritional dietary supplements, JOINT MAX nutritional supplements, ECDY MAX dietary and nutritional supplements, SKYMAX nutritional supplements, GREEN TEA MAX nutritional supplements, HEIGHTMAX dietary supplements, and BONEMAX vitamins and food supplements.

Furthermore, in response to applicant's request for reconsideration, the Trademark Examining Attorney placed into the record

> … excerpts retrieved from the Internet which illustrate that manufacturers of vitamins and

> supplements often market a "max" version of a base product. For this reason, because of the similarity in the goods of the applicant and the registrant, it is likely for consumers to believe that the goods of the parties emanate from the same source, the applicant's goods being the max version of the registrant's base product.

Denial of request for reconsideration, unnumbered page 2. She attached web pages showing ❶ Bricker Labs' **Big-C** supplement and **Big-C Max**/"Maximal supplement," ❷ Spectrum Essentials' **Essential** Fiber and **Essential Max**, ❸ Naturopathica's **FatBlaster** and **FatBlaster** Super Strength **Max**, ❹ Nature's Way's **Ginkgold** and **Ginkgold Max**, and ❺ Champion Nutritions' **MET** Endurance and **MET Max**. While applicant argues that, in reality, these examples represent "different marks for different products," we find that given the way this overall record demonstrates that the word "Max" is used with vitamins and supplements, it stands to reason that potential consumers might well be inclined to believe that **LIBIDO-MAX** is an extra-strength, or follow-on, version of **LIBIDO**.

The marks

With that in mind, we turn to the *du Pont* factor focusing on the similarity of the marks in their entireties. We must consider whether the marks are similar in sound, appearance, meaning, and commercial impression. *Palm Bay*

Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). We also note that if the respective goods of the parties are essentially identical, as is the case herein, it has been held that "the degree of similarity [of the marks] necessary to support a conclusion of likely of confusion declines." *Century 21 Real Estate v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Applicant argues that these marks are not confusingly similar because its mark contains the word "Max" not found in the registered mark, that this suffix represents an additional syllable, creates a sound not found in the registered mark, and creates a connotation and commercial impression different from those of the registered mark.

Applicant has taken registrant's LIBIDO mark in its entirety, and merely added the suffix, -MAX. While we have determined that the word "libido" is a highly suggestive and commonly-used term for these goods, we cannot disregard the cited registration. Moreover, we find that as to connotation and commercial impression, the added term, -MAX, appears to be a laudatory appendage, whether it refers to an extra-strength version of a base product, the intensity of the involved dosage or an improved version of an earlier

product. Perhaps not unlike the word PLUS, " … [MAX] is both a laudatory word, implying a higher quality product … and a highly suggestive word indicating that the product adds an additional value or quality to something else or contains an additional ingredient." *Plus Products v. Natural Organics, Inc.*, 204 USPQ 773, 780 (TTAB 1979) [hence, in dealing with vitamins, minerals and food supplements, NATURE'S PLUS is *not* confusingly similar to PLUS].

As for visual appearance, we believe that applicant's mark and registrant's mark are very similar. As argued by the Trademark Examining Attorney, it is often the first part of the mark that is most likely to be impressed upon the mind of the purchaser and remembered. *Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895 (TTAB 1988). Both marks herein begin with the term "Libido," and "-Max" is similarly not particularly distinctive for these goods. While we compare the marks in their entireties, our primary reviewing court has held that in articulating reasons for reaching a conclusion on the question of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature or portion of a mark. That is, one feature of a mark may have more significance than another.

See *Sweats Fashions Inc.* *v.* *Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987) [because the word "sweats" is commonly used as a highly descriptive name for fleece garments, no likelihood of confusion between opposer's sweats dd, the word "sweats" disclaimed, **sweats jj,** and sweats bi'ebe dd, and applicant's SUPER SWEATS, the word "sweats" disclaimed]; and *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985) [CASH MANAGEMENT ACCOUNT likely to be confused with THE CASH MANAGEMENT EXCHANGE]. While applicant would use this line of argument to have us minimize our attention to the "Libido" portion of its mark, we find that it is also a reason that prospective consumers would tend to minimize the visual impact of the "-Max" portion of its mark in distinguishing between these marks.

Similarly, as to sound, adding this fourth syllable to registrant's mark in a position where consumers of this type of product are quite accustomed to seeing the suffix, "-Max," limits the distinguishing capability of any perceived aural differences between these marks as well.

Certainly, similarity as to any one of the factors of sight, sound and meaning may be sufficient to support a finding that the marks are confusingly similar –

particularly when they are used on goods that are essentially identical. However, in this case we need not be concerned with focusing on only one of these factors because we find that applicant's mark is, at a minimum, very similar to registrant's mark with regard to sound, appearance, meaning, and commercial impression.

In sum, given the similarity of these marks, we find that their use on such closely-related goods is likely to result in confusion.

Conclusion

Upon careful review of this record and the arguments, we believe that purchasers and potential purchasers, including those with an interest in health and nutrition, who are familiar with registrant's **LIBIDO** vitamin and mineral supplements, who might then encounter applicant's **LIBIDO-MAX** vitamins and nutritional supplements, are likely to believe, because of the similarities of the marks, that all of these vitamins and supplements come from the same source.

Finally, to the extent that any of applicant's arguments may serve to create any possible doubt as to our conclusion of a likelihood of confusion, according to precedent, we must resolve any such doubt in favor of the

prior user and registrant. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984); and *In re Pneumatiques Caoutchouc Manufacture et Plastiques Kelber-Columbes*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

Decision: The refusal to register under Section 2(d) of the Lanham Act is hereby affirmed.