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This Opinion is Not a
Precedent of the TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ronald V. York

Serial No. 76600401

Michael I. Kroll for Ronald V. York.

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Before Quinn, Rogers and Drost,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Ronald V. York (applicant) has applied for registration on the Principal Register of the term VENTALIGHT, in standard character form, as a mark for "metal skylights equipped with a solar fan," in Class 6 and for "non-metal skylights equipped with a solar fan," in Class 19. The examining attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of the prior registration of VENT-A-LITE

in typed form for "electric light and fan units," in Class 11.¹

When the examining attorney made the refusal of registration final, applicant appealed. Applicant and the examining attorney have filed briefs addressing the refusal of registration, which is the only issue on appeal.

We analyze the issue of likelihood of confusion using the factors that were articulated by the Court of Customs and Patent Appeals, a predecessor of our primary reviewing court, in the case of In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003).

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services. 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 [or services] and differences in the marks").

¹ Registration No. 671478 issued December 23, 1958 and twice has been renewed. The designations "typed form" and "standard character form" are equivalent and indicate marks not restricted to a particular font or form of display.

In this case, we compare applicant's VENTALIGHT mark and the VENT-A-LITE mark in the cited registration by considering similarities, or differences, in the appearance, sound, connotations and overall commercial impressions of the marks. In re Coors Brewing Co., 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003) and Giant Food, Inc. v. Nation's Foodservice, Inc., 218 USPQ 390, 395 (Fed. Cir. 1983).

Both marks are structured the same, beginning with the identical word, VENT, and ending with a phonetically equivalent word, LIGHT or LITE. Further, in both marks, the first and last words are connected by the letter A.

Phonetically, the composite marks are identical. Visually, the only differences between the marks are that the registered mark utilizes a phonetic equivalent of "light," rather than the correct spelling of that word, and uses hyphens to connect the elements of the mark, rather than running them together, as applicant has. When the same or similar words are used in marks, the presence or absence of hyphens or other punctuation marks generally will be of little significance. See In re White Swan Ltd., 8 USPQ2d 1534, 1535 (TTAB 1988) (in case involving marks SHAKE SCATTER & GROW and SHAKE-N-GROW, Board found "fact that the registrant's mark contains the letter 'N'

surrounded by hyphens and applicant's mark contains an ampersand constitutes but a very minor difference"). Likewise, the visual difference between the words LIGHT and LITE in the involved marks is equally minor.

The connotation of the marks is essentially the same, in that each conveys the notion of a product that involves both venting and lighting. In addition, each mark may be viewed by some consumers as a play on the word "ventilate," which will reinforce the connotation of venting. The fact that the lighting obtained through use of the respective products is obtained by different means, e.g., through the natural light accessed by applicant's skylights compared to the electric light provided by registrant's product, will not have a significant effect on the connotations of the marks. Accordingly, the differences between the marks are inconsequential, and we find them to present the same overall commercial impression. See In re Total Quality Group Inc., 51 USPQ2d 1474, 1476 (TTAB 1999) (STRATEGYN and STRATEGEN "marks engender virtually identical commercial impressions, both suggesting the idea of a strategy").

Turning to the goods, the examining attorney has introduced evidence showing that ceiling fans and skylights can emanate from the same source and serve complementary functions. See the evidence attached to the August 30,

2005 final refusal of registration, specifically, the website www.degeorgeceilings.com, and the three excerpts of stories from the Nexis articles database that refer to rooms utilizing both ceiling or paddle fans and skylights. Applicant has not countered this evidence and only argues that the goods are different because of the obvious differences between skylights and electric lights and conventional fans versus solar-powered fans.

We acknowledge that the goods have differences, but that is not sufficient reason to consider them unrelated. In assessing likelihood of confusion, the question is not whether purchasers can differentiate the goods themselves but rather whether purchasers are likely to confuse the source of the goods. See Helene Curtis Industries Inc. v. Suave Shoe Corp., 13 USPQ2d 1618, 1624 (TTAB 1989). That is, likelihood of confusion may exist even if the parties are not direct competitors, and the rights of the owner of a mark extend to any goods and services that potential purchasers might think are related. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984) ("In the case at bar there is an extensive pattern of complementary interests: the channels of trade, the types of stores, the commonality of purchasers, and the conjoint use."); In re Opus One Inc., 60 USPQ2d 1812, 1815-

16 (TTAB 2001) (likelihood of confusion when identical mark used for restaurant services and wine, because goods and services complementary, applicant's wine actually served in registrant's restaurant, and practice of some restaurants to serve private label wine). As the examining attorney has shown, the involved goods can emanate from the same source and can be used together for complementary purposes. Accordingly, we find the goods related for likelihood of confusion purposes.

Apart from arguing that the goods have certain differences, applicant has also argued that the involved marks are suggestive and entitled to only a narrow scope of protection. In fact, applicant argues that the respective marks are so weak that neither should be protected except from use of the identical mark for the identical goods. Brief, p. 6. We cannot agree. Applicant has provided no evidence whatsoever to support his position. As far as the record reveals, the two involved marks are the only two that combine the VENT and LIGHT/LITE elements for any goods or services. Even if we were to accept as proven that the involved marks are weak, a suggestive or weak registered mark is entitled to protection against subsequent registration of a mark that would be likely to cause confusion. See In re The Clorox Co., 578 F.2d 305, 198

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USPQ 337, 341 (CCPA 1978) (ERASE for a laundry soil and stain remover held confusingly similar to STAIN ERASER, registered on the Supplemental Register, for a stain remover). See also The Barbers, Hairstyling for Men & Women, Inc. v. The Barber Pole, Inc., 204 USPQ 403, 408-09 (TTAB 1979) ("rights in such registered marks can in no way be restricted so as to limit ... protection merely to the subsequent registration of the same mark for the identical goods or services"). Finally, we do not find persuasive the prior decisions on which applicant bases his limited scope of protection argument. Each of the cited cases is factually distinguishable and the instant appeal must be decided on its own facts. See Polaroid Corp. v. Richard Mfg. Co., 341 F.2d 150, 144 USPQ 419, 421 (CCPA 1965) ("[P]rior decisions in trademark cases, where the issue is a likelihood of confusion, furnish meager assistance in the resolution of that issue. Each case must be decided on the basis of the factual situation thereby presented.").

Decision: The refusal of registration under Section 2(d) of the Trademark Act is affirmed.