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Mailed: August 29, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Shamrock Beverage Co.

Serial No. 76652382

Cary S. Tepper of Booth, Freret, Imlay & Tepper, P.C. for
Shamrock Beverage Co.

Nelson B. Snyder III, Trademark Examining Attorney, Law Office
107 (J. Leslie Bishop, Managing Attorney).

Before Holtzman, Kuhlke and Bergsman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Shamrock Beverage Co. to
register the mark shown below for goods ultimately identified as
"concentrates for non-alcoholic frozen fruit beverages, fruit

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drinks and fruit juices" in Class 32.¹



The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the marks in the following four registrations, all owned by the same entity, as to be likely to cause confusion.

Registration No. 0189882 for the mark shown below for "fresh citrous [sic] fruits" in Class 31;²



¹ Serial No. 76652382, filed December 21, 2005, based on an allegation of first use and first use in commerce on November 15, 2005. The wording "BEVERAGE CO." is disclaimed. The application contains the following color statement: "The letters in the term 'Shamrock' are black with a green inner outline and a thin[] black outer outline. The shamrock design element in the term 'Shamrock' is dark green with a light green inner outline and a thin black outer outline. The term 'BEVERAGE' is white with a black shadow, and appears in a rectangular banner design with a dark green background, light green inner outline, black outer outline and black shadow. The term 'CO.' is black."

² Issued September 30, 1924; fourth renewal.

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Registration No. 1761590 for the mark shown below (FOODS COMPANY disclaimed), for "fresh fruits and fresh vegetables" in Class 31;³



Registration No. 1761602 for the mark shown below for "fruit juices and fruit-flavored drinks" in Class 31.⁴



Registration No. 1846288 for the mark shown below for "canned and frozen vegetables; dietary (low sodium) canned vegetables; battered and breaded frozen vegetables; canned, frozen and dehydrated fruit; jams, jellies and preserves; peanut butter; pickles; processed peppers; olives; eggs" in Class 29.⁵



³ Issued March 30, 1993; Renewed; "The stippling on the mark is for shading purposes only and does not indicate color." "The mark incorporates a split-leaf shamrock design."

⁴ Issued March 30, 1993; renewed. "The stippling on the mark is for shading purposes only and does not indicate color." "The mark incorporates a split-leaf shamrock design."

⁵ Issued July 19, 1994; renewed. "The stippling on the mark is for shading purposes only and does not indicate color." "The mark incorporates a split-leaf shamrock design."

When the refusal was made final, applicant appealed. Briefs have been filed.

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

In our analysis we will focus on the two closest of the cited registrations to the involved application, namely the marks and goods in Registration Nos. 0189882 and 1761602.

Applicant argues that while the marks have some similarities in that they all contain the word SHAMROCK and the design of at least one clover, the style of lettering of that word and the clover designs are distinctly different in applicant's and registrant's marks. Applicant notes that the clover in its mark is used as the letter "O" as distinguished from registrant's marks where it appears as one large, three-leafed two-toned clover or many small intertwining clovers that, according to applicant, resemble ivy. While admitting that SHAMROCK "may be viewed as the dominant portion of the marks" (Brief, p. 10),

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applicant argues that the disclaimed portion of applicant's mark cannot be ignored and that the presence of this wording further distinguishes the marks in sound and appearance.

While marks must be considered in their entirety, it is well settled that "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 entirety." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). When we compare applicant's mark SHAMROCK with registrant's marks in their entirety, giving appropriate weight to the features thereof, we find that the marks are highly similar in sound, meaning and overall commercial impression, and that the differences in the marks, which involve primarily visual differences, are far outweighed by their similarities.

The dominant portion of registrant's two marks is the word SHAMROCK. The identical term, SHAMROCK, is the most significant component of applicant's mark. It is this portion of the mark that conveys the strongest impression in both applicant's and registrant's marks. While the disclaimed, if not generic, wording, "BEVERAGE CO." in applicant's mark is not ignored, the fact is, that consumers are more likely to rely on the nondescriptive portion of the mark, that is, the word SHAMROCK, as an indication of source. See In re National Data Corp., supra

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at 751 ("That a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark"). We also note that the disclaimed wording in applicant's mark is visually less prominent, appearing in much smaller lettering than SHAMROCK and on a separate line.

In addition, it is the word SHAMROCK itself, rather than the particular display of that word or the design elements in the marks, that is more likely to have a greater impact on purchasers and be remembered by them. See *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983) ("in a composite mark comprising a design and words, the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed"). The word portion of a composite word and design mark is generally accorded greater weight because it would be used to request the goods. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). This is particularly true where, as here, the design elements do not significantly add to or change the commercial impression created by the word, SHAMROCK, alone. In fact, the clover designs, although different in each mark and more prominent than the word in the '602 registration, merely serve to reinforce the meaning and commercial impression conveyed by the word SHAMROCK.

We also note that registrant's SHAMROCK marks are entirely arbitrary as applied to fresh fruit and fruit juices, and as such they are strong marks which are entitled to a broad scope of protection. See *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001). This makes it even less likely that purchasers will give much consideration to the visual differences in applicant's and registrant's marks and more likely, if the marks are used on related goods, to cause confusion.

We turn then to the goods. Applicant's goods are concentrates for frozen fruit juices and fruit drinks. The goods in Registration No. 0189882 are fresh citrus fruits and the goods in Registration No. 1761602 include fruit juices. Applicant argues that the goods in Registration No. 1761602 "appear to be somewhat similar to [applicant's products]" but that fresh citrus fruits are distinct from applicant's goods.

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 (TTAB 1989). Thus, it is not necessary that the goods of the applicant and registrant be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that the goods would be encountered by

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the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that the goods emanate from or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Fruit juices and fruit juice concentrates are obviously related beverage products. Applicant does not argue otherwise. Furthermore, fresh fruits are closely related to concentrates made from fruits. Purchasers would naturally assume, if they encounter these products under applicant's and registrant's very similar marks, that such products come from or are associated with the same company. We also note that the examining attorney has submitted a number of use-based, third-party registrations showing, in each instance, a mark which is registered for fresh fruits and fruit juices, on the one hand, as well as fruit concentrates, on the other. For example, the mark SUNKIST is registered for oranges (Registration No. 0072087) and lemons (Registration No. 0085069) as well as citrus-flavored beverages and concentrates for such beverages (Registration No. 0301281); the mark DOLE is registered for fresh fruits (Registration No. 2314787) as well as fruit juices and fruit juice concentrates (Registration No. 1335817); Registration No. 3047447 for the mark POM (stylized) lists fresh fruits and fruit juices, as well as fruit juice concentrates; Registration No. 0641108 for the mark

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OLD SOUTH lists fresh citrus fruits and canned citrus fruit juices, as well as fresh frozen citrus juice concentrates; Registration No. 0703640 for the mark CAL FAME lists fresh fruits and canned and frozen fruit juices, as well as frozen fruit juice concentrates; and Registration No. 2646095 for the mark TAD (and design) lists fresh fruit and fruit juices, as well as fruit juice concentrates. These third-party registrations, although not evidence of use of the marks in commerce, serve to suggest that the respective goods are of a type which may emanate from the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

There is no question that fresh fruits and fruit juices, along with fruit juice concentrates, are sold in the same channels of trade to the same purchasers. Also, these products are inexpensive and frequently replaceable. It has often been stated that purchasers of such products are held to a lesser standard of purchasing care and, thus, are more likely to be confused as to the source of the goods. See *Specialty Brands, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

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In view of the foregoing, and because highly similar marks are used in connection with closely related goods, we find that confusion is likely.

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