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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Petroleum Technology, Inc.

Serial No. 76663951

Myron Amer of Myron Amer, P.C. for Petroleum Technology, Inc.

Elizabeth L. Beyer, Trademark Examining Attorney, Law Office 102 (Karen M. Strzyz, Managing Attorney).

Before Walters, Bucher and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Petroleum Technology, Inc. seeks registration on the Principal Register of the mark PETROTECH (in standard character form) for goods ultimately identified as "oil reclamation machinery, namely, oil separatory system comprised of a mesh strainer and high surface filter, a pump, a low-watt density heater, a pressure-switch gauge, a valve, a liquid-gas separation column, a condenser, a condensate collection chamber with a level control switch

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and a vacuum discharge pump to treat hydraulic and industrial oils" in International Class 7.¹

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used with its identified goods, so resembles the registered mark PETROTEC for "process chemicals used in hydrocarbon refining and petrochemical processing" in International Class 1, as to be likely to cause confusion, mistake or deception.²

When the refusal was made final, applicant appealed and briefs have been filed. We affirm the refusal to register.

Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201

¹ Application Serial No. 76663951, filed August 1, 2006, alleging first use of the mark anywhere and in commerce on January 1, 2002 under Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a).

² Registration No. 1507639, issued October 11, 1988, Sections 8 and 15 affidavits accepted and acknowledged.

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(Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

In comparing the marks, we must determine whether they are sufficiently similar that there is a likelihood of confusion as to source and, in doing so, we must consider the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). The marks PETROTECH and PETROTEC are phonetically identical and nearly identical in appearance with only the addition of the letter H at the end of applicant's mark. See *RE/MAX of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980) (similarity in sound sufficient for likely confusion). The addition of this letter does not change the connotation or commercial impression of the mark and does not distinguish the appearance of the mark to obviate a finding of similarity. Thus, we find the marks to be highly similar when compared in their entireties in terms of appearance, sound, connotation and commercial impression, and the factor of

the similarity of the marks weighs in favor of likelihood of confusion. Applicant does not argue to the contrary.

In traversing the refusal, applicant relies solely on its contention that the goods are not related and the channels of trade are different. Specifically, applicant argues that "the respective goods are [not] marketed in a way that they would be encountered in a situation that would create the incorrect assumption that they originate from the same source." Br. p. 3. In addition, applicant argues that the third-party registrations submitted by the examining attorney do not demonstrate that "machines and chemicals are of a kind that emanate from a single source." Reply Br. p. 4.

In support of her argument that the goods are related, the examining attorney submitted printouts of webpages retrieved from the Internet that show that applicant's and registrant's goods, as identified in the application and registration, are likely to be used together and that "chemicals are used to clean oil reclamation machinery and are added to oil reclamation machinery to replenish depleted additives in the oil during or in connection with the oil reclamation process." Br. p. 5.

In addition, she submitted evidence in the form of third-party use-based registrations to show that other

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entities have adopted a single mark for applicant's "oil reclamation machinery" and registrant's "process chemicals used in hydrocarbon refining and petrochemical processing." See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). While the third-party registrations do show that entities have adopted a single mark for use in connection with various types of machinery and various types of chemicals, none of the third-party registrations contain precisely the goods in issue here. See, e.g., Reg. No. 2575840 (HALLIBURTON for, inter alia, chemicals for use in the construction, treatment, servicing, completion, and working of oil, gas, geothermal, and water wells, and for use in cleaning of industrial facilities, and machines and machine tools used in well drilling and well working, namely, pumps, injectors, coiled tubing, engines for machine operation, transmissions for machine operation, workover drill string, etc.) and Reg. No. 2830183 (ACCELON for, inter alia, chemicals for use in the manufacture of liquid admixture compounds, namely, fuels, alcohol fuel additives, and hydrocarbon blends, and mechanical mixing machine). Therefore, these registrations are of limited probative value. Further, while there is evidence in the record that registrant itself provides both chemicals and related processing equipment, again the "processing

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equipment" is not specifically listed as reclamation machinery. See www.business.com.

We first note that where the marks are identical, the relationship between the goods need not be as close to support a finding of likelihood of confusion as would be required in a case where there are differences between the marks. *Ancor, Inc. v. Ancor Industries, Inc.*, 210 USPQ 70, 78 (TTAB 1981). Further, the issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source of those goods. In *re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Finally, in making our determination, we must consider the cited registrant's and applicant's goods as they are described in the registration and application, and we cannot read limitations into those goods. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987).

To better understand applicant's goods, the examining attorney submitted an online article entitled "Turbine Oil Reclamation and Refortification" which includes the following excerpt:

Reclamation refers to cleaning and reconditioning of a lubricant, thereby rendering it suitable for continued use in the same application for which it was originally formulated. In the industry today, reclamation normally refers to the removal of water and solid particles from the lubricant. Refortification refers to the act of adding a predetermined amount of additive to a clean, dry, used lubricant to replenish some of the depleted additives. In most cases, refortification and reclamation are used together.

www.machinelubrication.com.

In addition, applicant submitted its own product literature which includes the following excerpt:

Petrotech's patented oil reclamation process is not just limited to the mobile MORS-300 or MORS-800 ... Whatever your choice you'll get the same Petrotech advantages: significant savings over oil replacement; elimination of hazardous waste disposal problems; and the increased productivity that comes from proper fluids maintenance ... Typical Oils Reclaimed By The Petrotech Process ... turbine ...

With regard to registrant's goods, we begin by taking judicial notice of the dictionary definitions from The American Heritage Dictionary of the English Language (4th ed. 2006) for the words PETROCHEMICAL, HYDROCARBON, REFINING, PROCESSING and ADDITIVE:³

Petrochemical n. A chemical derived from petroleum or natural gas;

³ The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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Hydrocarbon n. Any of numerous organic compounds, such as benzene and methane, that contain only carbon and hydrogen;

Refine, Refining, Refines v. 1. To reduce to a pure state; purify. 2. To remove by purifying;

Processed processing processes 2. To repair, treat, or convert by subjecting to a special process: process ore to obtain minerals; and

Additive n. A substance added in small amounts to something else to improve, strengthen, or otherwise alter it.

Based on these definitions, the phrase "petrochemical processing" in registrant's identification of goods is quite broad and would include chemical additives. Moreover, the printout from the webpage Business.com submitted by the examining attorney which discusses registrant's products as including "specialty chemical treatment programs, performance-enhancing additives and related process equipment ... includ[ing] demulsifiers, corrosion inhibitors, drilling fluids, waxes and water treating chemicals," further supports a finding that the identification of goods "process chemicals used in hydrocarbon refining and petrochemical processing" would include the additives used in conjunction with oil reclamation. For example, additives in turbine oil include antioxidants, rust inhibitors and corrosion inhibitors.

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See "Turbine Oil Reclamation and Refortification,"
www.machinelubrication.com.

In view of the above, applicant's goods, as identified, can be used in conjunction with registrant's goods, as identified, to the extent that after applicant's machinery reclaims the oil, the used oil is refortified by replenishing it with registrant's additives. See www.machinelubrication.com.

Reviewing the record as a whole, we find the evidence taken together to be sufficiently persuasive to support a finding that the goods as identified are complementary and, as such, related.

Finally, inasmuch as there are no limitations in registrant's identification of goods, we must presume that registrant's goods will be offered in some of the same channels of trade and will be used by some of the same purchasers as applicant's goods. See *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

In conclusion, we find that because the marks are nearly identical, the goods are related, and the channels of trade and purchasers overlap, confusion is likely between applicant's mark and the mark in the cited registration. To the extent there are any doubts, we

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resolve them, as we must, in favor of the registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988).

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