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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Northland Organic Foods Corp.

Serial No. 77001674

Jana L. France of Fish & Richardson, PC for Northland Organic Foods Corp.

Sonya B. Stephens, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

Before Bucher, Drost and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Northland Organic Foods Corp. seeks registration on the Principal Register of the mark shown below for goods and services identified as "nutritional supplements, namely, lecithin for use as a dietary supplement, soy proteins for use as a nutritional ingredient in various powdered and ready to drink beverages; soy protein powder for use as a nutritional ingredient in powdered nutritional supplement drink mixes," in International Class 5; "books, magazines, newsletters and circulars, all on the subject of

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information relating to environmentally sound and sustainable agricultural practices and the production of organic and non-GMO crops; printed recipes distributed individually; and art prints" in International Class 16; "soybean oils; soy powder used as food additives and ingredients in other food products; soy protein for use as a food additive; processed soybeans used as a vegetable protein and meat substitute" in International Class 29; "educational information relating to agricultural research namely, research relating to environmentally sound and sustainable agricultural practices and the production of organic and non-GMO crops" in International Class 42; and "educational information relating to agricultural advice namely, advice relating to environmentally sound and sustainable agricultural practices and the production of organic and non-GMO crops" in International Class 44.¹ The application includes a disclaimer for the depiction of the soybean.



SEED TO PLATE

¹ Application Serial No. 77001674, filed September 18, 2006, alleging a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

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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 and services in International Classes 16, 42 and 44, so resembles the following registered mark, as to be likely to cause confusion, mistake or deception:²



for "educational services, namely, conducting classes, seminars and workshops in the field of planting, growing and harvesting crops," in International Class 41, Registration No. 3047968, issued January 24, 2006. The registration includes the following disclaimer: "No claim is made to the exclusive right to use "seed", "plate", or "a community partnership in caring" apart from the mark as shown." In addition, the registration includes the following description of the mark: "The mark consists of the words "Seed To Plate", "A Community Partnership in

² The refusal to register applied to the goods in International Classes 5 and 29 based on requirements for more definite identifications has been withdrawn. In view thereof, regardless of the outcome regarding the specified goods and services at issue in this appeal, a notice of allowance may be issued for applicant's mark for at least the remaining goods in the application. Trademark Rule 2.65(a).

Sharing" with a plate, a plant and two people tending a garden."

When the refusals were made final, applicant appealed and filed a request for reconsideration. The examining attorney denied the request and the appeal was resumed and fully briefed. We affirm the refusal to register.

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

We turn first to a consideration of whether the respective marks are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. The analysis is not whether the marks can be distinguished when compared side-by-side. Rather, we must determine whether the marks are sufficiently similar that there is a likelihood of

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confusion as to source and, in making this determination, 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).

For the reasons set forth below, we find that the similarities in the marks outweigh the dissimilarities. In *re Shell Oil Company*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993). In traversing the refusal, applicant focuses on the differences in the design elements and argues that the literal portion of registrant's mark is weak and deserving of a limited scope of protection. While the design elements are different, the more dominant portion of registrant's mark is the phrase SEED TO PLATE. It dominates over the design because it is the literal portion of a mark that is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. In *re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); In *re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987). In addition, the wording SEED TO PLATE appears in larger more prominent lettering on the top of the design than the wording A COMMUNITY PARTNERSHIP IN CARING in non-boldfaced lettering at the bottom of the design. In *re Nat'l Data Corp.*, 753 F.2d

1056, 224 USPQ 749 (Fed. Cir. 1985). Similarly, the wording SEED TO PLATE is the dominant portion of applicant's mark. In re Appetito, supra. Thus, the dominant elements in the respective marks are identical in sound, meaning and commercial impression. The additional wording in registrant's mark does not detract from these similarities and the differences in appearance due to the design elements does not sufficiently distinguish the marks due to the identity of the dominant elements.

Applicant's argument and evidence that registrant's mark is weak focuses on the individual terms SEED and PLATE but not the phrase SEED TO PLATE. As the examining attorney aptly noted, the fact that "the registrant has disclaimed the wording 'seed,' 'plate,' and 'a community partnership in caring' in its mark ... does not remove the disclaimed portion from the mark for the purposes of this analysis." Br. p. 7 citing In re Nat'l Data Corp., supra. As to applicant's evidence consisting of third-party registrations that include the words SEED or PLATE, the examining attorney correctly noted that it "is unpersuasive because it fails to show that the collective wording at issue in this case, i.e., SEED TO PLATE, is weak in the relevant field." Br. p. 9. We add that even weak marks are entitled to protection for closely related goods or

services. In re Clorox Co., 578 F.2d 305, 18 USPQ 337 (CCPA 1978).

In view of the above, the du Pont factor of the similarity of the marks weighs in favor of a likelihood of confusion.

We turn next to a consideration of the goods and services identified in the application and the cited registration. It is well settled that goods and services need not be similar or competitive in nature to support a holding of likelihood of confusion. The question is not whether purchasers can differentiate the goods and services themselves, but rather whether purchasers are likely to confuse the source of the goods and services. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider the cited registrant's services as they are described in the registration and we cannot read limitations into those services. 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). If the cited registration describes services broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration

encompasses all services of the type described, that they move in all channels of trade normal for these services, and that they are available to all classes of purchasers for the described services. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

In support of her contention that the goods and services are related, the examining attorney submitted several third-party use-based registrations to show that numerous entities have adopted a single mark for books, magazines, educational services, and information services.³ See, e.g., Reg. No. 2448821 (information booklets, brochures, educational services, namely, seminars, workshops and classes, and providing educational information offered by way of online electronic communication networks); Reg. No. 2863141 (books, magazines, educational services, namely, conducting classes, seminars, conferences and workshops, educational information services); Reg. No. 2634847 (books, magazines, education and entertainment services, namely religious radio and television programs, conducting seminars and providing educational information in the field of religion via a global computer network); Reg. No. 3033184 (magazines

³ We have not considered the third-party registrations based on Section 44 of the Trademark Act.

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and posters, providing educational information in the field of history); Reg. No. 2846348 (newsletters and pamphlets, educational services, namely conducting seminars, workshops, and classes in the field of health and medicine); Reg. No. 2690981 (providing educational information in the field of astronomy featuring NASA resources and data that allow students to make scientific inquiries about stars and stellar evolution, and books and pamphlets in the field of astronomy); Reg. No. 3102429 (financial research services, providing financial information to others, providing educational information in the field of finance, books, newsletters pertaining to investing and finance, and educational services, namely, conducting classes, seminars, conferences, workshops); and Reg. No. 3183817 (books, brochures, leaflets, educational services, namely, educational instruction, training services, research service, and the provision of online tutorial assistance and educational information in the field of mathematics education.) We find these registrations persuasive evidence as to the factor of the relatedness of the goods and services. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

As to channels of trade and class of purchasers, there are no specific limitations in either the registration or

the subject application, thus, we must presume that applicant's and registrant's goods and services will be offered in some of the same channels of trade and will be bought by some of the same classes of purchasers. See *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

Applicant argues that its "information services and the registrant's educational courses and seminars" would not be confused because applicant distributes its information services via a global communication network and "registrant provides educational courses and seminars which are typically offered in a classroom." Br. p. 14.

Applicant concludes that "[o]ne would not confuse Applicant's information services and the registrant's educational courses and seminars because the parties' respective services travel in different trade channels." *Id.* This argument is not persuasive because there are no limitations as to trade channels in the identification of goods and services, and educational services, including classes, are regularly provided via the Internet, thus the normal course trade for registrant's services would not exclude provision of the services via a global communication network. Moreover, although applicant's subject matter may, in fact, differ somewhat, it is

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encompassed by the field listed in the registration, namely, "planting, growing and harvesting of crops."

In view of the above, the du Pont factors of the relatedness of the goods and services, the channels of trade, and class of purchasers favor a finding of likelihood of confusion.

In conclusion, we hold that because the marks are similar, the goods and services are related, and the channels of trade and class of customers overlap, confusion is likely between applicant's mark and the mark in the cited registration.

To the extent that we may have any doubt we resolve that doubt in favor of the registrant. *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed as to the goods and services in International Classes 16, 42 and 44, and the application will proceed to notice of allowance as to the remaining classes.