

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Aftermarket Replacement Solutions, LLC

Serial No. 78447051

Molly B. Markley and Andrew R. Basile of Young & Basile,
P.C. for Aftermarket Replacement Solutions, LLC.

Curtis W. French, Trademark Examining Attorney, Law Office
115 (Tomas V. Vlcek, Managing Attorney).

Before Seeherman, Hohein and Bucher, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Aftermarket Replacement Solutions, LLC seeks
registration on the Principal Register of the mark **ARS** (*in
standard character format*) for goods identified in the
application, as amended, as follows:

"aftermarket, non-structural automotive vehicle
and engine parts, namely, engines, gas caps,
windshield wiper blades, turn signals for
vehicles, horns for vehicles, universal joints,
shock absorbers, vehicle struts and strut bearing
plates therefore [sic], drive shafts, brakes and
brake parts for land vehicles, namely, brake
backing plates, brake boosters, brake cables,

brake calipers, brake drums and rotors, brake hardware, brake hoses, brake lines and fittings, brake pads, brake shims, brake caliper brackets and brake shoes, axle and wheel bearings, axle boot kits, truck air brake hoses, clutches and clutch parts, namely, clutch cables, clutch bearing release mechanisms, clutch linings, clutch pilot bushings, windshield wiper motors, transmissions and replacement parts thereof, engine rebuild kits sold as a unit, fuel tanks and straps therefor sold as a unit, motor mounts, accelerator cables, suspension parts, namely, coil springs, four wheel drive hubs for cars, trucks, vans and buses, seat belts for use in vehicles, steering boot kits, land vehicle parts, namely, drive gears, brake wheel cylinders, wheel studs and lug nuts, power steering units and parts thereof, window lift motors, namely, electric motors for power windows, structural parts of vehicles, namely, trunk lids and trunk supports therefor" in International Class 12.¹

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 Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles the mark shown below:

¹ Application Serial No. 78447051 was filed on July 7, 2004 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.



registered for goods identified as "oil seals and seals for lubricant packed bearings for use in motorcycles, motorcars, electric appliances, agricultural machines, construction equipment and office machines"² in International Class 17, as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have filed briefs in the case. We affirm the refusal to register.

In arguing for registrability, applicant contends that its mark is not likely to be confused with the mark in the cited registration given the differences in the goods, the differences in the respective channels of trade, and in light of the number of third-party registrations for the initialism, ARS.

By contrast, the Trademark Examining Attorney contends that the goods of the parties are closely related, the

² Reg. No. 2330470 issued to Arai Seisakusho Co., Ltd. of Tokyo, Japan, on March 21, 2000, Section 8 affidavit (six-year) accepted. The registration notes that the mark consists of the letters "ARS" in stylized form.

respective goods are presumed to move in the same channels of trade, and both marks share the same, distinctive letter string.

Likelihood of Confusion

We turn to the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See 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, however, two key, although not exclusive, considerations are the similarities between the marks and the relationship between the goods and/or services. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Marks

The Trademark Examining Attorney has taken the position that applicant's proposed mark has the same sound and connotation as the registered mark and creates the same

commercial impression as that mark. In its brief, applicant does not take issue with the Trademark Examining Attorney's conclusion that the marks are very much alike as to sound, meaning and commercial impression. We agree. In addition, because applicant has applied for its mark in standard character format and therefore may use its mark in various stylizations, the stylized display of the cited mark is not considered sufficient to distinguish the marks in appearance. Accordingly, this du Pont factor favors the position of the Trademark Examining Attorney.

Third-party registrations

In applicant's response of August 4, 2005, it listed three-dozen federal trademark applications and registrations allegedly containing the letters A•R•S. Attached to that summary listing were soft copies of only four of these listed registrations. In its brief, applicant highlighted the following three registrations (of those four earlier-submitted registration copies) in support of its contention that registrant's mark, the initialism ARS, is a weak mark:



for "wholesale distributorships featuring metal building products" in International Class 42;³

ARS

for "power lawn and garden tools, namely, tillers and mulching mowers, and machines parts, namely, blades, rotary parts and tines; tractor towed equipment, namely, tillers, mowers, blades, rotary parts and tines" in International Class 7;⁴ and

ARS

for "installation, maintenance, repair and replacement of air conditioning and heating equipment, plumbing and electrical systems" in International Class 37.⁵

We have considered only those four third-party registrations for which applicant submitted soft copies.

³ Registration No. 2030149 issued to NCI Building Systems, L.P. on January 14, 1997 based on an application filed on February 5, 1996; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

⁴ Registration No. 2112099 issued to Honda Giken Kogyo on November 11, 1997 based on an application filed on October 9, 1996; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

⁵ Registration No. 2139085 issued to American Residential Services, Inc. on February 24, 1998 based on an application filed on March 22, 1997; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged. After a series of assignments, this registration is now owned by American Residential Services L.L.C., according to the records of the United States Patent and Trademark Office's Assignment Division, at Reel 3403, Frame 0438.

This is because a mere listing of registrations is not sufficient to make them of record. Moreover, third-party registrations, even when properly made of record, are entitled to little weight on the question of likelihood of confusion. In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991); and In re Hub Distributing, Inc., 218 USPQ 284 (TTAB 1983). Such registrations are not evidence of what happens in the marketplace or that the public is familiar with the use of the marks. In re Comexa Ltda, 60 USPQ2d 1118 (TTAB 2001); and National Aeronautics and Space Admin. v. Record Chem. Co., 185 USPQ 563 (TTAB 1975).

Furthermore, the registrations highlighted by applicant in its brief - ostensibly the strongest of the registrations, including those that were not properly made of record - are themselves registered in connection with goods or services very different from automobile parts.

Finally, third-party registrations have also been found to serve, in the manner of a dictionary definition, as an indication that a term has a particular significance for the goods or services, e.g., that a term may be suggestive of the involved goods or services. See Truescents LLC v. Ride Skin Care LLC, 81 USPQ2d 1334 (TTAB 2006) [laudatory significance of the word GENUINE is

corroborated by forty-six third-party registrations made of record by applicant]. However, in the instant case, not only are the goods and services in the third-party registrations disparate from the goods of registrant, but it appears in most cases that the initialism is arbitrary as applied to the involved goods or services inasmuch as the initials are derived from the trademark owner's entity name.⁶

Thus, the registered mark is not a weak mark, and the registration is entitled to a normal scope of protection.

Goods

It is not necessary that the goods at issue are similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they

⁶ For example, in addition to applicant's Aftermarket Replacement Solutions, this seems to be true with several of the owners of third-party registrations of record, such as American Residential Services and American Rigging & Supply.

originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Applying this standard, we note that applicant's goods have been identified as various aftermarket, nonstructural automotive vehicle and engine parts, including wheel bearings, transmissions and replacement parts thereof, and power steering units and parts thereof. Registrant's goods have been identified as, *inter alia*, oil seals and seals for lubricant packed bearings for use in motorcars.

The record created by the Trademark Examining Attorney demonstrates that the respective goods are related. Both applicant's and registrant's identifications of goods include component parts for automobiles. Applicant's goods include a wide variety of non-structural automotive parts. Registrant's goods include seals and bearings that are integral components of a number of applicant's sub-system assemblies. In order to demonstrate the relatedness of the respective goods, the Trademark Examining Attorney has made of record a variety of Internet website excerpts showing that oil seals and seals for lubricated packed bearings are used in automotive parts such as transmissions, power steering units and wheel bearings, in each case designed to keep a variety of lubricants and other fluids from escaping

the larger assembly. Accordingly, at the very least, certain of applicant's listed goods and registrant's oil seals and/or seals for lubricated packed bearings are complementary products:

Transmission Oil

The transmission needs lubrication to keep all of the gears and shafts running smoothly. This is accomplished by partially filling the transmission housing with thick transmission gear oil. When the gear gears spin, they fling the fluid around and lubricate all of the parts. **Oil seals** at the front and rear stop the fluid from leaking out of the housing.

Fluid levels should be checked when you change your oil, or if you notice difficulties or differences in shifting. This can indicate that the level of fluid might be low.

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Oil Seals

Oil seals are rubber and metal composite items. They are generally mounted at the end of shafts. They are used to keep fluids, such as oil, transmission fluid, and power steering fluid inside the object they are sealing. These seals flex to hold a tight fit around the shaft that comes out of the housing, and don't allow any fluid to pass. Oil seals are common points of leakage and can usually be replaced fairly inexpensively. However, the placement of some seals make them very difficult to access, which makes for a hefty labor charge!

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Cars

Driving Concepts to Reality

SKF is the automotive industry's leading bearing solutions supplier and is a world leader in seals with Chicago Rawhide's sealing systems for engines, transmissions and other mechanical assemblies.

The automotive industry is going through a period of unprecedented change. Computer technology is moving into control and monitoring arrangements for many vehicle systems. New materials, such as light alloys for major suspension elements are moving from specialist cars to mainstream production. These are exciting and challenging times for all involved in engineering vehicles and vehicle systems.

At SKF we have been at the technical forefront of solutions for bearing systems and mechanical assembly sealing solutions for almost a century. The challenges set by today's opportunities are embraced by our engineers with the same determination that saw the development of the world's first hub bearing units and the first custom-designed engine oil seals.



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⁷ <http://www.autoswalk.com/> and http://www.innerauto.com/Automotive_Definitions/Transmission_Oil/

⁸ http://www.innerauto.com/Automotive_Definitions/Oil_Seals/

⁹ [http://www.skf.com/portal/skf/home/industries?contentId=0.000336.000728.](http://www.skf.com/portal/skf/home/industries?contentId=0.000336.000728)

Based on this evidence, we find that inasmuch as applicant's transmissions and power steering units include "parts thereof," this necessarily includes oil seals therefor. Hence, in addition to these auto components being related, there would actually be overlap between these respective goods. Registrant's oil seals for motorcars would be replacement for, and/or competitive components of, these parts. Likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods within a class of goods in the application. Tuxedo Monopoly, Inc. v. General Mills Fun Group, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981). Thus, the factor of the relatedness of the goods favors a finding of likelihood of confusion.

Channels of trade

As to channels of trade, applicant argues as follows:

Applicant is a distributor of automotive replacement parts. Applicant's goods are sold as a private label in its own distribution line. The end customers are not original equipment manufacturers, but rather individuals, companies, and mechanics that are replacing automotive parts in already existing vehicles. The purchaser knows that Applicant is the source of the goods that it is distributing. This is especially clear because Applicant is the

sole distributor of its own private label goods.

The goods in the cited registration are sold to original equipment manufacturers. These products flow in different markets and are sold to very different customers. While both are related to automobiles, they do not come to the attention of the same kind of purchasers. The manner in which the goods are sold are such that buyers are not likely to believe that the goods come from the same source.

(Applicant's appeal brief, p. 4).

This argument, however, is of no avail. Applicant's contention is based on the channels of trade in which its own goods are sold or intended to be sold, and what it believes to be registrant's channels of trade. Applicant ignores the oft-stated principle that likelihood of confusion must be determined based upon the identifications of the goods in the application and cited registration. Thus, where the goods in a cited registration are broadly described and there are no limitations in the registrant's identification of goods as to their channels of trade or classes of purchasers, it is presumed that the identified goods move in all channels of trade that would be normal for such goods, and that the goods would be purchased by all potential customers. *In re Elbaum*, 211 USPQ 639, 640

(TTAB 1981); and In re Davis-Cleaver Produce Co., 197 USPQ 248 (TTAB 1977).

Hence, in the instant case, not only are registrant's and applicant's goods intimately related, but also they could be sold in the same channels of trade. We must presume, for example, that all of these various automobile components are available to all consumers in the parts departments of auto dealerships. Such goods are also sold at retail through auto parts stores, where they could be purchased by do-it-yourself mechanics, as well as professional vehicle repair personnel.

Conditions under which and buyers to whom sales are made

Finally, as to the consumers to whom these parts will be available, as discussed above, the same consumers would be likely to come into contact with applicant's goods as well as registrant's goods.

While professional vehicle repair personnel and other persons having the skills needed to repair their own vehicles must be considered to be more sophisticated than members of the public at large, when closely-related automotive parts are being offered under very similar marks, even sophisticated purchasers may be confused. See Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d

1546, 14 USPQ2d 1840 (Fed. Cir. 1990). That is, because the marks are so similar, even sophisticated purchasers are not likely to differentiate the marks merely because of the particular stylization of registrant's mark. Rather, they would mistakenly believe that the goods originate with, or are in some way associated with, the same producer.

Conclusion

The respective marks are very similar; registrant's mark has not been shown to be weak in the field of automotive parts; registrant's goods are integral components of a number of applicant's sub-assemblies and their parts, and are thus closely related; and the same customers could encounter and purchase the respective goods in the same channels of trade. Accordingly, we find there is a likelihood of confusion.

Decision: We affirm the refusal to register herein based upon Section 2(d) of the Lanham Act.