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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Design Resources, Inc.

Serial No. 78478872

Glenn K. Robbins II of Spencer Fane Britt & Browne LLP for
Design Resources, Inc.

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Before Seeherman, Cataldo and Taylor, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

On March 12, 2007, Design Resources, Inc. filed a
request for reconsideration of the Board's February 12,
2007 decision affirming the refusal of registration of its
applied-for mark, DRI-DUCK and design, for "clothing,
namely, coats, jackets, parkas, shirts, pants, overalls,
vests, sweaters, gloves, mittens, scarves, and headwear,"
on the ground that it is likely to cause confusion with the

mark DRIDUX for "outerwear jackets, outerwear pants, outerwear suits, hats and mitts all for sports and/or recreation." On February 13, 2007, applicant filed a request for suspension, asking that proceedings in the appeal be suspended pending a determination of whether the cited registration will be cancelled for failure to file a Section 8 affidavit.

Turning first to the request for suspension, applicant cites the TTAB Manuel of Procedure as providing for the suspension of an ex parte appeal upon request by the applicant supported by a showing of good cause. Applicant points to the third example of good cause given in Section 1213 as applicable to the present situation, namely, that a registration cited as a reference under Section 2(d) is due, or will soon be due, for a Section 8 affidavit. What applicant fails to note in its request is that Section 1213 specifically states that the suspension procedure is available prior to the issuance of the Board's decision. Although applicant now asserts that "a substantial judicial economy can be realized if further appeal can be deferred," applicant's concern about judicial economy rings hollow in view of the fact that applicant did not attempt to have the

proceeding suspended prior to receiving an adverse decision by the Board.¹

It is also noted that the cited registration issued on September 4, 2001, so that, with the grace period provided by Section 8 of the Trademark Act, a Section 8 affidavit need not be filed until March 4, 2008, almost a year from the present date. Moreover, it will be another three months after that date until the Office can take action to cancel the registration.

In view of applicant's delay in filing its request for suspension until after the Board's decision issued, and the substantial delay that would ensue at this point until it can be determined whether the cited registration will be cancelled, applicant's request for suspension is denied.

Turning next to the request for reconsideration, applicant asserts as the basis for its request that the Board failed to address two cases from the Court of Customs and Patent Appeals that applicant cited in its brief. The Board is aware of no case law that requires it to discuss

¹ We also note that applicant filed its request for reconsideration one day prior to filing its request for suspension. If applicant was interested in judicial economy, it seems curious that applicant would have filed a request for reconsideration if it was planning to file a request for suspension. To the extent that applicant, by its filing of a request for reconsideration, is attempting to create work for the Board to support its argument for judicial economy, such a tactic is frowned upon, and is not persuasive.

every case cited in an applicant's brief, and sees no error in its decision in that respect. However, to the extent that applicant is asserting that the Board erred in not following the principles set forth in the cases, we will address that argument.

Applicant cited the two cases at issue, *In re General Electric Co.*, 304 F.2d 688, 134 USPQ 190 (CCPA 1962) and *National Distillers and Chemical Corp. v. William Grant & Sons, Inc.*, 505 F.2d 1719, 184 USPQ 34 (CCPA 1974) for the proposition that "the comparison of a well-known word to a coined mark [is] a point of great significance in the determination of likelihood of confusion." Appeal brief, p. 3. Applicant also pointed out that "notably, the Court in both cases discounted the suggestion that the marks might be pronounced similarly." Id.

In General Electric, the Court found no likelihood of confusion between VULKENE for electrical wires and cables and VULCAN in stylized form for electrical building wires. There are several factual differences between that case and the present situation. First, in General Electric the Court made a point of noting that the people buying and using those goods of applicant and registrant for which there was overlap would be "those who do the electrical wiring of buildings, for the most part licensed

electricians and electrical contractors. We believe that such persons would buy their electrical supplies with a reasonable amount of care and with considerable professional know-how as to what they are buying." 134 USPQ2d at 192.

In contrast, the purchasers of applicant's and the registrant's goods are the general public, and at least some of the goods may be purchased on impulse. See pp. 4-5 of our February 12 decision:

The purchasers for the identified goods of applicant and the registrant are the general public. They must be considered to be ordinary purchasers. Although we note that the goods identified in the registration are all for use in "sports and/or recreation," many sports and recreational activities may be undertaken without specialized clothing and be engaged in by users having varying degrees of experience, including newcomers to the sport/activity. Thus, we cannot consider the purchasers of either applicant's or the registrant's goods to have any particular sophistication about the products. Further, some of applicant's goods, such as gloves and mittens and headwear, may be purchased on impulse, or without exercising great care. Thus, this du Pont factor favors a finding of likelihood of confusion.

The Court also noted that, although VULKENE was a coined word, purchasers would quickly recognize it as a combination of one syllable from the common word

"vulcanize," a word "introduced into the vocabulary of every child at an early age," and a syllable consisting of "a common ending on the names of many now well-known chemical compounds in everyday use, such as kerosene, neoprene, and, of recent date, polyethylene." General Electric, *supra* at 192. This situation contrasts with the one before us in this appeal: the only connotations of the registrant's mark DRIDUX would be, because of the likely pronunciation and the similarities in appearance of the individual syllables, the word DRY and the word DUCKS. Thus, as opposed to VULKENE, where the Court found the individual syllables to suggest other connotations, the individual syllables in DRIDUX reinforce the similarities with applicant's mark.

The Court also addressed the argument of the similarity of pronunciation of the respective marks:

We do not believe building wire is the sort of merchandise likely to be advertised on radio or television, which media devote their advertising time mostly to attempting to influence the mass consumer market which they reach, rather than the kind of professional industrial buyers who are interested in building wire. As to telephone orders, we do not think an electrician phoning the knowledgeable order clerk in an electrical supply house would be likely to get the wrong product, if that is what the solicitor had in mind.

In the present case, of course, the goods are indeed consumer goods which may well be advertised on radio, such that similarity in sound plays an important role.

Moreover, as opposed to the General Electric case, the marks at issue herein can be pronounced identically.

In the second case cited by applicant, National Distillers, the Court found that DUET for prepared alcoholic cocktails was not likely to cause confusion with DUVET for liqueur and French brandy. As applicant has pointed out, the Court stated that its basic reason for believing that confusion would not be likely to result from concurrent use of DUET and DUVET was that "the familiar is readily distinguishable from the unfamiliar." 184 USPQ at 35.² However, the Court also stated that the sound and meaning of the marks "are substantially different." In the present case, for the reasons explained at length at pages 6 through 9 of our opinion, the marks have the same connotation and can be pronounced the same.

Thus, we find the present situation to be distinguishable from the cases cited by applicant.

² This opinion issued in 1974. Presumably the term "duvet" did not have a readily recognized meaning at that time as a bed covering. The dictionary definition quoted by the Court in its opinion was only "a downy growth characteristic of some fungus cultures."

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The request for reconsideration is denied.