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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re IDEAL Industries, Inc.

Serial No. 78537932

Joel H. Bock of Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd. for IDEAL Industries, Inc.

Michele-Lynn Swain, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Holtzman, Drost and Wellington, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, IDEAL Industries, Inc., has filed an application to register the mark 62 (in standard character form) for goods ultimately identified as "twist-on wire connectors intended for use by electricians, electrical contractors, and professional tradespeople" in Class 9.[1]

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[1] Serial No. 78537932, filed December 23, 2004, based on an allegation of a bona fide intention to use the mark in commerce.

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 registered mark SPEC 62 (in typed form) for "electrical wire and cable" in Class 9, as to be likely to cause confusion.[2]

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).

We turn first to a comparison of applicant's mark 62 with registrant's mark SPEC 62. In determining the similarity or dissimilarity of marks, as applicant points out, we must consider the marks in their entireties in terms of sound, appearance, meaning and commercial impression. See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005).

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[2] Registration No. 1756529; issued March 9, 1993; renewed.

Applicant is correct that the mere fact that two marks share a common term does not necessarily mean the marks are confusingly similar. Here, however, applicant has taken the term "62" one of the essential components of registrant's mark SPEC 62, and has made that term its entire mark, adding nothing to the mark to distinguish it from registrant's mark. Because registrant's mark consists in significant part of the term "62" and applicant's mark consists entirely of that same term, the two marks are similar in sound and appearance.

There is no difference in meaning to distinguish the marks. Indeed, the term 62, at least on this record, appears to be arbitrary in relation to the identified goods, and applicant has confirmed this at least as to its own goods, indicating that "The term '62' has no meaning other than trademark significance." Examininer's Amendment, August 3, 2005.

Further, the marks create the same commercial impression. Applicant's mark 62 suggests the compatibility of its wire connectors with registrant's SPEC 62 electrical wire. The word SPEC in registrant's mark does not significantly change the commercial impression created by 62 alone.

We also note that there is no evidence of any third-party use or registration of similar "62" marks on similar goods, further supporting our finding that SPEC 62 is an arbitrary and strong mark. See, e.g., Palm Bay Imports, supra at 1692 ("Veuve”

is an arbitrary term as applied to sparkling wines, "and thus is conceptually strong as trademark."). This is a factor which increases the likelihood that the marks, when used in connection with related goods, would be confused.[3]

Applicant argues, pointing to use of SPEC 62 on registrant's online catalog, tycoelectronics.com, that SPEC 62 "is known for being part of a 'family' of marks." Applicant contends that registrant "uses several other registered and unregistered marks incorporating the 'SPEC ##' template for use with wire and/or cable." Applicant concludes based on such use that the term SPEC is the dominant part of the registered mark. Brief, p. 4.

This argument is not persuasive. First, regardless of which, if either, part of registrant's mark is dominant, applicant has appropriated a significant element of registrant's mark. See, e.g., Hewlett-Packard Co. v. Packard Press Inc., 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (PACKARD TECHNOLOGIES and HEWLITT PACKARD convey similar commercial impressions since PACKARD, the dominant element of PACKARD TECHNOLOGIES, is identical to a "prominent" portion of HEWLITT

[3] Applicant's reliance on Colgate-Palmolive Co. v. Carter-Wallace, Inc., 432 F.2d 1400, 167 USPQ 529 (CCPA 1970) is misplaced. That case involved different marks for different goods, and it does not compel a finding that the marks and goods in this case are not confusingly similar. Further, the court's finding of no likelihood of confusion in that case (PEAK for dentifrice against PEAK PERIOD for personal deodorants) was based at least in part on the "laudatory or suggestive" nature of the shared term in the marks, in contrast to the present case where the shared term is arbitrary.

PACKARD); and In re The United States Shoe Corporation, 229 USPQ 707, 709 (TTAB 1985) (rejecting applicant's argument that its mark CAREER IMAGES is not similar to registrant's mark CREST CAREER IMAGES "because 'CREST' dominates the registered mark and is not present in applicant's marks"). Furthermore, even if applicant had shown, which it has not, that registrant uses the term SPEC as part of a family of marks, this du Pont factor, if anything, would favor registrant, not applicant.

As to the factor regarding fame, applicant argues that registrant's mark "is all but unknown, and certainly not famous" (Brief, p. 4), and the examining attorney argues that applicant has not shown that the registered mark is not famous. Both of these arguments are beside the point. The absence of evidence of fame of the registrant’s mark is not treated as a factor in applicant’s favor. Because this is an ex parte proceeding, we would not expect the examining attorney to submit evidence of fame of the cited mark. This du Pont factor, as is normally the case in ex parte proceedings, must be treated as neutral. See In re Thomas, 79 USPQ2d 1021 (TTAB 2006).

We turn then to the goods. Applicant's goods are "twist-on wire connectors" and registrant's goods are "electrical wire and cable." The goods are obviously different in kind. However, it is well established that goods need not be similar or competitive in nature to support a finding of likelihood of confusion. See

Helene Curtis Industries Inc. v. Suave Shoe Corp., 13 USPQ2d 1618 (TTAB 1989). It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from or are associated with, the same source. See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993).

It is clear that electrical wire and wire connectors, including twist on wire connectors, are by their nature, complementary, inherently related goods, as the connectors would be used to join two or more lengths of wire together. We also note that the examining attorney has submitted a number of use-based, third-party registrations showing that, in each instance, a single entity has adopted the same mark for electrical wire and/or cable, on the one hand, and "wire connectors," on the other. The "wire connectors" identified in these registrations, would be deemed to encompass all types of wire connectors including the twist-on type of connectors identified in the application. Some examples of these registrations are Registration No. 1426137 for the mark ACE HARDWARE (and design) for "...wire connectors...electrical wire..."; Registration No. 2309498 for the mark FOXLINK (and design) for "wire connectors

(electricity)...and electric wires"; Registration No. 2090407, for the mark HENSEL STUDIOTECHNIK PERFORMING LIGHT (and design), for "...electrical wires and wire connectors..."; Registration No. 2821454 for the mark POWER1 FIRST (and design) for "...electrical and communication cable, ...electrical wire connectors, ...electrical wires,..."; and Registration No. 2944508 for the mark SPELSBERG (stylized) for "...electrical wires...electrical wire connectors...". 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).

In addition, the evidence submitted by the examining attorney shows that at least one company, Radio Shack, provides cable and wire connectors under the same "Radio Shack" mark. (radioshack.com.)

Because the goods are closely related, they would be sold in the same channels of trade. See Venture Out Properties LLC v. Wynn Resorts Holdings LLC, 81 USPQ2d 1887 (TTAB 2007). The evidence shows that the channels of trade for these goods include online hardware and electrical supply outlets such as radioshack.com, circuitspecialists.com, acehardware.com and

wireconnections.com. In addition, these products would be purchased by the same commercial purchasers.

Applicant argues that "it is extremely uncommon for a single manufacturer to produce both twist-on wire connectors and electrical wire/cable" (Reply Brief, p. 3), and applicant has submitted the declaration of Ned Camut, Vice President/General Manager of applicant's Wire Termination Business Unit to support this contention. Mr. Camut states that he has been employed in the electrical industry in positions including marketing and sales positions for over 20 years. He asserts that "manufacturers of twist-on wire connectors, such as IDEAL, [applicant] do not also manufacture electrical wire and cables." In connection with these statements, applicant has submitted printouts from applicant's website (idealindustries.com) and also from registrant's online catalog (tycoelectronics.com) as well as several third-party websites (gardnerbender.com; solutions.3m.com; and tnb.com) purporting to show that other companies do not make twist-on connectors. Mr. Camut further states that "The electricians, electrical contractors, and professional tradespeople I have spoken with understand that manufacturers of electrical wire and cable...typically do not also manufacture twist-on wire connectors," and that such purchasers "would not tend to believe that a twist-on wire

connector bearing the '62' trademark and an electrical wire or cable bearing the 'SPEC 62' trademark come from the same source."

First, Mr. Camut's conclusion is not necessarily supported by his assertions. Moreover, it can be seen in the excerpts from registrant's website that, in addition to providing wire and cable, registrant also offers various types of "wire connectors." Whether or not they include the exact "twist on" type of connector provided by applicant is not particularly significant. The evidence shows that similar, if not the same, types of products which serve the same purpose in fact emanate from the same source. It would not be unreasonable for purchasers to assume that applicant's twist-on type of connector, just as other types of connectors, come from the same source.

Even assuming that electrical wire and twist-on wire connectors are not "typically" produced by the same company as applicant claims, Section 2(d) of the Trademark Act protects not only against confusion as to source, but also as to affiliation, connection or sponsorship. See McCarthy on Trademarks and Unfair Competition, §23:8 (4th ed. 2007); Hilson Research Inc. v. Society for Human Resource Management, 27 USPQ2d 1423 (TTAB 1993); and American Stock Exchange, Inc. v. American Express Co., 207 USPQ 356, 364 (TTAB 1980). The point is that these are closely related, complementary products that are used together, and purchasers will assume, correctly or incorrectly, when

encountering the two types of products offered under these very similar marks, that the products come from or are in some way connected with the same company. See Recot Inc. v. M.C. Becton, 214 F.3d 1332, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (although products may be distinctly different in kind, "the same goods can be related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis").

The overlapping purchasers of registrant's electrical wire and cable and applicant's twist-on wire connectors would be knowledgeable about such products and would exercise some degree of care in their purchasing decisions. However, even knowledgeable and careful purchasers of goods can be confused as to source under circumstances where, as here, highly similar marks are used on closely related goods. See In re Research Trading Corp., 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) citing Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd., 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ("Human memories even of discriminating purchasers...are not infallible."). See also, e.g., Weiss Associates, Inc. v. HRL Associates, Inc., 902 F.2d 1546, 14 USPQ2d 1840, 1841-42 (Fed. Cir. 1990) (similarities in marks and products overshadowed sophistication of purchasers and careful purchasing decision).

In view of the foregoing, and because applicant's mark is very similar to registrant's arbitrary and strong mark and the 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.