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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Safeguard Alarm Systems, Inc.

Serial No. 78579141

Seth M. Nehrbass of Garvey, Smith, Nehrbass & North, L.L.C.
for Safeguard Alarm Systems, Inc.

Cheryl Clayton, Trademark Examining Attorney, Law Office
102 (Karen M. Strzyz, Managing Attorney).

Before Hairston, Bucher and Mermelstein, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Safeguard Alarm Systems, Inc. has filed an application
to register the mark SAFEGUARD and design, as shown below,



for goods ultimately identified as "alarm systems,
comprising burglar and fire alarm systems; security
cameras, card access control systems for doors and gates

comprising computer hardware and computer software for monitoring exterior door and gate access, home theater products, namely, surround sound systems, comprising speakers and receivers, intercoms, satellite navigational systems, namely global positioning systems for automobiles and trucks" in International Class 9.¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with applicant's goods, so resembles the mark SAFEGUARD SECURITY (in standard character form), which is registered for "monitoring burglar and security alarms,"² as to be likely to cause confusion, mistake or deception.

Applicant and the examining attorney have filed briefs.

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*

¹ Serial No. 78579141, filed March 3, 2005, alleging dates of first use of at least as early as July 1, 1980. During examination, applicant voluntarily disclaimed the word SAFEGUARD apart from the mark as shown.

² Registration No. 2124597, issued December 30, 1997; renewed. The word SECURITY is disclaimed apart from the mark as shown.

Distilling Co., Inc., 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Applicant maintains that there is no likelihood of confusion because its application covers goods whereas the cited registration covers services. With respect to the marks, applicant argues that they are different due to the presence of the concentric circles in its mark and the word SECURITY in registrant's mark. Further, applicant argues that registrant's mark is entitled to a limited scope of protection, and that there have been no instances of actual confusion. Applicant submitted with its brief a dictionary excerpt wherein the word "safeguard" is defined, in pertinent part, as: "[o]ne that serves as protection or a guard."³

The examining attorney, on the other hand, contends that applicant's goods and registrant's services are

³ The American Heritage Dictionary of the English Language (4th ed. 2006). 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 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

related inasmuch as alarm systems and components thereof are used in connection with the services of monitoring burglar and security alarms. In support of her contention that the involved goods and services are related, the examining attorney submitted copies of third-party use-based registrations of marks which she maintains show that companies have registered their marks for both types of goods and services involved herein. With respect to the marks, the examining attorney maintains that they are similar in that applicant's mark and registrant's mark are dominated by the identical term SAFEGUARD.

We first consider the similarity or dissimilarity of applicant's goods and registrant's services. It is not necessary that the respective goods and services be 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 and services are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods and services are such that they would 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 originated from the same producer. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991).

The record supports a finding that applicant's alarm systems and components thereof and registrant's services of monitoring burglar and security alarms are related. As the examining attorney points out, alarm systems and components thereof are obviously used in connection with monitoring burglar and security alarms. Also, as indicated, the examining attorney made of record copies of third-party use-based registrations to show that goods of the type identified in applicant's application and services of the type identified in registrant's registration may be sold under a single mark by a single source. See, for example, Registration Nos. 2172644; 2091397; 2156232; 3140272; 3116559; and 3093237. See *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) [Although third-party registrations "are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may have some probative value to the extent that they may serve to suggest that such goods or services are the type which may emanate from a single source"]. See also *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Under the facts of this case, we find that applicant's burglar and fire alarm systems, security cameras, and card access control systems for doors and gates comprising

computer hardware and computer software for monitoring exterior door and gate access, on the one hand, and registrant's services of monitoring burglar and security alarms, on the other hand, are closely related.⁴

Insofar as the channels of trade and classes of purchasers are concerned, in the absence of any limitations as to the channels of trade and classes of purchasers in the goods and services identified in applicant's application and registrant's registration, we must assume that such goods and services are available in all normal channels of trade to all the usual purchasers of such goods and services. When we do so, we find that the channels of trade (security systems dealers) and classes of purchasers are the same (homeowners and businesses).

We next consider the similarity or dissimilarity of the marks. We must determine whether applicant's mark and registrant's mark, when compared in their entireties, are similar or dissimilar in terms of sound, appearance, connotation and commercial impression. Although the marks must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than

⁴ It is unnecessary to rule as to whether the other items set forth in applicant's application are so related to those in registrant's registration that confusion would be likely. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Furthermore, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their commercial impression that confusion as to the source of the goods and services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

In comparing the marks, we first note that each of the involved marks is dominated by the identical term SAFEGUARD. Although applicant has voluntarily disclaimed any rights in the word SAFEGUARD, applicant's mark must still be considered in its entirety, including all disclaimed matter, in determining likelihood of confusion under Section 2(d). See *In re National Data Corp.*, supra. Applicant's voluntary disclaimer of the word SAFEGUARD does not remove the word from our analysis of the similarity of applicant's mark to registrant's mark.

As such, the word SAFEGUARD is clearly the dominant part of applicant's mark. Although the concentric circles in applicant's mark cannot be ignored, it is well settled that "[w]hen a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods" and, therefore, "the word portion is normally accorded greater weight in determining likelihood of confusion." See, e.g., *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); and *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987). Thus, in terms of what customers would refer to when asking about or calling for applicant's goods, it is the literal portion, SAFEGUARD.

With respect to registrant's mark, the word SAFEGUARD is clearly the dominant portion thereof. Although the disclaimed and descriptive word SECURITY cannot be ignored, purchasers are more likely to rely upon the non-descriptive portion as the indication of source. Moreover, SAFEGUARD is the first word in registrant's mark and, therefore, it is more likely to be impressed upon the minds of purchasers and remembered. *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895 (TTAB 1988). When we consider the marks in their entireties, giving appropriate weight to the

features thereof, we find that they are similar in sound and appearance.

With respect to the meanings of the marks, we find that applicant's mark and registrant's mark share a similar meaning in that they convey "one that serves as protection" due to the shared term SAFEGUARD. Furthermore, when the marks are considered in their entirety, they engender similar overall commercial impressions such that when closely related goods and services are offered thereunder, confusion would be likely to result among purchasers. In particular, purchasers familiar with registrant's SAFEGUARD SECURITY services of monitoring burglar and security alarms are likely to view applicant's SAFEGUARD and design mark as identifying complementary security products, i.e., burglar and fire alarm systems, security cameras, and card access control systems for doors and gates comprising computer hardware and computer software for monitoring exterior door and gate access, originating from registrant.

Applicant, in contending that the marks are not confusingly similar, asserts in its brief that the word "safeguard" is descriptive of registrant's services; that SAFEGUARD has been disclaimed in Registration Nos. 2440566, 1803106, and 1379739; and that "the number and nature of SAFEGUARD marks is voluminous" as evidenced by a search of

the USPTO TESS database." (Brief, p. 5). Thus, according to applicant, marks consisting of or containing the word SAFEGUARD are entitled to a limited scope of protection. "Third-party registrations can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry." *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006). However, the third-party registrations to which applicant refers are not of record in this case, and the Board does not take judicial notice of registrations.

There is insufficient evidence for us to conclude that SAFEGUARD is descriptive of registrant's services. Nevertheless, the dictionary definition demonstrates that SAFEGUARD is suggestive of such services. Thus, registrant's mark is not entitled to the broadest scope of protection. However, the mark is still entitled to protection against registration of applicant's similar mark for closely related goods. See *In re Colonial Stores, Inc.*, 216 USPQ 793 (TTAB 1992). See also, *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974) [likelihood of confusion is to be avoided as much as between weak marks as between strong marks].

Finally, according to applicant, the marks have coexisted in the marketplace for approximately fourteen

years with no evidence of actual confusion. While a factor to be considered, the absence or presence of actual confusion is of little probative value where, as here, we have little evidence pertaining to the nature and extent of the use by applicant and registrant. In any event, the test under Section 2(d) is not actual confusion but likelihood of confusion. See *Majestic Distilling*, 65 USPQ2d at 1205 ["uncorroborated statements of no known instances of actual confusion are of little evidentiary value"].

In view of the similarity of the marks, the identity of the trade channels and purchasers, and the closely related nature of applicant's goods and registrant's services, we find that there is a likelihood of confusion in this case.

Decision: The refusal to register under Section 2(d) is affirmed.