

**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 TitanSeal, Inc.

Serial No. 78810102

Joseph H. McGlynn of Patent & Trademark Services, Inc. for
TitanSeal, Inc.

Tracy Whittaker-Brown, Trademark Examining Attorney, Law
Office 111 (Craig D. Taylor, Managing Attorney).

Before Hairston, Bucher and Zervas, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

TitanSeal, Inc. seeks registration on the Principal
Register of the mark **TitanSeal** (*in standard character format*)
for goods identified in the application as "non-metal seals
for use in mechanical shafts" in International Class 17.¹

This case is now before the board on appeal from the
final refusal of the Trademark Examining Attorney to

¹ Application Serial No. 78810102 was filed on February 8,
2006 based upon applicant's allegation of first use anywhere at
least as early as November 2, 2002 and first use in commerce at
least as early as December 10, 2002.

register this designation 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 **TITAN** (*in typed format*) for "metal and steel banding, closure sleeves, seals, and buckles"² in International Class 6, as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have each filed a brief in the case.

We *affirm* the refusal to register.

In arguing for registrability, applicant contends that extrinsic evidence drawn from registrant's website demonstrates that inasmuch as registrant makes machines and banding materials for use in the strapping business, registrant's type of seals are not at all the type of seals defined in the present application. Applicant touts this significant difference in the functions of the respective types of seals, in addition to the contrasting material compositions and the difference in International Classifications assigned to registrant's and to applicant's seals. Applicant argues there are other "-Seal-" formative

² Registration No. 0810357 issued on June 28, 1966; second renewal.

marks in third-party registrations for goods in International Class 6, indicating that the cited mark co-exists in a crowded field. On the other hand, applicant argues that none of the third-party registrations placed into the record by the Trademark Examining Attorney listed both types of these respective seals, namely, goods in the nature of a tight closure around a mechanical shaft and seals used in the strapping industry.

By contrast, the Trademark Examining Attorney contends that the entirety of registrant's mark is the dominant portion of applicant's mark; that applicant has failed to demonstrate that the registered mark is weak for seals; that both metal and non-metal seals are marketed under the same trademark by third parties; that International Classification within the United States trademark practice is a purely administrative determination unrelated to the determination of likelihood of confusion, and hence, that the respective goods, as identified, are legally related, and must be presumed to flow through overlapping channels of trade to the same classes of consumers.

Likelihood of Confusion

We turn then to a consideration of 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 this issue. 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); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). 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).

The Goods

As seen above, the goods in the cited registration are identified as "metal and steel banding, closure sleeves, seals, and buckles." Applicant's goods are identified as "non-metal seals for use in mechanical shafts."

Applicant argues that we should consider registrant's actual business practices in making our determination of likelihood of confusion herein. Accordingly, applicant contends that registrant's website demonstrates that registrant is in the business of providing machinery and industrial steel banding or strapping for its clients for

their secure packaging and distribution of heavy-duty, manufactured goods. Hence, the listing of "seals" within the cited identification of goods is totally different than applicant's small rubber seals used around a rotor shaft. It is true that registrant's entire listing of goods, identified as "metal and steel banding, closure sleeves, seals, and buckles" involves a grouping of items consistent with applicant's allegations about registrant's specialized, industrial-gauge operations.

However, there are no explicit limitations placed on the type of seals within registrant's identification of goods. Applicant misstates the issue before us in arguing that "a consumer would be hard pressed to confuse a metal seal used to connect 'Metal and Steel Banding' with a rubber seal used to seal mechanical shafts." Rather, the Trademark Examining Attorney correctly makes the point that the issue of likelihood of confusion between an applied-for mark and a registered mark must be determined on the basis of the goods as they are identified in the involved application and cited registration, not on the basis of whatever the extrinsic evidence may show. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n. 4 (Fed. Cir. 1993); *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992); *Paula Payne Products Company v.*

Johnson Publishing Company, 177 USPQ 76 (CCPA 1973); and *In re William Hodges & Co., Inc.*, 190 USPQ 47 (TTAB 1976). In this regard, we cannot diminish the scope of registrant's registration based on extrinsic evidence that applicant may have produced from registrant's website. In the instant case, without resort to extrinsic evidence, we must presume that registrant's goods include all kinds of "metal and steel banding, ... seals" intended for mechanical purposes, perhaps even such seals used in connection with rotor shafts.

Moreover, it is well settled that goods need not be identical or even competitive in order to support a finding of likelihood of confusion; it is sufficient that the goods be related in some manner or that the circumstances surrounding their marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. See *Monsanto Co. v. Enviro-Chem Corp.*, 199 USPQ 590, 596 (TTAB 1978); and *In re Peebles Inc.*, 23 USPQ2d 1795, 1796 (TTAB 1992).

Among the use-based, third-party registrations covering a variety of different types of seals, the Trademark Examining Attorney has pointed to a representative sampling of registrations, as follows:

COMETIC

for "gaskets and seals made entirely or primarily of metal for internal combustion engines" in International Class 6;

"gaskets and seals made entirely or primarily of non-metallic materials for internal combustion engines" in International Class 17;³



for "gaskets and seals made entirely or primarily of metal for internal combustion engines" in International Class 6;

"gaskets and seals made entirely or primarily of non-metallic materials for internal combustion engines" in International Class 17;⁴

TTK

for, *inter alia*, "metal seals and gaskets for use in land vehicle transmission" in Int. Class 6;

"non-metal seals and gaskets for use in land vehicle transmissions" in Int. Class 17;⁵

ESSENTIAL SEALING PRODUCTS

for "metal seals" in International Class 6;

"non-metal seals; non-metal gaskets; waterproof packings for pumps, gaskets and valves; and insulation covers for industrial machines, namely, fiberglass industrial welding blankets and curtains" in Int. Class 17;⁶

³ Registration No. 2490904 issued on September 18, 2001; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

⁴ Registration No. 2590948 issued on July 9, 2002; Section 8 affidavit (six-year) accepted.

⁵ Registration No. 2617455 issued on September 10, 2002.

⁶ Registration No. 2707539 issued on April 15, 2003. No claim is made to the words "Sealing Products" apart from the mark as shown.

KOK

for "oil seals of metal, packings of metal, shims of metal, washers of metal, seal rings of metal, protecting oil rings of metal" in International Class 6;

"plastic oil seals, rubber oil seals, plastic packings, rubber packings, plastic washers, rubber washers, plastic seal rings, rubber seal rings, plastic protecting oil rings, rubber protecting oil rings, plastic strips, rubber strips, plastic tubes, rubber tubes" in International Class 17;⁷

 **Roxtec**

for "cable and pipe penetration seals made of metal" in International Class 6;

"non-metallic cable and pipe penetration seals" in International Class 17;⁸

FIREFIGHTER

for, *inter alia*, metal loading dock seals and metal loading dock shelters" in Int. Class 6;

"non-metal loading dock seals" in International Class 17;⁹

QUICKIT

for "metal gasket kits consisting of gaskets, seals and o-rings" in International Class 6;

"non-metal and elastomeric gasket kits consisting of gaskets, seals, and o-rings" in International Class 17;¹⁰

⁷ Registration No. 2766803 issued on September 23, 2003.

⁸ Registration No. 2769854 issued on September 30, 2003.

⁹ Registration No. 2864240 issued on July 20, 2004.

¹⁰ Registration No. 2904160 issued on November 23, 2004.

XTRU-THERM

for "metal insulated pipes; metal accessories, namely, end seals, end caps, sealing mechanisms for end of pipes, anchors, and expansion pillows; and metal fittings, namely, tees, reducers, elbows, and couplings" in Int. Class 6;

"non-metal insulated pipes; non-metal accessories, namely, jackets, end seals, and sealing mechanisms for pipe ends; and non-metal fittings, namely, tees, reducers, elbows, and couplings" in International Class 17;¹¹

YOUR SEAL OF APPROVAL

for "metal reinforced seals" in International Class 6;

"all non-metal or primarily non-metal goods and all for use in the telephone, electrical, aerospace, manufacturing, steel, business machine, pulp and paper, petrochemical, and power generating industries, namely, oil seals; fluid seals; insulating seals; reinforced seals; elastomeric seals; low friction seals, namely, graphite seals and polytetrafluoroethylene seals; aramid reinforced seals; wall penetrating seals; seals for pistons and rods, namely, cups, rings, packing and gaskets; high temperature sheet gasket material; high strength sheet gasket material; solvent resistant sheet gasket material; flexible sheet gasket material; gasketing tapes and sleeves; adhesive and nonadhesive insulating tapes and sleeves; organic fiber packings for pumps, valves and rod, piston and door service; insulating ropes, tapes, cloth and tubing; sheet packing for industrial use in severe chemical conditions; sheet packing; sheet packing material for gaskets, seals, and the like for

¹¹ Registration No. 2967475 issued on July 12, 2005.

general industrial, refining and chemical processes to form a tight seal against air, gas, oil and other fluids and gases; sheet packing for packing flanges and joints; refractory ropes; and joint valve packings, non-metal or primarily non-metal sealing expansion joints for fluid conduit and non-automotive gaskets; sealing plugs" in International Class 17;¹²

WINDEROSA

for, *inter alia*, "metal gaskets and metal seals for engines" in International Class 6;
"non-metal gaskets and non-metal seals for engines" in International Class 17;¹³



for, *inter alia*, "metal oil seals, metal gaskets for use in preventing the escape of a gas or fluid, metal junctions for use with pipes in vehicles" in International Class 6;
"non-metal seals for use in preventing the leak of fluids in motors or machines; non-metal seals and gaskets for use with automotive components; non-metal junctions with use with pipes in vehicles" in International Class 17;¹⁴

NVENT

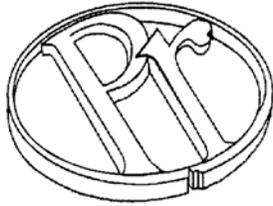
for "metal pipe couplings, metal pipe fittings, manually-operated metal valves, metal gaskets and seals for use with pipe couplings, pipe fittings and pipe valves" in International Class 6;
"nonmetal gaskets and seals for use with pipe couplings, pipe fittings and pipe valves" in International Class 17;¹⁵

¹² Registration No. 2978651 issued on July 26, 2005.

¹³ Registration No. 3076261 issued on April 4, 2006.

¹⁴ Registration No. 3089184 issued on May 9, 2006.

¹⁵ Registration No. 3098883 issued on May 30, 2006.



Precision rings incorporated

for, *inter alia*, "rings, namely metal seal rings for aircraft, aerospace, power generation, nuclear, industrial and rocket propulsion equipment" in International Class 6; and "seals, rings, sealing rings, namely, seals, rings and sealing rings made of polymers for use in aircraft, aerospace, power generation, nuclear, industrial and rocket propulsion equipment" in International Class 17.¹⁶

As acknowledged by the Trademark Examining Attorney, third-party registrations are not evidence of commercial use of the marks shown therein, or if in use, that the public is familiar with them. Nevertheless, such registrations that individually cover a number of different items and that are based on use in commerce have some probative value to the extent they suggest that the listed goods emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, footnote 6 (TTAB 1988). Furthermore, as noted by the Trademark Examining Attorney, International Classification within the United States trademark practice is a purely administrative determination unrelated to the determination of likelihood of confusion.

¹⁶ Registration No. 3105493 issued on June 20, 2006.

Based on the record before us, we readily conclude that applicant's "non-metal seals for use in mechanical shafts" are legally related to the cited registrant's "metal and steel banding, ... seals," and that this *du Pont* factor favors the position of the Trademark Examining Attorney that there is a likelihood of confusion herein.

As to the Trademark Examining Attorney's argument that even if the seals are different in function and application, purchasers would believe that applicant's seals are within registrant's "logical zone of expansion," it is neither necessary nor possible to determine that from this record. Inasmuch as some manufacturers and merchants make and market products known simply as "seals," some composed of metal and others of non-metal materials, we find that these respective goods are related for purposes of this *du Pont* factor without deciding the question of zones of expansion.

Trade Channels and Conditions of Sales

Regarding the related *du Pont* factors focusing on the respective trade channels and classes of purchasers, we must presume that the applicant's and registrant's respective goods could be offered and sold to the same classes of purchasers through all the normal channels of trade. See *Octocom Systems Inc. v. Houston Computers Services Inc.*,

918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994); and *In re Elbaum*, 211 USPQ 639 (TTAB 1981). As to the relevant classes of prospective consumers, we find that the purchasers of these respective goods overlap in that the purchasers of registrant's type of seals could also be the purchasers for applicant's type of seals. Hence, these two related *du Pont* factors also support a finding of likelihood of confusion.

The Marks

We turn next to the *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. See *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005).

While we must consider the similarity or dissimilarity of the marks when viewed in their entirety, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of the mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

The Trademark Examining Attorney points out that applicant has appropriated registrant's mark in its entirety, and has simply added as a suffix thereto the generic name of its goods. While there are situations where the addition of a new term to a registered mark does obviate the similarity between the marks such that it can overcome a likelihood of confusion under Section 2(d), generally this is not the case with the addition of a generic term.

Moreover, the first word of applicant's **TitanSeal** mark is the registered mark TITAN. In short, when used in connection with seals, the addition of the term "-Seal" to the end of registrant's mark is certainly insufficient to obviate the likelihood of confusion.

The number and nature of similar marks in use on similar goods

Applicant has argued that inasmuch as the term "Seal" has been registered by third parties for goods seemingly related to registrant's goods, issuing a registration to applicant for its mark should not be a problem. However, as noted above, it is the dominant and distinctive "Titan" portion of applicant's mark creating the likelihood of confusion herein, not the generic "-Seal" portion. Consequently, we have to agree with the Trademark Examining

Attorney that based on this record, it appears that the cited **TITAN** mark is strong when used in connection with seals.

Conclusion

In summary, we find that applicant's goods are legally related to registrant's goods under Section 2(d) of the Act; that applicant's and registrant's respective goods could be offered and sold to the same classes of purchasers through the same channels of distribution; that the marks are similar as to appearance, sound, connotation and commercial impression; and that on this record, the term "Titan" is a strong source indicator when used in connection with seals.

Decision: The refusal to register this mark under Section 2(d) of the Lanham Act is hereby affirmed.