

THIS DECISION IS NOT A
PRECEDENT OF THE TTAB

Mailed: August 29, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Michael R. Nevils and Kristen Nevils

Serial No. 78912361

Daniel S. Polley for Michael and Kristen Nevils.

Emily K. Carlsen, Trademark Examining Attorney, Law Office
103, Michael Hamilton, Managing Attorney.

**Before Zervas, Mermelstein, and Bergsman, Administrative
Trademark Judges.**

Opinion by Mermelstein, Administrative Trademark Judge:

Michael and Kristen Nevils seek registration of the
mark WATERSAFE (in standard characters) for "manually
operated emergency water supply storage system comprised of
non metal fluid storage bag and manually operated pump," in
International Class 22.

Registration has been finally refused pursuant to
Trademark Act § 2(d), 15 U.S.C. § 1052(d), on the ground
that applicant's mark so resembles the mark in Registration

Serial No. 78912361

No. 1239074¹ for WATER-SAFE (in the stylization shown below), for "domestic water filtering kits, comprising filters, faucets, fittings, tubing and drill bits," in International Class 11, as to be likely, if used in connection with the identified services, to cause confusion, to cause mistake, or to deceive.



Applicant and the examining attorney filed briefs. After careful consideration of the record, we affirm.

I. Applicable Law

Our determination under Trademark Act § 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. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311,

¹ Registered March 6, 1984, alleging first use and first use in commerce as of January 6, 1982. Post-registration filings pursuant to Trademark Act §§ 8, 9, and 15, accepted, granted, and acknowledged.

Serial No. 78912361

65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

II. Discussion

A. The Similarity or Dissimilarity of the Marks in their Entireties as to Appearance, Sound, Connotation and Commercial Impression.

Applicant's mark is WATERSAFE, in standard characters, while the mark in the cited prior registration is WATER-SAFE, in stylized letters. In arguing that the marks are different, applicant notes that "Registrant's mark is a two word mark WATER and Safe [sic] separated by a hyphen and appears in a highly stylized font and logo with the word Water appearing higher than Safe in the logo." App. Br. at 2. Nonetheless, we are constrained to agree with the examining attorney that "the marks are identical in sound and meaning, and very similar in appearance and overall commercial impression." Ex. Att. Br. at 5.

Serial No. 78912361

Although the prior registrant's mark is registered in stylized form, applicant seeks registration of a mark in "standard character" form, *i.e.*, registration of a word mark "without claim to any particular font style, size, or color." See Trademark Rule 2.52. Applicant's mark must therefore be considered to include depiction of the word WATERSAFE in any reasonable stylization, including stylization identical or similar to that used in the cited registration. The cited mark is not so highly stylized that it is essentially a design mark which conveys a distinct impression separate from its words. See *Textron Inc. v. Maquinas Agricolas "Jacto" S.A.*, 215 USPQ 162, 163 (TTAB 1982).

Applicant further notes that its mark is WATERSAFE, while "[r]egistrant's mark is a two word mark Water and Safe separated by a hyphen." Nonetheless, we agree with the examining attorney that this difference is minimal and not likely to provide any significant distinction between the marks. See *Charrette Corp. v. Bowater Communication Papers Inc.*, 13 USPQ2d 2040, 2042 (TTAB 1989).

While neither applicant nor the examining attorney have addressed the point in their briefs, we further find that the marks, as used on the identified goods, carry the identical meaning. In this context, the marks - WATERSAFE

Serial No. 78912361

and WATER-SAFE (stylized) - both imply that the identified goods will provide safe water.

We accordingly find that applicant's mark is highly similar to the mark in the cited registration, in appearance, pronunciation, and meaning. This factor strongly supports the finding of a likelihood of confusion.

B. The Similarity or Dissimilarity and Nature of the Goods or Services

Applicant's goods are identified as a "manually operated emergency water supply storage system comprised of non metal fluid storage bag and manually operated pump." Applicant's storage bag can be filled with clean water to maintain a supply in the event of an emergency such as a flood or hurricane, which might otherwise make potable water unavailable. The bag can be placed in a sink or bathtub for filling and storage. Stored water is dispensed using the included manual pump.

The goods in the cited registration are identified as "domestic water filtering kits, comprising filters, faucets, fittings, tubing and drill bits." These goods appear to comprise a water filter which is installed as part of a home plumbing system, enabling filtered water to be dispensed from a tap.

We begin our analysis with the premise that, because the marks at issue are virtually identical, the extent to which the applicant's and registrant's goods must be similar or related to support a finding of likelihood of confusion is lessened. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001). It is only necessary that there be a viable relationship between the goods to support a finding of likelihood of confusion. *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). The question is not, as applicant implies, App. Br. at 5, whether consumers would confuse the goods, but whether consumers, confronted with nearly identical marks on these goods, would likely believe they share common source or sponsorship.

Although the goods at issue are clearly different, they are nonetheless related in function; both are intended to provide a supply of potable water.² Although applicant points out that its goods are intended for temporary use in an emergency, we note that the goods in the cited registration contain no such limitation. The fact that the

² Applicant notes that its goods and those of the cited registrant are in different international classes. App. Br. at 3. Contrary to applicant's suggestion, the classification of the goods or services at issue is not relevant to a likelihood of confusion analysis. *E.g. Jean Patou Inc. v. Theon Inc.*, 9 F.3d 971, 29 USPQ2d 1771 (Fed. Cir. 1993).

Serial No. 78912361

registrant's goods are of a type that are suitable for everyday use does not preclude their use in emergencies.

The examining attorney has submitted evidence indicating that emergency water storage containers and water filtration systems are sold side by side and would thus be considered related items. While these water filters do not appear to be of the type that are installed as a permanent part of household plumbing, they nonetheless tend to show that water filters and water storage containers are related in use and function, and can be used together to provide a safe supply of water.

While the goods at issue are clearly not identical or even competitive, they nonetheless share a "viable relationship" in their purpose and use. This factor likewise supports a finding of a likelihood of confusion.

III. Conclusion

Because the marks at issue are virtually identical, and the goods are related, we find that applicant's mark, when used on the identified goods, would be likely to cause confusion with the mark in the cited registration.

Decision: The refusal to register under Trademark Act § 2(d) is accordingly affirmed.