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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

General Biscuits Belgie
v.
Tukas Turgutlu Konservecilik Anomin Sirketi

Opposition No. 91154452
to application Serial No. 76187523

Perla M. Kuhn of Hughes Hubbard & Reed LLP for General
Biscuits Belgie.

Sheryl Scharmach of Nixon & Vanderhye P.C. for Tukas
Turgutlu Konservecilik Anomin Sirketi.

Before Quinn, Bucher and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On December 27, 2000, Tukas Turgutlu Konservecilik
Anomin Sirketi (applicant) filed an intent-to-use
application (Serial No. 76187523) to register the mark in
the design shown below on the Principal Register:

tukas

for the following goods:

Processed, canned, and fresh meats, poultry and game, namely, beef, bologna, frankfurters, pork, chicken, duck, turkey, lamb, and venison; seafood, namely, fish, shrimp, and shellfish; meat extracts; processed fruits and vegetables, namely, processed beans, processed peas, processed carrots, processed tomatoes, tomato paste, tomato puree, processed olives, processed pickles, processed peppers; processed jellies; jams, and marmalade; eggs; processed and fresh dairy products, namely, milk, cheese, yogurt, and sour cream; processed nuts and processed edible seeds; edible oils and fats, namely, cooking oil, lard, butter and margarine; soups; prepared entrees consisting primarily of meat, poultry, fish or vegetables in Class 29

Coffee beans, roasted and unroasted, grain or chicory based coffee substitutes; cocoa; chocolate food beverages not being dairy-based or vegetable based; tea; sauces, namely, barbeque, spaghetti and tomato, marinades; mixes, namely, cake, pancake, waffle, cookie and brownie; flavored and sweetened gelatin and pudding; seasonings, spices, and flavoring extracts; syrup; bakery staples, namely, baking powder, baking soda, flour, food starch, honey, yeast, and granulated, brown, and powdered sugar; pizza; bread and bread products, namely, bread crumbs, biscuits, sticks, rolls, and tortillas; rice; cereals, namely, breakfast cereals, processed oats, and rolled oats; condiments, namely, ketchup, mustard, mayonnaise, salad dressing, hot sauces, salsa, and vinegar; pastas, namely, lasagna, macaroni, noodles, vermicelli, and spaghetti; ice; ice cream, ice cream bars, frozen yogurt, frozen yogurt bars; snack foods, namely, corn chips, processed popped popcorn, candy coated popcorn, puffed corn snacks, and pretzels in Class 30.

On December 16, 2002, opposer, General Biscuits Belgie, filed an opposition to the registration of applicant's mark.

Opposer alleges that it is the owner of three registrations for the term TUC.

I.

No. 2,682,105

Filed: 18 February 1999

Issued: 04 February 2003

TUC (typed or standard character drawing)

Preserved, dried and cooked fruits and vegetables, jam, jelly, soups, stewed fruits; potato-based salted snack foods, potato-based sweet snack foods; mini-cooked pork meat appetizers in Class 29

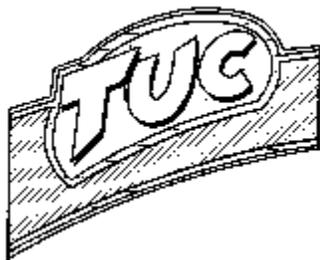
Rice, puffed rice; tapioca, flours, sweet pies, salted pies, pizzas, sweet tarts, salted tarts, plain pasta, flavored pasta, filled pasta, frozen, prepared or packaged meals consisting primarily of pastry; bread, sweet biscuits, salted biscuits, plain wafers, coated wafers, filled wafers, flavored wafers, plain cakes, coated cakes, filled cakes, flavored cakes, plain pastries, coated pastries, filled pastries, flavored pastries; candy, frozen confections, confectionery chips for baking, natural salt, flavored salt, mustard, vinegar, sauces; spices in Class 30.

II.

No. 2,454,791

Filed: 06 November 1999

Issued: 29 May 2001



Preserved, dried and cooked fruits and vegetables, jam, jelly, stewed fruits; Potato-based salted snack foods, potato-based sweet snack foods, mini-cooked pork meat appetizers in Class 29

Rice, puffed rice; tapioca, flours, sweet pies, salted pies, pizzas, sweet tarts, salted tarts, plain, flavored and/or filled pasta; frozen, prepared or packaged meals partially or totally made of pastry; bread, sweet biscuits, salted biscuits, wafers, cakes,

pastries, all these products being plain, coated, filled and/or flavored; candy, frozen confections, natural salt, flavored salt, mustard, vinegar, sauces; spices in Class 30.

III.

No. 2,461,121

Filed: 29 October 1999

Issued: 27 March 2001¹



Crunchy potato-based salted snack foods, crunchy potato-based sweet snack foods in Class 29

Toasts, rusks, sweet or salted biscuits, wafers, cakes, pastries, all these products being crunchy and being natural and/or coated and/or filled and/or flavored in Class 30.

These registrations all issued under the provision of Section 44 of the Trademark Act. Opposer alleged that applicant's mark TUKAS "is virtually identical to Opposer['s] mark TUC and is likely, when applied to Applicant's goods, to cause confusion, mistake or to deceive for purposes of Section 2(d)." Notice of Opposition at 4. Applicant denied the salient allegations of the notice of opposition.

The Record

The record consists of the following items: the pleadings; the file of the involved application; the

Affidavit of Opposer's Witness Olivia De Carvalho Aquino of Written Answers for Testimonial Deposition upon Written Questions with exhibits²; and opposer's notices of reliance on status and title copies of its three registrations and applicant's answers to opposer's interrogatories.

Priority

Priority is not an issue here to the extent that opposer relies on its ownership of three federal registrations for TUC marks. See King Candy Co. v. Eunice King's Kitchen, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

Likelihood of Confusion

The central issue in this case is whether applicant's mark is likelihood to cause confusion with opposer's marks, if they were to be used on the identified goods. We analyze the facts in likelihood of confusion cases under the factors set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). See also Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000); In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). Opposer, as plaintiff in the opposition proceeding, bears the burden of proving,

¹ The registration identifies the mark as TUC CRACKERS.

² The parties stipulated that "they may present evidence from a witness residing in a foreign country by submitting it in the form of questions and answers." Stipulation filed September 10, 2004.

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by a preponderance of the evidence, its asserted ground of likelihood of confusion. See Cerveceria Centroamericana,

S.A. v. Cervecería India Inc., 892 F.2d 1021, 13 USPQ2d 1307, 1309 (Fed. Cir. 1989). See also Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1848 (Fed. Cir. 2000).

Two important factors in any likelihood of confusion analysis are the relatedness of the goods or services and the similarities of the marks. We begin by comparing the goods in the application and registrations. Several items in the application are identical to items in the registrations. Both applicant and opposer include the following identical items in their respective identifications: jellies, jams, rice, pizzas, vinegar, spices, and mustard. The identifications of goods also contain the following items that are virtually identical or overlapping:

processed meats/mini-cooked pork meat appetizers;
sauces, namely, barbeque, spaghetti and tomato/sauces;
cake mixes/plain cakes, coated cakes, filled cakes, and flavored cakes;
ice cream, ice cream bars, frozen yogurt, frozen yogurt bars/frozen confections;
biscuits/sweet biscuits and salted biscuits; and
pastas, namely, lasagna, macaroni, noodles, vermicelli, and spaghetti/plain pasta, flavored pasta, and filled pasta.

When we compare the goods, we do so by considering them as they as they are described in the application and the

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registrations. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987).

Clearly, many of the goods are identical or virtually identical. Under these circumstances, since the involved marks are used on identical goods, there is a greater likelihood that when similar marks are used, confusion would be likely. Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992) ("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines").

In addition, if the goods are identical, we can assume that purchasers and channels of trade for these goods are also identical. Genesco Inc. v. Martz, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade"); In re Smith and Mehaffey, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers").

Other factors that we consider include the lack of evidence of actual confusion and the care of the purchasers. The lack of actual confusion in this case is particular inapplicable because the application is based on an intent to use and applicant has not shown that it has used its mark in the United States so there has been no opportunity for actual confusion to have occurred. Furthermore, we have no evidence, nor would we expect there to be evidence, that would demonstrate that purchasers of rice, pasta, jams, jellies, processed meats and similar items would be particularly careful.

With these factors all resolved in opposer's favor, the key question becomes how similar are the marks "in their entirety as to appearance, sound, connotation, and commercial impression." Majestic Distilling, 65 USPQ2d at 1203. It is well settled that it is improper to dissect a mark and the marks must be viewed in their entirety. In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993).

Applicant's mark is the word TUKAS shown in the design shown below:

The image shows the word "tukas" in a bold, lowercase, sans-serif font. The letters are thick and black, with a slightly irregular, hand-drawn appearance. The 't' is particularly tall and narrow, while the 's' has a rounded, slightly curved end. The overall style is modern and minimalist.

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We note that there is a slight mark under the letter "S."
Opposer has three registrations for the word TUC. One displays the mark without any design or stylization so that mark can be considered to be displayed in the same style or type as applicant's mark. Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000)

("Registrations with typed drawings are not limited to any particular rendition of the mark and, in particular, are not limited to the mark as it is used in commerce"). Regarding the design elements in marks, there is nothing specific in applicant's design that would suggest an association with the designs in opposer's marks so if the marks are similar it would be because of the words and not the designs in the marks.

We first look at the appearance of the marks.
Opposer's marks all include the word TUC, while applicant's mark is for the work TUKAS in a design form with a slight mark under the letter "S." Opposer argues that "TUC and TUK are properly considered the dominant portions of the parties' respective marks because both federal courts and the Board alike have consistently found the first word, prefix, or syllable of a mark to be the dominant part of the mark." Brief at 12. Although the marks are obviously similar because they both begin with the letters "TU," they are different because opposer's mark ends with the letter

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"C" while applicant's mark ends with the letters "KAS." While the marks have the letters "TU" in common, it is not likely that prospective purchasers will dissect applicant's mark into two components and compare the first part with opposer's marks. Rather, it is likely that they will view the marks as TUC and TUKAS. The difference with the last letters in these marks is noticeable and the marks are not very similar in appearance.

Next, we look at the pronunciation of the marks. Inasmuch as neither TUC nor TUKAS is a common English word, there is no correct pronunciation of the terms. Centraz Industries Inc. v. Spartan Chemical Co., 77 USPQ2d 1698, 1701 (TTAB 2006). However, the marks are capable of being pronounced, but here, if they were pronounced there would be differences because applicant's mark is a two-syllable word while opposer's mark is a one-syllable word and the ending of the marks, "C" and "KAS," would produce obviously different sounds. Again, there are significant differences between the marks.

The third question is whether the marks are similar in meaning. Inasmuch as the terms are not ordinary words, they would have no established meaning and, therefore, there is

no question of either mark having any descriptive or suggestive significance.³

The final question is the commercial impressions that the marks create. Here, we find that there are substantial differences between the marks. Opposer's TUC mark creates the impression of being a misspelling of the English word "Tuck" or perhaps an acronym. Applicant's mark makes no similar commercial impression. The mark, with the symbol under the letter "S," creates the impression of a word from a non-Western European language. Furthermore, the word "tukas" would likely suggest a connection with the American slang word "tokus." See *The Random House Dictionary of the English Language (unabridged)* (2d ed. 1987) (Tokus (tô' KHəs, TŌŌK' əs) n. *Slang*. The buttocks. Also, tochis, tuchis). See also Richard A. Spears, *Slang American Style*, (NTC Publishing Group 1997) ("tokus and tukkis; tuchus n. the buttocks; the rump (Yiddish) *She fell right on her tokus!*").⁴

Even to those not familiar with this definition, the commercial impression of TUC and TUKAS would not be similar inasmuch as the word TUC looks like an acronym or a

³ Opposer's witness also stated that she knew "of no other food products that bear a trademark beginning with 'TUC' or 'TUK' in the United States." Aquino affidavit at 22.

⁴ We take judicial notice of these definitions. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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misspelling of an English word while TUKAS looks like an unusual non-English word.

When we compare the marks in their entirety, we conclude that they are not similar. The simple fact the marks begin with the same two letters and that the marks have no English meanings does not show that they are similar. There are significant differences in their appearance and pronunciation and their commercial impressions would be very different. See, e.g., The Falk Corp. v. Toro Manufacturing Corp., 493 F.2d 1372, 181 USPQ 462, 467 (CCPA 1974) (Differences between TORO and TORUS contributed to a finding of no likelihood of confusion); Lever Brothers Co. v. The Barcolene Co., 463 F.2d 1107, 174 USPQ 392, 393 (CCPA 1992) ("While appellant points out some similarities between the word ALL as it is used by both parties, inspection of the two marks [ALL and design and ALL CLEAR! and design] also shows some obvious differences. Considering appellee's mark *in its entirety*, we are convinced that there is no likelihood of confusion"); Colgate-Palmolive Co. v. Carter-Wallace Inc., 432 F.2d 1400, 167 USPQ 529, 530 (CCPA 1970) ("The difference in appearance and sound of the marks in issue [PEAK and PEAK PERIOD] is too obvious to render detailed discussion necessary. In their entirety they neither look nor sound alike"); and In

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re General Electric Co., 304 F.2d 688, 134 USPQ 190 (CCPA 1962) (VULCAN and VULKENE not similar).

We conclude that the differences in the TUC marks and the TUKAS mark overwhelm their similarities. The differences in appearance, sound, and commercial impression lead us to conclude that the fact that both marks start with the same two letters and have a "C" or "K" as the third letter would not likely lead to confusion. The "statute refers to likelihood, not the mere possibility, of confusion." Bongrain International (American) Corp. v. Delice de France, Inc., 811 F.2d 1479, 1 USPQ2d 1775, 1779 (Fed. Cir. 1987). Opposer has not met its burden of showing that there is a likelihood of confusion in this case. Kellogg Co. v. Pack'em Enterprises Inc., 951 F.2d 330, 21 USPQ 1142, 1143-44 (Fed. Cir. 1991) (FROOTEE ICE and elephant design is so different from FROOT LOOPS that even if goods were closely related and opposer's mark were famous there was no likelihood of confusion).

Decision: The opposition is dismissed.