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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Igloo Products Corp.

v.

Kel-Gar, Inc.

Cancellation No. 92040061
against Registration No. 2,407,598

J. Ray Riley of J. Ray Riley & Associates for Igloo Products Corp.

Molly Buck Richard of Thompson & Knight, L.L.P. for Kel-Gar, Inc.

Before Simms, Chapman and Drost, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Igloo Products Corp. ("petitioner"), a Delaware corporation, seeks cancellation of Registration No. 2,407,598, issued November 28, 2000, to Kel-Gar, Inc. ("respondent"), a Texas corporation, for the mark KARGO GEAR ("GEAR" disclaimed) for "travel and storage products specifically adapted for use in automobiles and strollers,

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namely, storage pockets that temporarily affix to vehicle seats, car seats, baby strollers, lap trays, game trays, seat protectors, fitted seat belt covers, fitted car seat covers, window shades, and drink holders attached to cars and strollers," in Class 12; and "food and beverage containers, namely, portable coolers and drink holders, and travel trays with bibs sold as a unit," in Class 21.

This proceeding was commenced after petitioner's application to register the mark CARGO for "multi-purpose utility containers" (Serial No. 76105504, filed August 8, 2000) was refused by the USPTO on the basis of respondent's registration. Because the Examining Attorney had specifically referred to certain of respondent's Class 21 goods ("food and beverage containers, namely, portable coolers and drink holders"), respondent, during the course of this proceeding, filed a motion to amend the identification of goods in its registration in an attempt to resolve this case. By its proposed amendment, respondent offered to delete those Class 21 goods ("food and beverage containers, namely, portable coolers and drink holders") from its registration. Petitioner opposed this amendment for various reasons, including that the proposed amendment does not serve to eliminate the likelihood of confusion. On September 10, 2002, the Board deferred

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determination of this motion to amend until final decision. See Trademark Rule 2.133(a) and TBMP §514 (2d ed. rev. March 2004).

Despite the fact that the Board deferred action on this motion, it appears from the registration file that the Post Registration Branch of the USPTO inadvertently acted upon respondent's request, and on October 15, 2002, respondent's registration was amended by the deletion of these Class 21 goods. Nevertheless, because the Board has jurisdiction to approve or deny amendments to applications and registrations involved in proceedings before it, and because the amendment should not have been approved and entered by the Post Registration Branch, we shall determine the merits of this case as if the amendment had not been entered.

The Pleadings

In its petition for cancellation, petitioner alleges that it makes and sells a variety of ice, and food and beverage containers, as well as products for use with automobiles and other vehicles. Petitioner also alleges its ownership and the refusal of the above-noted application to register the mark CARGO for multi-purpose utility containers. Petitioner asserts that it has a

superior right to register the mark CARGO, and that it will be damaged by respondent's registration.

We note that while the petition does not mention the words "likelihood of confusion" or "Section 2(d)," it is clear from a reading of the petition that petitioner is in effect asserting prior rights and that respondent's mark KARGO GEAR is likely to cause confusion with petitioner's mark CARGO. (The parties have also briefed the issues of priority and likelihood of confusion.)

Respondent admitted that petitioner filed an application to register the mark CARGO, but it otherwise denied the allegations of the petition to cancel.

The record of this case consists of testimony (and exhibits) taken by both parties, as well as the registration file. Both parties filed briefs, but no oral hearing was requested.

The Record

Petitioner took the testimony of Mr. Lee Stranathan, a former senior vice president of petitioner, and now a consultant. According to Mr. Stranathan, petitioner first started using the mark CARGO in 1984 (Stranathan dep., 13), and now uses this mark in connection with utility containers for transporting water. Petitioner also has made ice chests under the mark CARGO ROADMATE. Beginning

around the year 2000, petitioner introduced a soft-sided insulated lunch kit under the mark COOL CARGO. Mr. Stranathan testified that these lunch kits are competitive products to some of the food and beverage containers sold under respondent's mark KARGO GEAR. That is, the COOL CARGO lunch kits are cooler bags which may function as insulated soft drink containers similar to respondent's KARGO GEAR portable coolers. Mr. Stranathan indicated that petitioner's goods are also intended to be used in automobiles.

According to petitioner's testimony, its goods are sold to the general public through mass merchants, hardware stores, grocery and drug stores. Petitioner's goods are advertised on television, radio and in newsprint. Mr. Stranathan also testified that petitioner's containers and lunch kits are lower-priced items which may be purchased on impulse. Stranathan dep., 46-47.

Finally, Mr. Stranathan testified that he is aware of no third-party use of the mark CARGO, and that there have been no instances of actual confusion.

Petitioner introduced a number of exhibits in connection with Mr. Stranathan's testimony. For example, Exhibit 1 consists of pages from a 1985 IGLOO catalog. Petitioner's CARGO SERIES coolers and ice chests are

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indicated therein to be “[s]pecially designed to ride easily on the front or rear seat of cars, trucks, golf carts, and boats.” This series of products included the ROADSTER car coolers, LITTLE KOOL REST ice chests, and KOOL REST ice chests. Exhibit 2, a 1986 catalog, shows packaging displaying the mark IGLOO CARGO, for an ice chest or a cooler. One page of that exhibit lists the CARGO SERIES as including the IGLOO ROADSTER car cooler, the LITTLE KOOL REST ice chest and the KOOL REST ice chest, as well as JERRY JUG containers and STURDY JUG containers. Exhibit 3 is a 1987 catalog which mentions petitioner’s CARGO SERIES automotive ice chests and utility containers. Exhibit 4 is a 1987 catalog which shows petitioner’s CARGO fuel and water containers as well as listing CARGO car coolers under the marks LITTLE KOOL REST, KOOL REST and ROADMATE. Exhibit 6, a 1991 product catalog and price list, shows only CARGO water, gasoline, kerosene and diesel containers. Exhibit 7, a 1992 product catalog and price list, illustrates the same CARGO automotive containers. In other words, no ice chests or coolers are listed or shown in these catalogs (1991-1992). Similarly, petitioner’s 1998 product catalog and price list shows only CARGO water containers, as does its 1999 catalog (Exhibit 9). Exhibit 10 is petitioner’s 2000 product catalog and price list.

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This catalog introduces petitioner's COOL CARGO SERIES soft-sided insulated lunch kits. Subsequent catalogs show the same COOL CARGO lunch kit as well as the CARGO water containers. See Exhibit 12, petitioner's 2001 product catalog and price list. Exhibit 14, an undated brochure, shows only petitioner's CARGO gasoline containers, as does Exhibit 15, a sales sheet. Exhibit 16 is an undated photograph showing an IGLOO CARGO SERIES ROADMATE ice chest. Exhibit 17, also undated, shows packaging for a CARGO SERIES LITTLE KOOL REST ice chest. The packaging shows a part of the product bearing a label with the following wording: "Little Kool Rest car cooler by igloo." The testimony does not indicate when this product was sold. Exhibit 21 is a label which is applied to containers for petitioner's LITTLE KOOL REST car cooler. The label prominently displays the word CARGO TRANSPORTATION SERIES as well as the words IGLOO LITTLE KOOL REST car cooler. Exhibit 22 is another label containing the words CARGO TRANSPORTATION SERIES and IGLOO ROADSTER car cooler.

Respondent took the testimony of Gail Frankel, the owner and president of Kel-Gar, Inc. She testified that the KARGO GEAR products were introduced in 1998 (Frankel dep., 9, 41). The products include car seat protectors, bags that attach to car seats and strollers, backseat

organizers that attach to car seats and hold children's toys, snacks and drinks, and window shades for cars. Ms. Frankel referred to these products generally as car and travel accessories. The products are designed to be used in vehicles by children ages 0-6. Respondent's goods are sold at mass market retailers, specialty children's stores and infant and juvenile stores, as well as by catalog companies. Ms. Frankel testified that she did not believe that respondent's products compete with petitioner's. Frankel dep., 26. She also testified that she is aware of no instances of actual confusion despite over \$300,000 in sales by respondent throughout the United States.

Arguments of the Parties

Petitioner argues that the identification of goods in respondent's registration is broad enough to describe petitioner's own goods, such as the CARGO water container and the COOL CARGO insulated lunch kit. Petitioner argues that its COOL CARGO lunch kit is similar to respondent's drink trays and drink holders. The products of both parties are sold through common retailers to the general public, and are often purchased on impulse, petitioner contends. With respect to the marks, petitioner argues that the dominant and more significant part of respondent's

mark is the word KARGO, the word "GEAR" being descriptive and disclaimed.

Respondent, on the other hand, contends that the respective marks must be considered in their entirety, including disclaimed matter, and that the respective marks differ in sound, appearance and meaning. Respondent points to the definition of "cargo" meaning "the load of goods carried by a ship, airplane, etc.; freight." The significance of petitioner's mark CARGO is, respondent argues, different from the significance of the mark KARGO GEAR, which suggests gear that one may carry.

Concerning the goods, respondent admits that the parties' goods "broadly cover goods with storage capabilities" (brief, 3), but maintains that the respective goods are nevertheless different and non-competitive.

More importantly, respondent contends that the exhibits show no use by petitioner after 1990 of the mark CARGO per se for ice chests or coolers. According to respondent, there is no documentary evidence that other products which petitioner has referred to in its brief were sold under the CARGO mark, but rather they were sold under the IGLOO mark or various other marks. Moreover, respondent maintains that petitioner's soft-sided lunch kits are sold under the mark COOL CARGO, not CARGO, and

that those goods were not introduced until 2000, two years after respondent commenced its use. Respondent argues, therefore, that petitioner's use of the mark COOL CARGO on lunch kits is irrelevant because it is not prior to respondent's use. It is respondent's position that the only mark and goods which we should consider are petitioner's CARGO multi-purpose utility containers, as to which goods respondent has conceded that petitioner has priority. However, respondent maintains that these goods are not competitive with its products and that the marks are sufficiently dissimilar to avoid likelihood of confusion.

Discussion and Analysis

Our determination of likelihood of confusion under Section 2(d) of the Act 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 Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Two key considerations are the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative

effect of differences in the essential characteristics of the goods and differences in the marks.").

Turning first to a consideration of the respective goods, it is settled that the issue of likelihood of confusion must be determined on the basis of the identification of goods as set forth in the involved registration. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Also, it is settled that, absent any specific limitations in registrant's identification of goods, the issue of likelihood of confusion must be determined by looking at all the usual or normal channels of trade for those goods. See *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983); and *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983). See also *Schieffelin & Co. v. Molson Companies Ltd.*, 9 USPQ2d 2069, 2073 (TTAB 1989); and *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

Here, there are no restrictions in the identification of goods in registrant's registration, and we do not read limitations into that identification of goods.

It is also true that the respective goods need not be identical or competitive. They need only be related in some manner or the circumstances surrounding their marketing be 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 *In re Peebles Inc.*, 23 USPQ2d 1795 (TTAB 1992); and *Chemical New York Corp. v. Conmar Form Systems Inc.*, 1 USPQ2d 1139 (TTAB 1986).

Further, because petitioner does not own a registration of the mark CARGO, we must determine the issue of likelihood of confusion in light of petitioner's common law use of the mark CARGO. This determination necessarily requires us to examine the manner in which consumers are exposed to petitioner's mark in the marketplace. We will first examine the issue of likelihood of confusion with respect to petitioner's CARGO goods and the goods sought to be deleted from respondent's registration ("food and beverage containers, namely, portable coolers and drink holders"). Thereafter, we will consider the question of likelihood of confusion with respect to the remainder of respondent's goods.

Petitioner has demonstrated, and respondent has conceded, prior use of the mark CARGO in connection with

water containers. These containers are, according to the evidence, plastic jugs which are capable of holding liquids, and are sold to the general public in mass merchandising stores, hardware stores, grocery and drug stores. Respondent's food and beverage containers include portable coolers and drink holders. Respondent's goods are not restricted as to channels of trade and may well be sold in the same or similar channels of trade to the general public. Petitioner's containers for water and respondent's portable coolers, which may be used to carry or dispense drinks, are closely related items which, if sold under the same or similar mark, could be attributed to the same source.

Considering next the marks, it is well settled, of course, that marks must be considered and compared in their entirety, not dissected or split into component parts so that parts are compared with other parts. This is because it is the entire mark which is perceived by the purchasing public and, therefore, it is the entire mark that must be compared to any other mark. See *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992); and *Franklin Mint Corp. v. Master Manufacturing Co.*, 667 F.2d 1005, 212 USPQ 233 (CCPA 1981). However, although marks must be compared 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 a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

While the marks CARGO and KARGO GEAR are not identical, we believe that if these marks were used on such closely related goods as petitioner's water containers and respondent's portable coolers, confusion would be likely. These marks differ only in that respondent's mark begins with a "K" and includes the descriptive and disclaimed word "GEAR." A consumer, who had purchased or was aware of petitioner's CARGO water container and who then encounters respondent's KARGO GEAR portable coolers may well believe that the cooler is a product ("GEAR") that comes from the same source as the CARGO water container. Accordingly, we find that petitioner has shown by a preponderance of the evidence that it has priority and that there is a likelihood of confusion with respect to these goods in Class 21 of respondent's registration. Therefore, the petition is granted and the registration should be cancelled to the extent that these goods should be deleted from respondent's registration. Because the Post Registration Branch has already acted upon and entered

respondent's proposed amendment deleting these goods, no further action need be taken in this regard.

We now turn to the issue of likelihood of confusion of petitioner's mark vis-à-vis respondent's remaining goods in its registration in both Classes 12 and 21.

Aside from petitioner's CARGO water containers, it is necessary to discuss petitioner's common law rights in more detail. First, petitioner's product catalogs and price lists from 1991 on show only CARGO water and fuel containers, and later, just CARGO water containers. As noted above, no ice chests or coolers are listed or shown in the pages from the more recent catalogs made of record. It does not appear, therefore, that petitioner has recently offered any CARGO ice chests or coolers, even with such other marks as ROADSTER, LITTLE KOOL REST and KOOL REST. Other exhibits of record, such as Exhibit 16, showing an IGLOO CARGO SERIES ROADMATE ice chest, and Exhibit 21, a label to be applied to IGLOO LITTLE KOOL REST car coolers, also prominently bearing the words CARGO TRANSPORTATION SERIES, are undated, and petitioner's witness, a former officer, did not indicate when these labels were made or if they are still in use. Moreover, in its brief, petitioner has focused on its CARGO water coolers and its COOL CARGO

soft-sided insulated lunch kits, which we will discuss below.

In any event, aside from petitioner's CARGO water containers, it is clear that petitioner uses or has used the mark CARGO with other marks on its ice chests and coolers. For example, the mark CARGO TRANSPORTATION SERIES is used in conjunction with the marks IGLOO ROADSTER or IGLOO LITTLE KOOL REST. See Exhibits 21 and 22. Also, while petitioner's product catalogs and price lists mention the CARGO SERIES, the goods shown in pages from those exhibits prominently display such other marks as LITTLE KOOL REST by IGLOO or KOOL REST. Accordingly, even if we were to assume that petitioner is still using the mark CARGO or CARGO SERIES for ice chests and coolers, those goods also prominently bear other distinguishing marks. Therefore, in our likelihood of confusion analysis, we consider petitioner's CARGO water containers and its ice chests and coolers bearing the mark CARGO but also other marks such as LITTLE KOOL REST by IGLOO.

With respect to petitioner's COOL CARGO lunch kits, the testimony is clear that petitioner introduced these products under this mark in the year 2000. However, respondent's registration claims a date of first use of June 5, 1998, and, as respondent has pointed out, the

testimony demonstrates that respondent first used the mark KARGO GEAR in 1998. Accordingly, petitioner's subsequent use of COOL CARGO for lunch kits is irrelevant to our likelihood of confusion determination.

Considering then petitioner's CARGO water containers, those goods are obviously different from respondent's Class 12 goods, which include "storage pockets that temporarily affix to vehicle seats, car seats, baby strollers, lap trays, game trays, seat protectors, fitted seat belt covers, fitted car seat covers, window shades, and drink holders attached to cars and strollers." Those water containers are also different from respondent's remaining Class 21 goods--travel trays with bibs sold as a unit. Accordingly, considering both the differences in the marks CARGO and KARGO GEAR, and the differences in the respective goods, we conclude that purchasers would not be likely to believe that respondent's KARGO GEAR goods come from the same source as petitioner's CARGO water containers. These goods are different in nature and purpose.

Finally, when petitioner's mark CARGO is considered in the context of its use with such other marks as LITTLE KOOL REST by IGLOO, KOOL REST and ROADSTER, we believe that consumers encountering respondent's KARGO GEAR products are not likely to be confused because of the differences in

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these marks as well as the differences in the goods--ice chests and coolers versus respondent's storage pockets, car seats, baby strollers, lap trays, car seat covers, etc.

Decision: The petition to cancel is granted only with respect to respondent's "food and beverage containers, namely, portable coolers and drink holders." Inasmuch as respondent's amendment to the identification of the Class 21 goods has already been entered, and those specific goods deleted, no further action need be taken by the Board with regard to those goods. The petition to cancel with respect to respondent's Class 12 goods and the remaining Class 21 goods is denied.