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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Specialty Coating Systems, Inc.

Serial No. 75334378

Robert W. Clarida and Antonio Borrelli of Cowan,
Liebowitz & Latman for Specialty Coating Systems, Inc.

Sophia S. Kim, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Seeherman, Walters and Walsh, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Specialty Coating Systems, Inc. has filed an
application to register the mark shown below on the
Principal Register for "apparatus for measuring the
residual ionic contamination of electronic parts,
structural components and printed wiring assemblies,"
in International Class 9.¹ The application includes a
disclaimer of METER apart from the mark as a whole.

¹ Serial No. 75334378, filed August 1, 1997, based on use of the
mark in commerce, alleging first use and use in commerce as of

Omega Meter

The examining attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the standard character mark OMEGA, previously registered for a wide variety of industrial and electronic parts and equipment including "analyzers, namely, ion analyzers,"² that, if used on or in

September 23, 1975. We note that the final refusal included a final requirement to amend the identification of goods by changing the term "components" to "structural components." In its request for reconsideration, applicant made the required amendment to its identification of goods. Although the amendment was not entered into the record, the Examining Attorney did not address the amendment in either her denial of the request for reconsideration or her brief. In view thereof, and because applicant amended its identification of goods in exactly the manner required by the examining attorney, we conclude that the amendment was deemed to be acceptable and have corrected Office records accordingly. Therefore the issue of the propriety of the identification of goods is not before us in this appeal.

² Registration No. 2022762 issued December 17, 1996, to Omega Engineering, Inc. [Section 8 affidavit (six-year) accepted.] The entire identification of goods in the registration follows (emphasis added):

International Class 1:

solutions, namely conductivity solutions, ion selective electrode standard solutions, pH buffer solutions, pH electrode fill solutions; cements, namely air set cements, chemical set cements, epoxy cements

International Class 2:

coatings, namely heat transfer and release coatings

International Class 7:

electric motors for fluid flow pumps

International Class 9:

adaptors, namely electrode adaptors; alarms, namely alarm modules, audible alarms; ammeters, namely D;C; ammeters; amplifiers, namely thermocouple amplifiers; **analyzers, namely ion analyzers**, loop analyzers, water analyzers; anemometer, namely anemometers, hygro/thermal/anemometers; barometers, namely barometers, handheld barometers;

temperature controlling baths, namely circulating baths, constant temperature baths, fluidized sand baths, heated baths, refrigerated baths; battery chargers; circuit boards, namely analog I/O boards, digital I/O boards, plug-in boards, adapter boards, relay boards; cable, namely constant wattage heat trace cable, mineral insulated heat trace cable, self-regulating heat trace cable; calibrators, namely automatic pH loop calibrators, benchtop calibrators, block calibrators, conductivity calibrators, frequency calibrators, handheld calibrators, loop calibrators, multi-function calibrators, pH calibrators, process calibrators, RTD calibrators, thermocouple calibrators; capsules, namely pH buffer capsules; cards, namely plug-in cards; cells, namely conductivity cells, conductivity/resistivity cells, load cells; high temperature cements; checkers, namely handheld leak checkers; clamps, namely tube clamps; computers, namely BTU/flow computer, mass flow/BTU computer, computers, computer interfaces, computer software; conditioners, namely signal conditioners; connectors, namely contactors, namely magnetic contactors; crayons, namely temperature indicating crayons; controllers, namely analog controllers, autotune controllers, batch controllers, benchtop controllers, conductivity controllers, conductivity/resistivity controllers, cryogenic controllers, deviation controllers, digital controllers, dual input controllers, IEEE-488 controllers, indicating controllers, industrial pH controllers, level and temperature controllers, limit controllers, microprocessor based conductivity/resistivity controllers, microprocessor based pH controllers, microprocessor based pH/ORP controllers, multi-loop controllers, non-indicating controllers, panel mount controllers, pH controllers, pH/ORP controllers, pH pump controllers, power controllers, process controllers, profile controllers, programmable logic controllers, pulse frequency pH controllers, ramp and soak controllers, resistivity controllers, SCR controllers, SCR power controllers, setpoint controllers, sequencing controllers, temperature controllers; converters, namely A/D converters, D/A converters, converters; dataloggers, namely battery powered, handheld dataloggers, intelligent dataloggers, portable dataloggers, programmable dataloggers, temperature dataloggers; detectors, namely leak detectors; dialers, namely autodialers, telephone dialers; electrodes, namely combination pH electrodes, conductivity electrodes, epoxy bodied combination pH electrodes, glass bodied pH electrodes, in-line pH/ORP electrodes, industrial pH/ORP electrodes, ion selective electrodes, ISE electrodes, laboratory pH/ORP electrodes, measuring electrodes, ORP electrodes, oxidation-reduction potential electrodes, pH electrodes, preamplified pH electrodes, reference electrodes, retractable pH/ORP electrodes, submersible pH/ORP electrodes, power control elements laboratory feedthroughs, namely hermetic feedthroughs, vacuum feedthroughs, laboratory feedthroughs, namely compression fittings, tube fittings; flowmeters, namely in-line flowmeters, magnetic flowmeters, mass flowmeters/controllers, ultrasonic flowmeters; gauges, namely dial gages, handheld force gages, strain gages; hygrometers, namely digital thermal hygrometers; indicators,

namely analog indicators, analog input indicators, analog/frequency input indicators, flow/total/batch control indicators, frequency input indicators, humidity and recorder indicators, loop indicators, loop powered indicators, mini indicators, modular indicators/controllers/transmitters, motor rotation indicators, phase sequence indicators, pH indicators, RTD indicators, temperature indicators, thermistor indicators; interfaces; isolators, namely loop isolators, loop powered isolators; junction boxes, namely load cell summing junction boxes; labels, namely liquid crystal labels, temperature labels; lacquers, namely temperature indicating lacquers; loggers, namely power loggers; manometers, namely handheld manometers; meters, namely AC/DC meters, AC clamp meters, air velocity meters, analog meters, benchtop meters, benchtop conductivity meters, benchtop pH meters, benchtop dissolved oxygen meters, conductivity meters, conductivity/TDS meters, current meters, datalogging pH/MV meters, DC volt meters, dewpoint meters, digital meters, dissolved oxygen meters, flow meters, frequency meters, handheld meters, handheld dissolved oxygen meters, handheld conductivity meters, handheld strain gauge meters, handheld humidity meters, panel instrumentation meters, laboratory conductivity meters, large display meters, load meters, loop powered meters, load cell meters, microvolt meters, miniature meters, OHM meters, panel meters, panel mounted meters, pH meters, pH/MV meters, pH/KV/ISE meters, pH/ORP meters, potentiometers, portable conductivity meters, portable dissolved oxygen meters, portable pH meters, portable pressure meters, positive displacement meters, pressure meters, process meters, process instrumentation meters, programmable process meters, quadrature meters, rate meters, reference point meters, relative humidity meters, RDT meters, strain-gauge meters, solar powered meters, strain meters, temperature meters, square root meters, temperature meters using infrared technology, thermistor meters, thermocouple RTD meters, thermocouple meters, true-RMS (root mean square) meters, turbine meters, voltage meters, plastic vortex meters, harsh environment vortex meters, water meters, watertight pH meters; mixers, namely bung-entering mixers, static mixers; modems, namely short haul modems; modules, namely intelligent control modules, isolation modules, loop isolator modules, proportional firing modules, pulse control modules, solid state I/O modules; monitors, namely conductivity monitors, dewpoint monitors, environmental monitors, handheld pressure monitors, handheld temperature monitors, power line monitors; multimeters, namely digital multimeters, handheld multimeters, multi-functional multimeters, multimeters/thermometers; panels, namely power control panels; papers, namely pH indicating papers; pellets, namely temperature indicating pellets; plotters; printers, namely panel-mount printers; probes, namely conductivity probes; profiler, namely temperature profiler; psychrometers, namely sling psychrometers; pumps, namely carbon drum pumps, centrifugal pumps, chemical dosing pumps, chemical metering pumps, diaphragm metering pumps, drum pumps, electronic metering pumps, gear pumps, hand pumps, large capacity metering pumps, microprocessor based chemical metering

pumps, low flow metering pumps, magnetic drive centrifugal pumps, peristaltic pumps, rubber impeller pumps; pyrometers, namely infrared radiation pyrometers; receivers, namely process receivers; recorders, namely analog recorders, battery powered recorders, benchtop recorders, circular recorders, compact recorders, distributed process recorders, event recorders, flatbed recorders, function recorders, hybrid recorders, indicating recorders, ink jet recorders, microprocessor recorders, paperless recorders, pH recorders, portable recorders, programmable recorders, temperature recorders, thermal recorders, thermal-array recorders, transient recorders, trend recorders, vertical recorders, X-Y recorders; relays, namely intrinsic safety relays, mechanical relays, power switching relays, solid state relays, pump up/pump down relays; rotameters, namely acrylic rotameters, gas proportioning rotameters, industrial rotameters, laboratory rotameters, multiple tube rotameters; purge rotameters; scanners, namely process scanners, temperature scanners; seals, namely diaphragm pressure seals; sensors, namely conductivity sensors, conductivity/resistivity sensors, displacement sensors, low flow sensors, non-contact conductivity sensors; paddlewheel sensors, torque sensors, vacuum sensors; simulators, namely pH electrode simulators, RTD simulators, thermocouple simulators; snubbers, namely pressure snubbers; computer software, namely data acquisition software, data analysis software, graphic presentation software; standards, namely benchtop pressure standards, handheld pressure standards, melting point standards; stirrers, namely lab hot plate/stirrers; supplies, namely power supplies; switches, namely conductivity level switches, level switches, dry material level switches, industrial flow switches, paddle type switches, pressure switches; radio frequency level switches, single station level switches; tachometers; testers, namely conductivity testers, pH testers, pocket pH testers, pocket testers, solder system testers; thermocouples; thermometers, namely benchtop thermometers, bi-metal thermometers, compost thermometers, dial thermometers, digital thermometers, glass thermometers, handheld thermometers, infrared thermometers, microprocessor based thermometers, non-contact thermometers, portable thermometers, radiation thermometers; thermostats; period timers ancillary to and incorporated into apparatus scientifically or industrially employed for the measurement and/or control of temperature, pressure, force, load, vibration, electrical conductivity, liquid level, acidity, humidity, strain or flow; totalizers, namely ratameters/totalizers; transducers, namely air mass flow transducers, air velocity transducers, infrared transducers, pressure transducers; transmitters, namely chilled mirror transmitters, conductivity, continuous level transmitters, dewpoint transmitters, digital transmitters, infrared transmitters, indicating transmitters, indicating transmitters and recorders, intelligent transmitters, pH transmitters, programmable transmitters, relative humidity transmitters, modular indicator/controller transmitters, pressure transmitters, RTD transmitters, smart transmitters, temperature transmitters, thermocouple transmitters, two-wire transmitters, two-wire conductivity transmitters, two-

connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.³

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

Our determination under Section 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

wire pH transmitters, two-wire resistivity transmitters, wireless transmitters; laboratory tubes, namely pitot tubes; laboratory tubing, namely metal tubing, plastic tubing, rubber tubing; valves, namely metering valves, solenoid valves, voltmeters, namely strain-gauge/micro voltmeter; laboratory wind tunnels; wire, namely nichrome resistance wires, sensor wires, superconductive wires, thermocouple wire; and parts therefor industrially and/or scientifically employed

International Class 11:

furnaces, namely bench top muffle furnaces; hot plates; tapes, namely flexible heating tapes; heaters, namely air duct heaters, air gun heaters, band heaters, cartridge heaters, ceramic radiant heaters, circulation heaters, comfort heaters, drum heaters, electric stud heaters, finned strip heaters, finned tubular heaters, flanged immersion heaters, kapton insulated flexible heaters, over the side immersion heaters, process air heaters, portable air heaters, radiant panel heaters, ring heaters, screw plug immersion heaters, silicone rubber insulated flexible heaters, small tank immersion heaters, space heaters, strip heaters, substrate heaters, teflon covered immersion heaters, tubular heaters; mantles, namely heating mantles

International Class 16:

printed matter, namely catalogs and reference guides containing product, engineering and/or technical data.

³ This application was suspended pending a cancellation proceeding brought by a third party against the cited registration. The proceeding was dismissed following entry of an amendment to the identification of goods in the cited registration, which is reflected in the identification set forth in footnote 2. The amendment did not affect the goods that are cited in connection with this appeal.

1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, 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 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 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 Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The examining attorney contends that the marks are essentially identical, noting that the mark in the cited registration is the term OMEGA and applicant's mark consists primarily of the term OMEGA followed by the merely descriptive term METER, which has been disclaimed. The examining attorney also contends that there is a close relationship between applicant's identified goods and the specified goods in the cited registration. In support of her position, the

examining attorney submitted copies of seven third-party registrations. Of these third-party registrations, two registrations are based on Section 44 of the Trademark Act rather than on use of the marks in commerce and, as such, are of no probative value. Two additional registrations are owned by the same party for variations of a mark registered in connection with the identical goods, thus, these two registrations are essentially a single example for the goods identified therein. The remaining four examples of note in the record of third-party registrations identify goods, in pertinent part, as follows:

- "ion concentration and conductivity; namely, analyzers ..."
- "analytical and measuring apparatus and instruments for general purposes, namely, ... conductivity meters ... ion meters"
- "electronic measuring, signaling and testing devices, namely, ion selective electrodes; ... ion meters ..."
- "instruments and devices used in ... [fields], namely instruments ... for analyzing ... conductivity, ... hydrogen ion concentration, ..."

The examining attorney argues that neither applicant's nor registrant's identification of goods is limited as to trade channels or class of purchasers and, thus, while the respective products may be sold only to "sophisticated, highly trained and educated professional purchasers" (brief, unnumbered p. 7), this

class of purchasers is the same with respect to both products.

Applicant has noted that its pending application is identical to expired registration no. 1045835, which was owned by applicant's predecessor-in-interest.

Applicant states the following (brief, p. 1):

Applicant purchased all the assets of Kenco Alloy & Chemical Co., Inc., the record owner of the OMEGA METER and design registration. However, due to an oversight in the purchase documents, the OMEGA METER & Design registration was not formally assigned to applicant, and consequently applicant was unable to renew the OMEGA METER and Design registration. Applicant subsequently filed the application for the same mark and covering the same goods as appeared in the OMEGA METER & Design registration. In response to the examining attorney's refusal, applicant argued that the application should be accepted because the OMEGA METER & Design registration coexisted on the register with the ... registration cited by the examining attorney.

Applicant also notes that the cited registration was approved for registration while the OMEGA METER & Design registration was extant by the same examining attorney who has now refused registration of the OMEGA METER & Design mark in view of the cited registration.⁴

Applicant claims that this inconsistency in the examining attorney's actions is inexplicable and that, "the examining attorney cited no evidence of any

changes in the relevant marketplace that would support his inconsistent position" (brief, p. 2). Applicant argues that there is no likelihood of confusion in view of the previous coexistence of the marks on the register and, for over thirty years, in the marketplace; and that there has been no actual confusion.

Applicant argues, further, that confusion is unlikely because the goods are sufficiently unrelated and are directed to different potential purchasers, as applicant describes below (brief, pp. 4-5):

[The product] is a highly specialized apparatus that costs approximately \$20,000 and is used by quality and process engineers of electronics manufacturers to measure the ionic contamination of electronic hardware and components caused by processing steps such as wave soldering, hot air leveling, plating, etching and chemical cleaning. The engineers making the decision to purchase applicant's OMEGA METER & Design apparatus are extremely sophisticated, highly trained and educated professionals who know that they are dealing with applicant when they consider the purchase of applicant's apparatus. These professionals exercise extreme care in making the decision to purchase an OMEGA METER & Design apparatus, and purchase the apparatus only after carefully researching applicant and its products and reputation. In this market, the identity and reputation of the manufacturer is of critical importance.

We begin by addressing applicant's primary argument regarding its previously existing registration

⁴ The examining attorney presenting this case on appeal is different from the examining attorney who initially examined the

and the prior examining attorney's seemingly inconsistent actions with respect to issuing the cited registration while applicant's registration was extant and then refusing this application, in all respects identical to the prior registration, based on the cited registration. We have no way of knowing the motivation for the prior examining attorney's actions any more than applicant does. However, the cited registration is valid and existing based on the records of the USPTO, and whether it should have issued in view of applicant's now expired registration is not before us in this appeal. We are concerned only with the issue of whether there exists a likelihood of confusion based on the cited registration. Moreover, applicant cites no authority, and we are not aware of any, for its contention that the examining attorney was precluded from refusing registration of this application based on the cited registration without evidence of changes in the relevant marketplace. We find no basis for making this proposed standard the rule in this case. In view thereof, applicant's argument becomes essentially an impermissible attack on the validity of the cited registration.

application.

Considering the issue of likelihood of confusion, we turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. 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 overall commercial impressions that confusion as to the source of the goods or 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). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than 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).

We agree with the examining attorney, and applicant does not appear to dispute, that the marks

are substantially similar. Applicant's mark includes a design feature between the two words that is the Greek alphabet character referred to as "omega,"⁵ and, as such, this letter reinforces the word OMEGA in the mark. The second word in the mark, METER, is admittedly merely descriptive, as evidenced by the disclaimer of record, and, thus, is of less significance overall in determining the commercial impression of the mark. Additionally, the font in which the wording appears is of minimal design significance. Therefore, we conclude that the appearance, pronunciation, connotation and commercial impressions of applicant's mark, **Omega  Meter**, and the mark in the cited registration, OMEGA, are substantially similar. This *du Pont* factor weighs against applicant.

Turning to consider the goods involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows

⁵ We take judicial notice of the definition of "omega" as "n. 1. the 24th and final letter of the Greek alphabet." *The American Heritage Dictionary*, 2nd College Edition, 1985. The Board may take judicial notice of dictionary definitions. See *University of*

the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

There are a substantial number of goods and services listed in the cited registration, covering a broad range of laboratory and manufacturing process products. Only one product in the cited registration, "ionic analyzers," is discussed by the examining

Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594

attorney as the basis for the refusal. We do not find the four third-party registrations to be particularly probative because it is not clear to what extent, if any, the goods recited in those registrations are the same as or related to the goods involved herein.

However, looking only at the identifications of the respective goods herein, applicant's goods measure the degree of ionic contamination that may be present on electronic parts and the like, while registrant's goods can be used to analyze ions and indicate their level of concentration in, for example, a solution. Thus, while the goods are not the same, we note the obvious fact that both products must do an ionic analysis in order to respectively determine contamination or concentration levels. While applicant describes its goods in detail, it does nothing to distinguish them from the relevant goods in the cited registration. We conclude that applicant's identified goods are closely related products that measure and otherwise analyze ions so that, if identified by confusingly similar marks, confusion as to source is likely. In view of the breadth of the goods identified in the cited registration, purchasers of applicant's goods would be likely to believe that its goods are merely an

(TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

extension of registrant's line of products. Thus, this *du Pont* factor also weighs against applicant.

In its reply brief, applicant argues that its trade channels differ from those of registrant because it sells its goods directly to end users of the apparatus. In its main brief applicant argues that the goods are directed to different potential purchasers (brief, pp. 2-3); whereas, in its reply brief, applicant states that it "does not dispute that the parties' goods may be marketed towards the same potential customers" (reply brief, p. 2). We find applicant's contentions regarding trade channels and class of purchasers to be unpersuasive. Applicant's and registrant's respective goods are closely related, and neither product is restricted as to channels of trade or class of purchasers. Thus, we presume that the goods of applicant and registrant are sold in all of the normal channels of trade to all of the usual purchasers for such goods. See *Canadian Imperial Bank v. Wells Fargo*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); and *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981). The fact that applicant may currently be limiting its channels of trade by selling its goods directly to consumers does not affect that presumption.

Thus, these *du Pont* factors also weigh against applicant.

Applicant argues that the cost of the involved goods and the level of education and technical sophistication of the purchasers, along with the care used in making such purchases, all work to obviate any confusion. We agree that this factor weighs in applicant's favor.

However, on balance, we conclude that in view of the substantial similarity in the commercial impressions of the marks herein, their contemporaneous use on the goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods. We find that the factor of purchaser care and sophistication is insufficient to overcome this likelihood of confusion. We note that highly educated and sophisticated professionals are not immune from confusion when the marks are as similar as these marks and the goods with which they are used are as closely related as the goods herein. *See In re General Electric Company*, 180 USPQ 542 (TTAB 1973); *In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986), citing *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ("Human memories even of discriminating

purchasers ... are not infallible."). See also *Wincharger Corp. v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289 (CCPA 1962); and *In re Pellerin Milnor Corp.*, 221 USPQ 588 (TTAB 1983).

With regard to applicant's assertion that it is aware of no instances of actual confusion occurring as a result of the contemporaneous use of the marks of applicant and registrant over a long number of years, we note that we have no information from registrant as to its experience with regard to actual confusion. Nor does not the record indicate the sales, in terms of amount or geographic area, of applicant's and the registrant's goods, such that we could determine that there has been an opportunity for confusion to occur.

Finally, to the extent that any doubts might exist as to the correctness of this conclusion, we resolve such doubts in favor of registrant. See *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992); *Ava Enterprises Inc. v. Audio Boss USA Inc.*, 77 USPQ2d 1783 (TTAB 2006); *Baseball America Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844 (TTAB 2004).

Decision: The refusal under Section 2(d) of the Act is affirmed.