

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 75/918891

APR 28 2003

APPLICANT: MELARD MANUFACTURING CORP.

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MARK: ALEXANDRIA

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Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	MELARD	:	BEFORE THE
	MANUFACTURING CORP	:	
Trademark:	ALEXANDRIA	:	TRADEMARK TRIAL
		:	
Serial No:	75918891	:	AND
		:	
Attorney:	Edgar A. Zarins	:	APPEAL BOARD
		:	
Address:	2101 Van Born Road	:	ON APPEAL
	Taylor, Michigan 48180	:	

EXAMINING ATTORNEY'S APPEAL BRIEF

Applicant appealed the Examining Attorney's final refusal to register the trademark "ALEXANDRIA" for "bathroom accessories namely towel bars, towel rings, soap dishes, tissue holders and tumbler holders" on the grounds of a likelihood of confusion with the Registrant's

mark in U.S. Registration No. 2057500 under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

I. FACTS

Applicant applied for registration on the Principal Register of the mark "ALEXANDRIA" for "bathroom accessories namely towel bars, towel rings, soap dishes, tissue holders and tumbler holders." The Examining Attorney refused registration under Section 2(d) of the Trademark Act based on U.S. Registration No. 2057500 for the identical mark ALEXANDRIA for "towels." This appeal follows the Examining Attorney's Final Refusal based on the likelihood of confusion under Section 2(d) based on the above noted registration.

II. ARGUMENT

THE MARKS OF APPLICANT AND REGISTRANT ARE IDENTICAL AND THE GOODS ARE CLOSELY RELATED SUCH THAT THERE EXISTS A LIKELIHOOD OF CONFUSION, MISTAKE, OR DECEPTION UNDER SECTION 2(d) OF THE TRADEMARK ACT.

The Court in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d) of the Trademark Act. Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. In this case, the following factors are the most relevant: similarity of the marks and the similarity of the goods. The other factors cannot be considered because no relevant evidence concerning those factors is contained in the record. See *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984).

A. THE MARKS ARE IDENTICAL

The applicant's proposed mark is ALEXANDRIA and the registrant's mark is ALEXANDRIA. Both are in typed form. The applicant has conceded the marks are identical. See Appeal Brief p. 2. If the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of

confusion as might apply where differences exist between the marks. *Amcors, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981).

B. THE GOODS ARE CLOSELY RELATED

Applicant's goods are identified in the application as "bathroom accessories namely towel bars, towel rings, soap dishes, tissue holders and tumbler holders." The Registrant's goods are "towels." The goods of the parties are closely related because goods of these types often emanate from the same registrant or manufacturer under the same mark. See Registration Nos. 2334474, 20868381930355, 1570990, 2491057, 2581891, 2579749, 2548979, 2275051, 2382438, and 2284659 previously entered in the record as evidence. Such registrations, while not evidencing that the marks shown therein are in use or that the public is familiar with them, nevertheless, have been found by the Trademark Trial & Appeal Board (TTAB) to have some probative value to the extent that they serve to suggest that the goods and/or services listed therein are of the kinds which may emanate from a single source. See: e.g., *In re Albert Trustle & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 (TTAB 1988) at n. 6; *In re Nobody's Perfect Inc.*, 44 USPQ2d 1054 (TTAB 1997) at n. 4. It follows, therefore, that the same consumers buy and use towels, towel bars, towel rings, soap dishes, tissue holders, and tumbler holders from the same manufacturer and/or stores.

Consumers like to coordinate towels and soap dishes, tissue holders and tumbler holders for decorating purposes. The mark ALEXANDRIA connotes a particular decorating style of an Egyptian theme. Alexandria was the capital of Egypt from its founding by Alexander the Great in 332 BC to AD 642, when it was subdued by the Arabs. It is now the second largest city, the centre of a major industrial region, and the chief seaport of Egypt. See attached copy of definition from <http://www.britannica.com/eb/article?eu=108636&tocid=0&query=alexandria&ct>. As consumers know that the parties goods often emanate from the same manufacturer and seek this as a feature

for these goods, consumers are likely to believe that the Applicant's goods and the Registrant's goods emanate from a single source.

Consumers are likely to be confused as to the source of the Applicant's/Registrant's goods because towels, towel bars, towel rings, soap dishes, tissue holders and tumbler holders are in the same channels of trade. See Registration Nos. 2334474, 20868381930355, 1570990, 2491057, 2581891, 2579749, 2548979, 2275051, 2382438, and 2284659 previously entered in the record. These items can be found in the same linen stores, the same department in department stores, and some specialty interior decorating stores sell both together in shopping malls. See for example, Registration Nos. 2348681, 2334474, 2086838, 1930355, and 2491057 previously attached in the record. The examining attorney must consider any goods or services in the registrant's normal fields of expansion to determine whether the registrant's goods or services are related to the applicant's identified goods or services under Section 2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). *Trademark Manual of Examining Procedure* Section §1207.01(a)(v) (3rd Edition January 2002). The evidence demonstrates that the Applicant's goods are in the Registrant's natural channels of expansion of trade.

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). Here, the goods of the parties are closely related because, as shown in the First and Final Refusals, goods of this type often emanate

from a single source under the same mark, manufacturers know that consumers like to coordinate these items and manufacture them to sell accordingly, and these goods are often found in the same stores and even the same departments of the same stores.

Applicant argues that its mark is not likely to cause confusion with the Registrant's mark because the respective goods and channels of trade are different. In support of this argument, the Applicant states 1) "the Applicant's bathroom accessories are substantially permanent fixtures sold through hardware departments of retail outlets such as home centers"; and 2) the Applicant's hardware is relatively expensive, suggesting that the consumers are sophisticated enough to disassociate the applicant's goods from the registrant's goods. See Applicant's Response to First Office Action p.2.

Despite Applicant's arguments that the goods are unrelated because the Applicant's goods are substantially permanent fixtures, the Applicant has not limited the identification of goods in any such manner to indicate this. However, even if the Applicant had amended his identification to indicate which items were fixed and the venues in which the goods are sold, the likelihood of confusion would still exist. As indicated by the 16 attached third party applications and/or registrations (4 attached to the first office action and 9 attached to the final action), there is no distinction between retailers and manufacturers who sell towels and towel bars, towel rings, and soap dishes for fixing to walls and those who sell towels and non-fixed towel bars, towel rings or soap dishes. For example, Registration No. 2581891 uses its mark in connection with goods that are both for permanent fixture to walls, such as drapery holdbacks, hooks, and electric wall lamps and goods identical to those of the Applicant, which may or may not be fixed. Therefore, contrary to the Applicant's statement in the Appeal that the Examining Attorney "ignores the realities of the marketplace," the evidence demonstrates that towel bars, towel rings, soap dishes, tissue holders, and tumbler holders, whether for fixing to walls or not, may travel in the same channels of trade as

the Registrant's goods, towels. The examining attorney must consider any goods or services in the registrant's normal fields of expansion to determine whether the registrant's goods or services are related to the applicant's identified goods or services under Section 2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). *Trademark Manual of Examining Procedure* Section 1207.01(a)(v) (3rd Edition January 2002). As the Applicant's goods are in the normal fields of expansion of trade of the Registrant's goods, the source of the goods are likely to be confused.

The applicant argues confusion is not likely because the Applicant's hardware is relatively expensive, suggesting that the consumers are sophisticated enough to disassociate the applicant's goods from the registrant's goods. The fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. *See In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). *Trademark Manual of Examining Procedure* §1207.01(d)(vii) (3rd Edition January 2002).

The Applicant argues "even in the largest bed and bath superstores, towels would not be found in the same department as metal hardware." See Applicant's Appeal p.3. The test of relatedness of the goods and likelihood of confusion does not turn on whether goods can be found in the same department of the same store. The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. The goods need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common origin or source. As previously demonstrated, these goods travel in the same channels of trade and the Applicant's goods are in the Registrant's normal channels of trade. Moreover, the issue is not likelihood of confusion between particular goods but likelihood of confusion as to the source of those goods. *See In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467

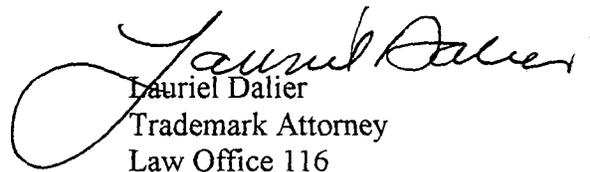
(TTAB 1988); *Trademark Manual of Examining Procedure* Section 1207.01, (3rd Edition January 2002). Therefore, it would be reasonable and therefore likely for purchasers to believe that Applicant's goods and the Registrant's goods come from the same source, upholding a finding of likelihood of confusion.

In short, the evidence of record shows that Applicant's goods, "bathroom accessories namely towel bars, towel rings, soap dishes, tissue holders and tumbler holders" and the Registrant's goods, "towels," are sufficiently related under Section 2(d) of the Trademark Act, such that purchasers are likely to be confused the source of these goods. If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980). Here, the marks are identical and the goods of the respective parties are very closely related.

Since it has been established that the marks are identical and the goods are related, it is likely that purchasers would operate under the mistaken belief that the goods come from a common source.

III. CONCLUSION

For the foregoing reasons, the refusal to register under Section 2(d) of the Trademark Act should be affirmed.


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Arabic Al-Iskandariyah city and urban *muh afazah* (governorate), Lower Egypt. Once the greatest city of the ancient world and a centre of Hellenic scholarship and science, **Alexandria** was the capital of Egypt from its founding by **Alexander the Great** in 332 BC to AD 642, when it was subdued by the Arabs. It is now the second largest city, the centre of a major industrial region, and the chief seaport of Egypt. It lies...

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