

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: December 6, 2002
Paper No. 14
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re SP Systems, LLC

Serial No. 75/932,869

Request for Reconsideration

Robert Dickerson of Jones, Day, Reavis & Pogue for SP
Systems, LLC.

David H. Stine, Trademark Examining Attorney, Law Office
114 (Margaret Le, Managing Attorney).

Before Hairston, Chapman and Drost, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

On October 21, 2002, applicant filed a request for
reconsideration of the Board's decision issued September
20, 2002, wherein the Board affirmed the refusal to
register FARM & HOME as a trademark for manually-operated

compression sprayers for dispensing liquids" on the ground of mere descriptiveness.

Applicant maintains that the Board's decision is incorrect because the fact that applicant's sprayers can be used around the farm or the home is not a significant feature of the product. Further, according to applicant, there is no understood or recognized subcategory in the sprayer industry for a "farm and home" sprayer and there is nothing in the record to indicate that applicant's particular sprayer was specifically designed to fill some well-understood need for sprayers that can be used around farms and homes. In addition, for the first time, applicant points to the fact that there are nineteen third-party registered marks which include such words as "farm," "home," "auto," and "sea" for various goods, and has argued that this shows that FARM & HOME is suggestive.

First, with respect to applicant's contention that its mark is only suggestive in view of certain third-party registrations, we must point out that the record in an application should be complete prior to the filing of an appeal, and additional evidence filed after appeal will ordinarily be given no consideration by the Board. Trademark Rule 2.142(d). Moreover, mere typed listings of third-party registrations are not an appropriate way to

enter such material into the record, and the Board does not take judicial notice of registrations in the USPTO. See *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992); *Cities Service Company v. WMF of America, Inc.*, 199 USPQ 493 (TTAB 1978); and *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). Accordingly, applicant's references to third-party marks have not been considered. We note, however, that even if applicant had timely and properly submitted the evidence of third-party registrations, it would not be persuasive of a different result in this case. As often noted by the Board, each case must be decided on its own merits. We are not privy to the records of the third-party registration files, and moreover, the determination of registrability of those particular marks by Trademark Examining Attorneys cannot control the merits in this case. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to [applicant's application], the PTO's allowance of such prior registrations does not bind the Board or this court"). See also *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985) (Applicant's existing rights arising from registration of DURANGO'S for cigars are unaffected by rejection of DURANGO

for chewing tobacco; each application for registration of a mark for particular goods must be separately evaluated).

Second, we remain of the view that FARM & HOME describes a significant feature of applicant's goods. We believe that the relevant purchasers of applicant's goods would understand that a "farm & home" compression sprayer is designed for smaller jobs, namely jobs around the farm and home, as opposed to commercial uses. In this regard, applicant failed to offer any evidence in support of its contention that there is no "farm & home" subcategory of compression sprayers.

Accordingly, because we are not persuaded by applicant's arguments that our October 21, 2002 decision was incorrect, applicant's request for reconsideration is denied.

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