

Trademark Law Office 103
Serial No. 76/055,965
Mark: SURECOM
Attorney Docket No.: BHT/3091-32

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant : SURECOM TECHNOLOGY CORPORATION
Serial No. : 76/055,965
Filed : May 19, 2000
Mark : SURECOM
Trademark Examining Attorney : J. Bruno
Law Office : 103
Responds to Action Dated : September 18, 2001
Attorney Docket : BHT/3091-32

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

APPEAL BRIEF

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TRADEMARK
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APPEAL BRIEF

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Madam:

The applicant appeals from a final decision of the Examining Attorney of September 18, 2001. The Notice of Appeal was filed on March 18, 2002, and the prescribed fee was paid by check. If the amount of the check was incorrect, please charge or credit Deposit Account No. 50-1874. The applicant relies upon the following points and authorities for the appeal.

I. ISSUES ON APPEAL

The final Office Action states:

[T]he examining attorney has found the applicant's arguments unpersuasive with regards to the refusal to register based on U.S. Registration No. 1828812 for the mark SURE-COMM. That refusal is maintained and made FINAL for the following reason:

Final Refusal: Likelihood of Confusion

Registration was refused under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the mark for which registration is sought so resembles the mark shown in U.S. Registration No. 1,828,812 as to be likely, when used in connection with the identified goods, to cause confusion, or to cause mistake, or to deceive.

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The applicant appeals this rejection and maintains that its mark is distinguishable over U.S. Registration No. 1,828,812.

II. STATEMENT OF FACTS

The applicant, Surecom Technology Corporation (hereinafter "the applicant" or "Surecom"), applied to register the mark SURECOM with a stylized "S," a stylized "E," a stylized "C," and a stylized "M." The drawing submitted with the application depicted the stylized lettering. The amended identification of the goods for the applicant's mark is:

Microcomputers, namely main frames, CPU's (central processing units), hard disk drivers, magnetic disk drivers, optical disk drivers, hubs, electrical connectors, audio receivers, telephone receivers, and blank magnetic disks in International Class 9.

The registrant's SURE-COMM mark is used with radio transceivers.

The Examining Attorney refused registration, concluding that the applicant's mark is similar in appearance and sound to U.S. Registration No. 1,828,812 for the mark SURE-COMM and that the identified goods are sufficiently related to the goods identified by the registrant's mark as to create a likelihood of confusion as to their source.

III. ARGUMENT

The applicant, Surecom Technology Corporation, respectfully requests that the Board reverse the Examining Attorney's refusal to register its SURECOM logo mark. The applicant maintains that its mark is distinguishable over U.S. Registration No. 1,828,812

and that therefore there is no likelihood of confusion as to the source of the goods in the marketplace.

A. The Applicant's Mark Is Not Confusingly Similar to U.S. Registration No. 1,828,812

The Examining Attorney bases his refusal to register on his finding that the applicant's mark is essentially a phonetic equivalent of the registrant's mark and that the overall impression of both marks is the combination of the words "sure" and "com." The Examining Attorney must review the marks in their entireties. 15 U.S.C. § 1052(d). When viewed in their entireties, however, there is little likelihood of confusion between the two marks.

One feature of a mark may be recognized as more significant in creating a commercial impression, and greater weight may be given to that feature in a likelihood of confusion analysis. In re National Data Corp., 224 U.S.P.Q. 749 (Fed. Cir. 1985); Textronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 U.S.P.Q. 693 (C.C.P.A. 1976); In re J.M. Originals Inc., 6 U.S.P.Q.2d 1393 (T.T.A.B. 1988). The Examining Attorney chose to focus on a similarity of sound between the two marks, ignoring the fact that the applicant's mark is a stylized logo that is distinctly different from the registrant's mark. The dominant feature of the applicant's mark is the design elements of the lettering. The Examining Attorney failed to assign the proper weight to this feature.

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The applicant's mark comprises the word "SURECOM" with a stylized "S," a stylized "E," a stylized "C," and a stylized "M." On the stylized "E" of the mark, the center leg of the "E" is replaced with a triangle. These stylized letters add an overall artistic design element to the entirety of the applicant's mark. Although the registrant's mark may be presented in a stylized form in commerce, it is visually distinct due to the addition of a hyphen between the words "sure" and "comm" and the addition of an extra "m" to "com."

The applicant's mark is not a misspelling or a phonetic equivalent of a descriptive term. See Elizabeth Arden Sales Corp. v. Faberge, Inc., 304 F.2d 891, 892, 134 U.S.P.Q. 186, 187 (C.C.P.A. 1962). The mark's distinctive stylization and its difference in spelling and visual appearance produce a commercial impression that is not likely to result in confusion with the registered mark.

B. The Applicant's Mark Is Used on Goods that Are Not Similar to the Goods Used with the Registrant's Mark

The Examining Attorney concluded that the goods identified by the applicant's mark are sufficiently related to the goods identified by the registrant's mark to create a likelihood of confusion. The Examining Attorney's evidence, already of record and attached to the Office Action of September 18, 2001, consists of website excerpts from both parties' websites. It also

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consists of evidence that other parties manufacture and sell both computers and computer products and radio transceivers.

The applicant maintains that the goods associated with the applicant's mark are not closely related. The Examining Attorney would have the Board find that all electronic devices are, per se, related goods. The fact that a large corporation such as Surecom or Telephonics Corporation -- or even Matsushita or Sony -- manufactures dozens or hundreds of products does not establish that each product line is necessarily related to the other. Precedent exists to extend trademark protection to closely connected fields that can be considered to be an area of normal expansion of the business. Matsushita Electrical Co. v. National Steel Co., 170 U.S.P.Q. 98, 99 (C.C.P.A. 1971). The case law does not establish a presumption, however, that all electronics devices are necessarily related products. Matsushita Industrial Co. v. Sanders Associates, Inc., 177 U.S.P.Q. 720, 725 (T.T.A.B. 1973). Factors considered to determine whether the products are related included whether the same devices are sold by both parties under their respective marks, whether the goods could be sold to the same class of purchaser and whether they are advertised to the same potential purchasers. Id.

The registrant, Telephonics Corporation, owns U.S. Registration No. 1,828,812 for the mark SURE-COMM for use with radio transceivers. There is no evidence that Telephonics

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Corporation uses the mark with any other products, including product lines that may be similar to those manufactured by the applicant, Surecom Technology Corporation. There is no evidence that other electronic products manufactured by Telephonics Corporation are known in the industry under a SURE-COMM brand name, as was the case in the Matsushita cases. See id.

The applicant's mark, a stylized SURECOM logo, is easily recognizable as an identifier of the source of the goods, Surecom Technology Corporation. The exponential growth of the electronics industry since the Matsushita cases and others cited by the Examiner has resulted in a huge range of product lines that are not all related. The goods used with the applicant's mark are computer related goods. They are advertised and sold to sophisticated purchasers, who are easily able to distinguish a computer product line from radio transceivers or other unrelated products. It is therefore not likely that the applicant's mark will cause confusion with the registrant's mark.

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IV. CONCLUSION

In consideration of the argument presented above, the applicant respectfully requests that the Board reverse the Examining Attorney's refusal to register and order that the application is in condition for publication.

Respectfully submitted,

May 17, 2002
Date



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TRANSMITTAL COVER SHEET

Sir:

Transmitted herewith for filing are the following:

- 1. APPEAL BRIEF.

02 JUN 12 AM 8:23
TRADEMARK TRIAL AND
APPEAL BOARD

The Commissioner is hereby authorized to charge any fees which may be required for the filing of this document to **Deposit Account No. 501874.**

Respectfully submitted,

Date: May 17, 2002

By: B. H. Troxell
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