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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Williams Products, Inc.

Serial No. 76469860

Arnold S. Weintraub of The Weintraub Group, P.L.C. for
Williams Products, Inc.

Rebecca L. Gilbert, Trademark Examining Attorney, Law
Office 113 (Odette Bonnet, Managing Attorney).

Before Quinn, Kuhlke and Taylor, Administrative Trademark
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Williams Products, Inc. has filed an application to
register the following mark



for services ultimately identified as "distributorship
services in the field of construction materials, including
water stops, bearing pads, joint fillers, panel seals,
joint seals and masonry accessories" in International Class

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35.¹ In response to a request from the examining attorney, applicant disclaimed the wording PRODUCTS, INC.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used with its identified services, so resembles the following registered marks as to be likely to cause confusion, mistake or deception.

WILLIAMS (typed form) for "concrete form hardware used in pouring and laying concrete; rock bolts" in International Class 6;²

WILLIAMS (typed form) for "C-Clamps, Chain Pipe Wrenches and Wrenches" listed in International Classes 7 and 8;³

WILLIAMS

for "C Clamps, Strap Clamps, Lathe Tools, Planer Tools, Boring Tools, Lathe-Tool Holders, Threading Tools, Pipe Tools, Chain Pipe Wrenches, Wrenches, Machinists' Clamps" listed in International Classes 7 and 8;⁴ and

Williams

for "hand tools, namely, adapters, ratcheting adapters, adjustable wrenches, carbide bits, cobalt bits, boring bars, boring tools, box

¹ Application Serial No. 76469860, filed November 25, 2002, alleging first use and use in commerce on December 31, 1960 under Section 1(a) of the Trademark Act. 15 U.S.C. §1051(a).

² Registration No. 1090001, issued April 25, 1978, renewed.

³ Registration No. 381837, issued October 8, 1940, renewed. Many of the original goods listed under this registration have been deleted (e.g., lathe tools, planer tools, vises).

⁴ Registration No. 517355, issued November 8, 1949, renewed. Many of the original goods listed under this registration have been deleted (e.g., machine handles, grinding tools, vises).

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wrenches, wheel sockets, chisels, c-clamps, strap clamps, toolmakers clamps, combination wrenches, crank handles, crowfoot wrenches, drills, extensions, screw extractors, flange jacks, flare nut wrenches, flaring tools, flex head ratchets, flex/open end wrenches, gear pullers, ball peen hammers, sledge hammers, soft face hammers, hammer wrenches, hex key wrenches, impact sockets, lathe dogs, lock ring pliers, nut drivers, open end wrenches, pinch bars, roll bars, pipe tongs, pliers, pullers, ratchets, ratcheting box wrenches, rod ends, roll pouches, slotted screwdrivers, screwdrivers, torque screwdrivers, screw extractors, wedges, slip joint pliers, snap ring pliers, aviation snips, sockets, soft face hammer tips, spark plug sockets, striking face wrenches, tappet wrenches, torque tools, tube cutters, adjustable wrenches, chain wrenches, combination wrenches, box end wrenches, check nut wrenches, construction wrenches, metric wrenches, open end wrenches, spanners, special purpose wrenches, structural wrenches, bolt cutters, pipe wrenches, cable cutters, vises and cone pullers" in International Class 8.⁵

The examining attorney has indicated that three of the cited registrations, i.e., Registration Nos. 381837, 517355 and 1415609, are owned by the same registrant.

When the refusal was made final, applicant appealed and briefs have been filed. We affirm the refusal to register.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d

⁵ Registration No. 1415609, issued November 4, 1986, renewed.

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1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Considering the marks, we find that they are similar and support a finding of a likelihood of confusion. In making this determination, we compare the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

To begin our analysis, we agree with the examining attorney that the dominant part of applicant's mark is the word WILLIAMS inasmuch as it is the name by which consumers would call for the goods. *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987). Applicant argues that the examining attorney did not view the mark as a whole. We see no such error. While it is correct that we must view the mark in its entirety, *Kangol Ltd. v. Kangaroo U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992), it is also well settled that "there is nothing

improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable." In re National Data Corp., 753 F.2d 1056, 1058, 224 USPQ 749, 750-51.

Applicant further argues that the common element between the marks, WILLIAMS, is inherently weak because it is a surname and there are several registrations that contain the word WILLIAMS. As to the list of registrations submitted by applicant, inasmuch as the examining attorney did not object to this list during examination we will consider it; however, it is of little probative value because it only lists the registration numbers and the term WILLIAMS.⁶ The list does not include the goods and/or services for which the term WILLIAMS is registered; thus, it does not provide any evidence of the strength or weakness of this term in the construction materials field. With regard to applicant's surname argument, even if we were to agree with applicant that WILLIAMS is an inherently

⁶ This listing does not make the entire registrations of record. In re Duofold Inc., 184 USPQ 638, 640 (TTAB 1974); In re Dos Padres Inc., 49 USPQ2d 1860, n. 2 (TTAB 1998).

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weak mark because it is a surname, that does not detract from its dominance in applicant's mark given that it is the only pronounceable word that has any possible source-identifying significance. Moreover, even weak marks are entitled to protection, in particular here, where applicant's mark incorporates the entirety of the literal portion of the marks in the cited registrations and that dominant element in applicant's mark is identical in sound to the marks in the cited registrations. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Applicant also argues that the W design is prominent; however, we find that the W design is not sufficient to present an overall different commercial impression or connotation that would set applicant's mark apart from the marks in the cited registrations such that when encountered by a consumer they would distinguish these marks as coming from a different source. W is simply the first letter in the word WILLIAMS and the stylization is suggestive of applicant's field of use, namely, construction and masonry. As to the remaining elements in applicant's mark, PRODUCTS, INC. does not have any source identifying significance and the rectangular background design does not serve to distinguish the marks. The sound and connotation of the

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common element in the marks are identical and the difference in appearance is not sufficient to overcome the similar commercial impression. In particular, with regard to Registration Nos. 1090001 and 381837, because they are in typed form we must presume that they could be presented in any type of stylization. In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991).

As to the respective goods and services identified in the application and the cited registrations, it is well settled that goods and services need not be similar or competitive in nature to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods and services themselves, but rather whether purchasers are likely to confuse the source of the goods and services. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider the cited registrant's goods as they are described in the registration and we cannot read limitations into those goods. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the cited registration describes goods broadly, and there is no limitation as to the nature, type, channels

of trade or class of purchasers, it is presumed that the registration encompasses all goods of the type described, that they move in all channels of trade normal for these goods, and that they are available to all classes of purchasers for the described goods. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992). Finally, it is well established that goods and services may be related. See *In re United Service Distributors, Inc.*, 229 USPQ 237 (TTAB 1986) (mark for distributorship services in the field of health and beauty aids held likely to be confused with mark for skin cream).

The examining attorney argues that applicant's recitation of services includes the goods in the cited registration because "the term 'including' does not limit the recitation in any meaningful way." Br. p. 5. Further, the examining attorney notes that the word "materials"⁷ is defined as "tools or apparatus for the performance of a given task"⁸ and argues that "construction materials" in applicant's identification are "tools or apparatus for the

⁷ The examining attorney's request that the Board take judicial notice of the definition of "materials" is granted. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983) (Board may take judicial notice of dictionary definitions).

⁸ *The American Heritage Dictionary of the English Language* (3rd ed. 1992).

performance of a given construction task [which would include the] hardware and tools listed in the cited registrations." Id.

Based on the identifications set forth in the cited registrations and the application we agree with the examining attorney that applicant's recitation of services would include the registered goods and thus applicant's services are sufficiently related to the goods in the cited registrations. Therefore, this factor supports a finding of a likelihood of confusion.

Applicant argues that the consumers of registrant's goods "appear to be craftsmen who would certainly discern the difference between a distributorship offering specific building supplies and a source of hardware items." Br. p. 2. Applicant also argues that "anyone who would purchase applicant's goods are sophisticated purchaser's of construction materials." December 19, 2003 Response p. 3.

We first note that the goods in the cited registrations are not limited to any particular trade channel and thus would overlap with applicant's distributorship channel of trade. We agree that in this overlapping trade channel the consumers of applicant's distributorship services would be more sophisticated than a general consumer at, for example, the retail level.

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However, we do not believe that this factor is dispositive in this case. Compare *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992) (relevant purchasers are sophisticated enough that the likelihood of confusion remains remote as to computer services and battery chargers). Even assuming WILLIAMS is an inherently weak mark, as noted above it is the dominant portion of applicant's mark and is identical in sound and connotation to the registrants' marks. Thus, despite the higher level of sophistication in the purchasers, "being knowledgeable and/or sophisticated in a particular field does not necessarily endow one with knowledge and sophistication in connection with the use of trademarks." *In re Decombe*, 9 USPQ 1812, 1815 (TTAB 1988). See also *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983).

In conclusion, we find that because the marks are similar, the goods and services are related, and the channels of trade overlap, confusion is likely between applicant's mark and the cited registrations. Finally, to the extent there is any doubt as to our conclusion we must resolve that doubt in favor of the prior registrants. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir.

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1993); In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6
USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusal to register under Section
2(d) of the Trademark Act is affirmed as to each
registration.