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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Koolatron Corporation

Serial No. 76692281

Richard O. Bartz of Bartz & Bartz for Koolatron Corporation.

Daniel Capshaw, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

Before Walters, Grendel and Taylor, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Koolatron Corporation has filed an application to register the mark shown below on the Principal Register for "electric mixers, choppers, whippers, grinders, graters and blenders for household use" in International Class 7.[1] The application includes a disclaimer of BLENDER apart from the mark as a whole.

[1] Serial No. 76692281, filed August 21, 2008, based on use of the mark in commerce, alleging first use and use in commerce as of October 31, 2004.

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 registered marks shown below that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Registration No. 1446009 (Registered July 7, 1987; renewed; Section 15 affidavit acknowledged)
Owner: Miracle Specialty Products, Inc. ("MSPI")
Mark: MIRACLE PRO
Goods: "Fruit and juice making machines," in International Class 7.

Registration No. 1586537 (Registered March 13, 1990; renewed; Section 15 affidavit acknowledged)
Owner: Miracle Products, LLC ("MPL")
Mark:

Goods: "Electric juicing machines for domestic use," in International Class 7.

Registration No. 1743863 (Registered December 29, 1992; renewed; Section 15 affidavit acknowledged)
Owner: Miracle Products LLC
Mark: THE MIRACLE JUICER
Disclaimer: JUICER
Goods: "Electric juicing machines for domestic use," in International Class 7.

Registration No. 2597799 (Registered July 23, 2002; Sections 8 and 15 affidavits accepted and acknowledged, respectively)
Owner: S.C. Chang, Inc. ("SCCI")
Mark: MIRACLE KITCHEN PLUS
Goods: "Hand-operated slicer, hand-operated choppers, hand-operated vegetable shredder, and non-electric hand held whipper, blender and mixer," in International Class 8.

An additional registration cited by the examining attorney, but pending cancellation under Section 8 of the Trademark Act, has not been considered in reaching our decision:

Registration No. 2553116 (Registered March 26, 2002; Sections 8 and 15 affidavits filed and refused)
Owner: Miracle Products LLC[2]
Mark: MIRACLE MILLENIUM JUICER
Disclaimer: JUICER
Goods: "electric powered fruit and vegetable juice extractor," in International Class 7.

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

Because the strength or weakness of the respective marks is an issue, we begin by clarifying the ownership of the cited registrations. Registration No. 2597799 is owned by S.C. Chang, Inc. Registration Nos. 1446009, 1586537, and

[2] On October 20, 2005, Miracle Exclusives, Inc. assigned its entire interest in this registration to Miracle Products LLC on (recorded on December 28, 2005 at 3217/0441). Subsequently, on December 20, 2007, Miracle Exclusives, Inc. assigned its entire interest in this registration to Miracle Specialty Products, Inc. (recorded on February 29, 2008 at 3731/0540). Because Miracle Exclusives, Inc. no longer owned the mark and registration, it could not assign the mark and registration to the second party. We consider the first assignment, to Miracle Products LLC, as the operative assignment transferring ownership thereto. Moreover, the Sections 8 and 15 declarations for this registration have been refused by the USPTO on the ground that the declarations were not signed by the record owner. This registration will be cancelled in due course.

1743863 were originally registered and owned by Miracle Exclusives, Inc. However, Miracle Exclusives, Inc. subsequently transferred Registration Nos. 1586537 and 1743863 to Miracle Products LLC; and transferred Registration No. 1446009 to Miracle Specialty Products.

There is absolutely no evidence that Miracle Exclusives, Inc., Miracle Products LLC and Miracle Specialty Products are the same or closely related entities. Contrary to the examining attorney's contentions, we must treat these entities as entirely independent. The fact that the original registrant assigned its registrations to different entities and, therefore, that the cited registrations are owned by three different entities, must be considered in determining, below, the strength or weakness of the respective marks.

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 1973). *See also Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee 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 Goods

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. *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; and *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002).

We repeat the respective goods below:

Application	Reg. No. 1446009 Owner MSPI	Reg. No. 1586537 Owner MPL	Reg. No. 1743863 Owner MPL	Reg. No. 2597779 Owner SCCI
electric mixers, choppers, whippers, grinders, graters and blenders for household use	Fruit and *(sic)* juice making machines	Electric juicing machines for domestic use	Electric juicing machines for domestic use	Hand-operated slicer, hand-operated choppers, hand-operated vegetable shredder, and non-electric hand held whipper, blender and mixer

The examining attorney submitted a great deal of extraneous evidence that has been of little probative value and unnecessary to our decision herein. However, the examining attorney did submit an excerpt from the Amazon

Internet page showing one company, Oster, selling both electric juicers and blenders. Additionally, the examining attorney submitted numerous third-party registrations showing most and/or all of the goods involved herein registered in connection with the same mark in numerous registrations.

Regarding, first the SCCI-owned registration, both applicant and SCCI include in their identifications of goods choppers, whippers, blenders and mixers. We do not find the fact that applicant's goods are electric and SCCI's goods are handheld to be sufficient to distinguish these otherwise identical items. While applicant's goods are limited to household use, SCCI's goods are not so limited and would include items for household use. We find that applicant's goods are very closely related to the goods in the SCII registration.

Regarding the MPL-owned registrations, both MPL's juicing machines and applicant's goods are electric and both are for household/domestic use. Moreover, applicant's mixer's, choppers, grinders and blenders could be used for the same purpose as MPL's machines, i.e., making juices from whole fruits or vegetables. We find that applicant's goods are closely related to the goods in the MPL registrations.

Regarding the MSPI registration, MSPI's fruit juice making machines would encompass both handheld and electric

devices and both household and commercial devices. As noted above, at least several of applicant's products could be used for making juices from whole fruits. We find that applicant's goods are closely related to the goods in the MSPI registration.

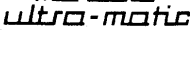
In view of the close relationship between applicant's goods and those identified in the cited registrations, this *du Pont* factor weighs against registration.

The Marks

We turn, next, 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. *H.D. Lee Co. v. Maidenform Inc.*, 87 USPQ2d 1715 (TTAB 2008). 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).

Applicant contends that MIRACLE is a weak portion of the respective mark because it is registered for identical or closely related goods to at least three entities. The marks are shown below:

Application	Reg. No. 1446009 Owner MSPI	Reg. No. 1586537 Owner MPL	Reg. No. 1743863 Owner MPL	Reg. No. 2597779 Owner SCCI
 [Disclaimer: BLENDER]	MIRACLE PRO		THE MIRACLE JUICER [Disclaimer: JUICER]	MIRACLE KITCHEN PLUS

Each of the above marks shares the word MIRACLE, which is likely to be perceived as slightly laudatory, i.e., the machines work so well that they perform miracles. The additional wording in each mark is either merely descriptive or suggestive. In the MSPI mark, MIRACLE PRO, the PRO portion is likely to be perceived as an abbreviation of "professional," which, in turn, suggests that the identified juice making machine is "heavy duty" or of a quality used by professionals. In the MPL design mark, the term ULTRA-MATIC is likely to be perceived as a laudatory term suggesting that the identified juicing machine is better than

"automatic." In the MPL word mark, THE MIRACLE JUICER, the word THE is of little significance and the word JUICER is merely descriptive of the identified goods. In the SCCI mark, MIRACLE KITCHEN PLUS, the word KITCHEN merely describes the location where the identified goods are used and the word PLUS is likely to be perceived as a laudatory term suggesting the added quality and/or usefulness of the identified goods.

The registered marks are weak, but nonetheless coexist on the Principal Register. Each of these registered marks identifying the same or closely related goods and containing the term MIRACLE with additional wording, are distinguishable by the additional wording, albeit descriptive or suggestive, and the design element of the MPL design mark. Applicant's mark, MIRACLE BLENDER and design, includes the additional descriptive word BLENDER and a stylized "M" with an elliptical background design.

There is no doubt that all of these five marks are somewhat similar to each other. However, we find that, in view of the weakness of the respective marks and the coexistence on the Register of four MIRACLE marks owned by three entities for the same or closely related goods, the differences between applicant's mark and each of the cited registered marks are sufficient to permit their coexistence on the Register.

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