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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Liberty Hardware Mfg. Corp.

Serial No. 77141148

Edgar A. Zarins, Esq. for Liberty Hardware Mfg. Corp.

Melvin T. Axilbund, Trademark Examining Attorney, Law
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Before Hairston, Drost, and Wellington, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On March 27, 2007, applicant, Liberty Hardware Mfg.
Corp., applied to register the mark GIO, in standard
character form, on the Principal Register for goods
ultimately identified as "metal hardware, namely knobs and
pulls for kitchen and bath cabinetry" in Class 6. The
application (Serial No. 77141148) is based on applicant's
intention to use the mark in commerce.

The examining attorney¹ has refused to register applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of a registration (No. 2143081 issued March 10, 1998, renewed) for the mark GEO and design shown below for "metal door hardware, namely, locksets, leversets, deadbolts, handlesets, locks, padlocks, knobs, levers, handles, keys and key blanks" in Class 6.



After the examining attorney made the refusal final, this appeal followed.

We briefly discuss the examining attorney's objection to the fact that "applicant refers to an 'internet printout.' Material consistent with that description is attached to the brief [filed October 1, 2008]. The examining attorney objects to the consideration of that material." Brief at 2. Normally, we would sustain the examining attorney's objection. *In re Trans Continental Records Inc.*, 62 USPQ2d 1541, 1541 n.2 (TTAB 2002) (Exhibits from web search engines not considered when

¹ The current examining attorney was not the original attorney in this application.

submitted for the first time on appeal). However, on November 5, 2008, the examining attorney requested a remand "to permit additional evidence to be made part of the record." Request for Suspension of Appeal and Remand at 1. After the remand, the examining attorney submitted "10 webpages from nine unique sources. These show the respective goods are advertised in close proximity to one another." Office Action dated December 8, 2008. In this case, the examining attorney requested another opportunity to submit evidence after the appeal was filed and after applicant submitted its evidence. Under these circumstances, the examining attorney had an opportunity to submit evidence in response to applicant's evidence and we, therefore, overrule the examining attorney's objection.

Now, we address the examining attorney's statutory refusal. The refusal based on a likelihood of confusion requires that we consider the evidence as it relates to the factors set out by the Federal Circuit and the Court of Customs and Patent Appeals in such cases as *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003); and *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In considering the evidence of record on these

factors, we must keep in mind that "[t]he fundamental inquiry mandated by § 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).

We begin by comparing the marks GIO and GEO and design. "The first *DuPont* factor requires examination of 'the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.'" *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). The words GIO and GEO are very similar. The words begin and end with the same letters, "G" and "O." While the middle letters are different, the letters "E" and "I" can be pronounced identically. *The Random House Dictionary of the English Language (unabridged)* (2d ed. 1987) ("Geology - jē ol' ə jē" and "Gina - jē' nə").² Furthermore, the term "Gio" is not a recognized English word and there "is no correct pronunciation of a trademark,

² We take judicial notice of these dictionary entries. *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).

and it obviously is not possible for a trademark owner to control how purchasers will vocalize its mark." *Centraz Industries Inc. v. Spartan Chemical Co.*, 77 USPQ2d 1698, 1701 (TTAB 2006).

We have also considered the fact that registrant's mark does contain a design. However, the design of a key hole is highly suggestive of registrant's locksets and locks. In addition, "in a composite mark comprising a design and words, the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed." *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983). Applicant's mark is shown in standard character form and by presenting its mark merely in a standard character or "typed drawing, a *difference* cannot legally be asserted by that party. [Applicant] asserts rights in [its mark] regardless of type styles, proportions, or other possible variations. Thus, apart from the background design, the displays must be considered the same." *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). See also *ProQuest Information and Learning Co. v. Island*, 83 USPQ2d 1351, 1359 (TTAB 2007) (Applicant's mark "is shown in standard character format. Hence, we must consider that applicant's mark is

not limited to any special form or style as displayed on its goods").

When we compare the marks GIO and GEO and design, we find that the marks would be pronounced similarly, if not identically. The marks could also look similar in spite of the keyhole design inasmuch as applicant's mark can be displayed with the same general style of letters as registrant's. Also, neither mark is an English word³ and many purchasers may not attribute any meaning to them. There is also no basis to conclude that the commercial impressions of these marks GIO and GEO would be significantly different.

Finally, we point out that:

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 impression that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks.

Baseball America Inc. v. Powerplay Sports Ltd., 71 USPQ2d 1844, 1848 (TTAB 2004). See also *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573,

³ "Geo-" can be "a combining form meaning 'the earth' used in the formation of compound words." *The Random House Dictionary of the English Language (unabridged)*.

574 (CCPA 1973); *Johann Maria Farina Gegenuber Dem Julichs-Platz v. Chesebrough-Pond, Inc.*, 470 F.2d 1385, 176 USPQ 199, 200 (CCPA 1972).

When we consider the marks GIO and GEO and design, we conclude that they are similar and this factor favors a conclusion that there is a likelihood of confusion.

Next, we consider whether applicant's and registrant's goods are related.

It "has often been said 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 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 thereon, 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 [party's] goods or services."

In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991).

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

Applicant's goods are metal knobs and pulls for kitchen and bath cabinetry while registrant's goods are metal door locksets, leversets, deadbolts, handlesets, locks, padlocks, knobs, levers, handles, keys and key blanks. The examining attorney has submitted evidence to show that these goods are related.

Ultra Hardware is a nationally recognized leader in Locksets, Builders' Hardware, Commercial Hardware and Window & Door Hardware... Ultra Hardware is one of the fastest growing hardware manufacturer and distributor in the country.

Door Security

A diverse range of Residential, Designer and Commercial locksets make Ultra Hardware the largest lockset importer in the US today...

Cabinet Hardware

Ultra Hardware now boasts thousands of options with designs and finishes from classic to contemporary - brand new and old favorites.

www.ultrahardware.com

Registration No. 3150066

Reveal Designs

For, inter alia, "cabinet pulls" and "door handles, door knobs, and door latches"

Applicant argues that its goods are "[d]ecorative knobs and pulls purchased by consumers to dress up their cabinetry. Such knobs and pulls are purchased for their appearance ... [Registrant's] goods are purchased for their functionality, not their decorative appearance." Brief at unnumbered p. 1. It is not clear why applicant's and registrant's goods would not both be functional and decorative. Both goods would be used to open doors. Many purchasers would purchase these products at least in part for their appearance. See, e.g., Applicant's Google printouts ("Schlage Lock ... Georgian Design Ant[ique] Brass) and www.ultrahardware.com (Cabinet Hardware - "thousands of options with designs and finishes from classic to contemporary").

We must consider the goods as they are described in the identification of goods in the application and registration. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed"). See also *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods").

The goods both include knobs for doors (kitchen and bath cabinets and other doors). Indeed, registrant's identification of goods for metal door hardware, namely locksets, locks, and knobs is broad enough to include door hardware for cabinets. See www.daytonlock.com (Hardware for Cabinets - Knobs, hinges, Locks, Backplates, Ball

Catches, Pulls, Pull Assemblies, Cup Pulls and Keylocks).⁴

When goods are identical, we also must assume that the purchasers and channels of trade are similarly identical.

Genesco Inc. v. Martz, 66 USPQ2d 1260, 1268 (TTAB 2003).

Ultimately, even, if the goods do not overlap, we find that they are closely related. Both applicant's and registrant's goods include knobs for doors that can be purchased and used on doors and cabinets when remodeling a kitchen or a bathroom.

Applicant argues that the "goods travel through different channels of trade." Brief at 1. However, even if the goods are not identical, the examining attorney has submitted evidence that shows that cabinet knobs and pulls are sold in the same channels of trade as door deadbolts, locks, padlocks, levers, and handles.

Specific Products Include [among others]:

- Door Locks
- Deadbolts
- Padlocks
- Knobs and Levers
- Cabinet Pulls

www.daytonlock.com

We specialize in High Security Locks by Medeco Security Locks... We also carry several lines of cabinet locks, knobs and pulls.

www.bob-fraser.com

⁴ Applicant argues that "the goods of the cited registration refers to entry doors hardware since only entry doors would have locksets, deadbolts, keys and key blanks." Brief at 1. However, the evidence indicates that there are "keylocks" and "locks" that are identified as "Hardware for Cabinets."

Cabinet Pulls
Cabinet Knobs - Metal
Laminated Padlocks
Shrouded Padlocks
Brass Padlocks
www.myproship.com

Cabinet Knobs and Pulls
Combination Padlock
www.lockandhinge.com

We carry Door Locks, Entry Lock, Entrance Lock, Privacy Lock, Keyed Alike Lock, Levers Lock, Cabinet Pulls, Cabinet Knobs, Cabinet Hinges, Euro Hinges, Concealed Hinges, Stainless steel Bar Pulls, Stainless Steel Hinges, Resettable Combination Padlock.
www.locksknobsandhinges.com

Furthermore, these goods could be purchased by the same purchasers who are remodeling a kitchen or a bathroom.

In this case, the mark GEO has no meaning when applied to the goods and it can be pronounced similarly to applicant's GIO mark. They are also similar in appearance and commercial impressions. Since the goods are related and the purchasers and channels of trade overlap, we conclude that there is a likelihood of confusion in this case. Of course, to the extent that we have any doubts, we have resolved those doubts in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

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Decision: The examining attorney's refusal to register applicant's mark GIO under Section 2(d) of the Trademark Act is affirmed.