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5/8/2009

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

In the matter of Trademark Application Serial No. 77/363538
For the Trademark SLICE (Logo)

MARK: SLICE (Logo Mark)
SERIAL NO: 77/363538
FILING DATE: 1/3/2008
APPLICANT: Promotopia, Inc.
LAW OFFICE: 110
EXAMINING ATTORNEY: Linda E. Blohm

APPLICANT'S BRIEF IN SUPPORT OF APPEAL



05-18-2009

FACTS

On January 3, 2008, Promotopia, Inc, (hereinafter referred to as "Applicant"), filed an application to register the logo mark for SLICE on the Principal Register for the following: Household utensils, namely, graters in International Class 21.

The Examining Attorney issued an office action on February 14th 2008, proclaiming the design mark for SLICE to be "descriptive," under Section 2(e) of the Trademark Act, and refusing registration under Section 2(d) of the Trademark Act based

Trademark Act, and refusing registration under Section 2(d) of the Trademark Act based on likelihood of confusion with the U.S. Registration No. 2860179 for the mark "SLICE-PRO," which is for a "(K)itchen Cutting Tool, namely, a hand-operated shears and knife combination." The Examining Attorney argued that despite the differences between the goods at issue, the marks were so similar as to cause confusion among consumers.

Applicant responded on August 14, 2008, arguing *inter alia*, that the mark was suggestive, and not merely descriptive, and that no such likelihood of confusion exists between the respective marks. The Examining Attorney then proceeded to issue a final refusal on September 9, 2008, dismissing Applicant's prior arguments. Applicant filed a Notice of Appeal with the Board on March 9, 2009. Applicant hereby submits its brief in support of appeal below.

A. No Likelihood of Confusion Exists between Applicant's Mark and the Cited Registration:

In the Examining Attorney's Office Actions, it is asserted that the registration for "SLICE-PRO" for "a kitchen cutting tool, namely, a hand-operated shears and knife combination," (Reg. No. 2860179), is in conflict with Applicant's logo Mark for SLICE (Ser. No. 77/363538) for "graters.". Applicant respectfully disagrees with this determination, and presents the following arguments in response:

1. Registrant's Mark is Weak, And Qualifies For A Narrow Degree of Protection

A mark's strength is important in determining the scope of protection it receives. Where the senior mark is inherently weak, greater product relatedness is required to find confusion likely. *See Kirkpatrick, Infra*, § 5:5.(citations omitted), "Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights." *Kenner Parker Toys, Inc. v. Rose Art Indust., Inc.* 963 F.2d 350, 353. Common words that are frequently used for different products or services, particularly with descriptive or laudatory connotations, are usually found to be weak marks. Their legal protection and registrability are narrowly circumscribed, and

virtually identical products. *See Telemed Corp. vs. Tel-Med, Inc.*, 588 F.2d 213, 219 (7th Cir. 1978).

Here, Registrant's Mark is for "SLICE-PRO." As is shown in Registrant's materials filed in connection with its specimen of use, this product is designed to "slice" fruits and vegetables, such as "peppers," "onions," and "oranges." See Exhibit A, attached. As a result, the name of this product directly reflects its purpose and function. As a demonstration of the inherent weakness of the term "slice" in this regard, the following marks have all been approved in either Class 8 or Class 21:

- Registration No. 3035425 for PRECISE-A-SLICE (for "hand tools, namely precision indexed slicing and cutting devices...");
- Registration No. 2963414 for MAGIC SLICE (for "cutting board");
- Registration No. 2879477 for SQUEEZE-N-SLICE (for "hand held bagel and bread holder for use when slicing");
- Registration No. 2743399 for SLICE N POUR (for "cutting boards");
- Registration No. 2584589 for HOLD 'N SLICE (for a "household utensil, namely, onion and food holder")
- Registration No. 2871007 for ISLICE (for a "hand held unit containing a ceramic cutting blade for the opening of...paper and plastic");
- Registration No. 2796739 for EURO SLICER (for a "hand operated all-in-one cutter, slicer, and dicer for vegetables");
- Registration No. 2505774 for WONDER SLICER (for a "kitchen slicing system for slicing food comprising a base...and a slicing knife");
- Registration No. 2162688 for EGG SLICER PLUS (for a "hand-operated food slicer").

(See Lexis Printouts of above Registrations and Allowed Marks, attached). With regard to the term "pro," this term is reflective of being "professional." In support of the inherent weakness of the term "pro," in the vast majority of trademark filings this term is "disclaimed" as part of the mark. For example, each of the following "pro" marks in International Class 8 were all required to "disclaim" this term:

- Registration No. 3136379 for CLEVER CUTTER PRO (for “manually operated, handheld kitchen cutting device in the nature of a scissor/knife combination...”);
- Registration No. 3076874 for SDS PRO (for “manually operated tools, namely, screwdrivers and drills”);
- Registration No. 2916477 for TRADES PRO (for “hand tools, namely, wrenches, sockets, socket rails, extension bars, flex handles, etc.”);
- Registration No. 2812316 for OPTI-TORQUE PRO (for “hand tools namely, wrenches and socket sets”);
- Registration No. 2768037 for POWERSHOT PRO (for “hand tools, namely, staple guns, nail guns”);
- Registration No. 2437491 for TAPER PRO (for “hand tools, namely, sockets”); and
- Registration No. 2421771 for ROBO PRO (for “pliers”)

(See LEXIS Printouts of above Registrations, attached). Interestingly, the first registration cited for “CLEVER CUTTER PRO” is owned by Ronan Tools, Inc., the manufacturer of Registrant Sear’s “SLICE-PRO” kitchen tool product. See excerpt of Ronan Tools website, attached as Exhibit C. Of course, Registrant’s entire mark, or at least certainly the term “PRO,” should have been disclaimed on the same grounds. Regardless, the mark “SLICE-PRO” is incredibly weak. Applicant’s filing for “graters” should not be denied registration on the basis of such an undeniably “weak” trademark.

The instant case is similar to the facts before the District Court in *ConAgra, Inc. v. George A. Hormel & Co.*, 990 F.2d 368 (8th Cir. 1993). In that case, the plaintiff food company ConAgra, Inc., brought suit against the defendant Hormel alleging that its “HEALTHY SELECTIONS” trademark for prepared meals infringed upon ConAgra’s mark “HEALTHY CHOICE” for similar products. In reviewing the decision of the trial court to reject ConAgra’s claim, the District Court noted the extreme “weakness” of both marks, and the inherently “descriptive” nature of the “HEALTHY CHOICE” trademark. See *Id.*, at 368. The District Court also addressed ConAgra’s claim that since the marks

marks, and the inherently “descriptive” nature of the “HEALTHY CHOICE” trademark. *See Id.*, at 368. The District Court also addressed ConAgra’s claim that since the marks both contained a common “dominant term” (i.e., “HEALTHY”), and had the same “meaning,” the trial court erred in not finding confusion. In rejecting this claim, the District Court pointed to several other cases which specifically addressed this issue, and found no such confusion. *See Id.*, citing to *Claremont Polychemical Corp. vs. Atlantic Powdered Metals, Inc.*, 470 F.2d 636, 637 (C.C.P.A. 1972) (EVERGOLD for metal powder and DURAGOLD for bronze pigment); *Gravel Cologne, Inc. v. Lawrence Palmer, Inc.* 469 F.2d 1397, 1398 (C.C.P.A. 1972) (Gravel and On The Rocks for men’s cologne). Much like the facts in the *ConAgra, Inc.* case, the registered mark at issue was composed of weak and descriptive terms. Unlike the facts in that case however, the actual goods are distinct in this case (i.e., “combo knife/cutting board” vs. “graters”). In the *ConAgra, Inc.* case, the Court was addressing an almost identical set of products (i.e., prepared frozen food products). Even more so than in the *ConAgra Inc.* decision therefore, there should be no finding of confusion between Applicant’s Mark and that of Registrant.

As also noted by the 10th Circuit Court in *First Savings Bank FSB vs. First Bank Systems, Inc.*, when a mark is weak, “minor alterations may effectively negate any confusing similarity.” See also, *Squibb & Sons, Inc. v. Cooper Labs*, 536 F. Supp. 523, (S.D.N.Y. 1982) (Court finds plaintiff Squibb’s cannot prevent competitor from using term “angle,” as used in Squibb’s Oral-B “Right Angle” tooth brush, noting that, “[p]laintiff acted at its peril in choosing a highly descriptive mark”). Here of course, given the incredible weakness of Registrant’s “SLICE-PRO” mark, even the slightest of differences will be sufficient to avoid confusion in the marketplace. Here, the addition of the term “PRO” is more than enough to serve this purpose. When this distinction is combined with the differing nature of the underlying goods, the chances for any confusion to occur are remote at best.

2. The Respective Goods Are Readily Distinguishable.

While there are many reasons why a likelihood of confusion does not exist between the marks at issue, perhaps the most salient distinction is that the respective goods at issue are distinct. Product relatedness is a matter of degree, and the greater the relatedness of the goods or services, the greater the likelihood of confusion. *See Beer Nuts, Inc., vs. Clover Club Foods Co.*, 711 F.2d 934, 941 (10th Cir. 1983). In addition, where two products are in direct competition with each other, the likelihood of confusion increases. *See Tripledge Prods, Inc., vs. Whitney Res., Ltd.*, 735 Supp 1154, 15 U.S.P.Q.2d 1434, (citing TMEP 1207). Importantly, the inherent “strength” of the senior mark also plays a significant role when evaluating potential conflicts. Where the senior mark is *inherently weak*, greater product relatedness is required to find confusion likely. *See Entrepreneur Media vs. Smith*, 279 F.3d 1135, 1148 (9th Cir. 2002).

Here, Applicant’s SLICE logo mark is for “graters” in Class 21. Registrant’s mark on the other hand concerns “a kitchen cutting tool, namely, a hand-operated shears and knife combination.” (Emphasis added). Quite simply, Applicant’s “graters” do not come close to either “knives” and/or “shears.” In fact, upon a review of the images of Applicant’s product with that of Registrant’s, the differences between the goods are dramatic. This is true for both the “appearance” of each item, in addition to the underlying “function” of each respective product. For example, images of Applicant’s “family” of products reflect an ultramodern designer line of household items. *See Exhibit D*, attached. This line of products, which was created by famed designer Karim Rashid, combine both aesthetics and exceptional functionality. Each of the products have similarities in color and shape, and all have ceramic edges and/or blades. Included among these items is Applicant’s “grater” product. Of course, this “grater” does not involve the cutting of vegetables and/or meat with “scissors” or “shears.” Instead, it serves the express function of “grating” items, such as cheese. As noted by the 8th Circuit in *Life Technologies, Inc. v. Gibbco Scientific, Inc.*, 826 F.2d 775, 776 (8th Cir. 1987), “[t]he fact that two products are used together does not mean that they are in competition, especially where, as here, the products perform different functions. (Citing *Astra Pharmaceutical Prod., Inc. vs. Beckman Instruments, Inc.*, 718 F.2d 1201, 1205-06 (1st Cir. 1983) (fact that all products involved are used in medical or health care field does not demonstrate a likelihood of confusion). Of course, even if these products were

used together, there would be no difficulty telling them apart. The “SLICE-PRO” is a combination “shears” and “cutting board,” which looks very much like a pair of gardening shears. See specimen of use submitted in connection with the “SLICE-PRO” registration, attached as Exhibit A. This is in stark contrast to the rounded shapes and colorful designs of Applicant’s goods, including of course the “grater.” See Exhibit D, attached.

In the context of the distinct purpose and function of the respective goods in this instance, it is important to remember the principle that “trademark rights extend only as far as necessary to avoid consumer confusion.” *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp, Co.*, 703 F.2d 1372, 1374, (“recognizing a right in gross...is contrary to principles of trademark law”). In very crowded markets, “the potential consequences of [overbroad protection] would be to limit dramatically the number of marks that could be used by producers.” See Kirkpatrick, *Likelihood of Confusion in Trademark Law*, §5.1 (citing to *In re Coors Brewing Co.*, 343 F.3d 1340, 1347) (Fed. Cir. 2003). Here, in the extremely large and diversified “kitchen goods” and/or “office supplies” arena, it would be improper to restrict others from using the term “slice” for other products. Of course, this is evident in the listing of other allowed and registered “slice” marks in Section 1 above. To permit a relatively “weak” mark such as “SLICE-PRO” to prevent all other uses of “SLICE” in the marketplace is to effectively grant a “right in gross” to one manufacturer, for all goods which involve “cutting, slicing, peeling, grating, etc.” This is exactly what the court *In re Coors Brewing Co.* cautioned against. As a result, Registrant’s Mark for “SLICE-PRO” for a “kitchen cutting tool, namely, a “hand-operated shears and knife combination,” should not be permitted to prevent all other uses of “SLICE” in the housewares and/or office supplies arena.

3. Applicant’s Mark is Distinct in Sight and Sound From Registrant’s Mark

When evaluating a claim of potential confusion, the examining attorney must analyze the similarity or dissimilarity of the marks in their entirety, as to appearance, sound, connotation and commercial impression. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Similarity of the marks in one respect --

sight, sound or meaning -- will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related. *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 n.4 (TTAB 1987); TMEP section 1207.01(b)(i). As stressed by the 6th Circuit Court in *Jet Inc., v. Sewage Aeration Systems*, 165 F.3d 419, trademarks must be compared in their "entirety", and courts must not "focus only on the prominent features of the mark, or only on those features that are prominent for purposes of litigation, but on the mark in its totality." *See Id.*, at 420. Furthermore, when a mark is weak, "minor alterations may effectively negate any confusing similarity." *First Sav. Bank FSB v. First Bank Sys., Inc.*, 101 F.3d 645, 40 U.S.P.Q.2d 1865, 1873 (10th Cir. 1996). In fact, if the registered mark is "weak," consumers typically will be able to avoid confusion unless the overall combinations have other commonality. *See, e.g., In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *United States Shoe Corp. v. Chapman*, 229 USPQ 74 (TTAB 1985); *In re Istituto Sieroterapico E Vaccinogeno, Toscano "SCLAVO" S.p.A.*, 226 USPQ 1035 (TTAB 1985); TMEP 1207.01(b)(ii).

Here, Registrant's mark consists of two words, "SLICE-PRO." Applicant's logo mark on the other hand is composed of fanciful lettering which spells out the term "SLICE," with lower portion of the letters removed. Even though the term "PRO" is a relatively "weak" term, it still adds a distinctive element with regard to a comparison of these marks. Of course, it also affects both the visual and aural presentation of the mark to consumers. As noted above, in the case of "weak" marks (such as "SLICE-PRO"), it takes very little to distinguish them from other marks. In this case, the addition of the "hyphen" with "PRO" is more than sufficient. The term "PRO" adds a distinctive "sound" to the end of Registrant's Mark. It also lends a connotation of a "professional" of some sort, utilizing the kitchen tool. Of course, there is no such connotation with regard to Applicant's SLICE mark. It should also be noted that even if the term "PRO" was "disclaimed" by Registrant, a disclaimer does not remove the disclaimed matter from the purview of the determination of likelihood of confusion, since the public is unaware of disclaimers. *See Kirkpatrick, Likelihood of Confusion in Trademark Law*, at § 4:9:4 (citations omitted). As a result, this additional language cannot be simply disregarded, and must be considered when evaluating a potential conflict. *See In Re Shell Oil Co.*, 992

F.2d 622, 627 (Fed. Cir. 1993). As such, given the respective distinctions in “sight, sound and connotation,” there is simply little chance for any confusion to occur.

B. Applicant’s mark is Suggestive, not Descriptive, and therefore should proceed to publication on the Principal Register

In the Office Action, the Examining Attorney refuses registration on the basis that the proposed logo mark is merely descriptive of the goods. Applicant asserts that especially with regard to its Mark being used in connection with “graters,” this is not the case. Under TMEP § 1209.01(b) a mark is merely descriptive if it “describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. *See In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE held merely descriptive of potpourri); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986) (BED & BREAKFAST REGISTRY held merely descriptive of lodging reservations services); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984) (MALE-P.A.P. TEST held merely descriptive of clinical pathological immunoassay testing services for detecting and monitoring prostatic cancer). The determination of whether or not a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. This requires consideration of the context in which the mark is used or intended to be used in connection with those goods or services, and the possible significance that the mark would have to the average purchaser of the goods or services in the marketplace. *See In re National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (C.C.P.A. 1978); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985).”

Applicant submits that on the continuum of trademarks, its mark is a suggestive mark, not a descriptive one. Suggestive marks are defined as follows in TMEP § 1209.01(a). “Suggestive marks are those that, when applied to the goods or services at issue, require imagination, thought or perception to reach a conclusion as to the nature of those goods or services. Thus, a suggestive term differs from a descriptive term, which

immediately tells something about the goods or services. *See In re Shutts*, 217 USPQ 363 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow removal hand tool). *See also In re Quik-Print Copy Shop, Inc.*, 203 USPQ 624 (TTAB 1979), *aff'd*, 616 F.2d 523, 205 USPQ 505 (C.C.P.A. 1980) (QUIK-PRINT held merely descriptive of printing services); *In re Aid Laboratories, Inc.*, 223 USPQ 357 (TTAB 1984) (BUG MIST held merely descriptive of insecticide). Suggestive marks, like fanciful and arbitrary marks, are registrable on the Principal Register without proof of secondary meaning. Therefore, a designation does not have to be devoid of all meaning in relation to the goods and services to be registrable.

Here, Applicant's logo mark is composed of the fanciful lettering "SLICE," with the bottom of the letters "cut off." This logo design is for "graters," which have little to do with "slicing" per se. Instead, Applicant's product is designed to "grate" items such as cheese or lemon rind. As noted by Professor McCarthy, [t]o [t]o be characterized as "descriptive," a term must directly give some reasonably accurate or tolerably distinct knowledge of the characteristics of a product... [i]f information about the product or service given by the term used as a mark is indirect or vague, then this indicates that the term is being used in a "suggestive," not descriptive manner." *See McCarthy on Trademarks*, Fourth Edition, § 11.06[1], citations omitted. With regard to the function of the SLICE "letter opener," the term "slice" is entirely "vague" and "indirect" at best, with regard to describing the "characteristics" of Applicant's product. It is difficult to believe that any consumers, when encountering the mark SLICE, are going to be "immediately aware" of its purpose or function, given its name. This will require additional "thought or perception" to reach a conclusion as to their nature. This is even more true with regard to a logo mark, such as Applicant's. As is noted above, Applicant's mark is comprised of the fanciful term "SLICE," with a novel deletion of the bottom portion of the mark. When evaluating the strength of a trademark, logo marks tend to be classified as more inherently distinctive, as opposed to merely standard "words" marks. In this instance, the consumer will have to mentally process both the meaning of the term "slice" itself, and its configuration. Once again, this makes the logo mark "vague" and

“indirect” in connection with the “grating” of food items. As a result, when used in the context of Applicant’s “grater” product SLICE is “suggestive” at worst.

It is also important to note that the overall “connotation” of Applicant’s Mark also extends beyond a mere description of the functions of the underlying product. The term “SLICE” is seen quite frequently on the Principal Register, for a variety of goods and services. For example, the following federal registrations also consist solely of this term:

- (1) “SLICE,” (Reg. No. 3309307), for “cymbals and percussion instruments.”
- (2) “SLICE,” (Reg. No. 3309307), for “computer hardware, namely, computer servers and operating system software in the field of mission critical computing...”;
- (3) “SLICE,” (Reg. No. 2891405), for “video editing,”; and
- (4) “SLICE,” (Reg. No. 2052443), for “exothermic cutting torch, striker for exothermic cutting torch...,” and
- (5) “SLICE,” (Reg. No. 2628437), for “inflatable towable float for recreational use.”

Although each of the above marks not only share the term “slice,” but also share a positive connotation for this term in connection with the underlying products. For example, the mark “SLICE” for “video editing,” connotes the efficient “paring down” of video footage. The registration for “SLICE,” which concerns an “exothermic cutting torch” on the other hand, connotes an image of these goods efficiently “cutting through” metal. Even the final registration for “SLICE,” which concerns an “inflatable towable float for recreational use,” connotes these products efficiently “slicing” through the water. Although each of the underlying goods above have some aspect which relates to “slicing,” the overall connotation of the mark goes beyond mere “descriptiveness.” This is also the same for Applicant’s mark, which goes beyond a mere description of “slicing” for much of its product line. Once again, the consumer must undergo a “mature thought

or follow a multi-stage reasoning process,” to determine the attributes of Applicant’s product line. See *McCarthy, infra*, citing to “*In re Tennis in the Round, Inc.*, 199 USPQ 496 (TTAB 1978), and *Rodeo Collection Ltd. v. West Seventh*, 2 USPQ2d 1204, 1206 (9th Cir. 1987) (“If a consumer must use more than a small amount of imagination to make the association [of product attribute], the mark is suggestive and not descriptive.”

The term “slice” itself also has a number of distinct meanings apart from “cutting” or “tearing apart.” According to the Merriam-Webster Online Dictionary, the term “slice” also is used to convey someone “interpreting” or “construing” something (e.g., “any way you *slice* it, China faces major pollution problems”). See excerpt from Merriam-Webster Online Dictionary, attached as Exhibit E. The term may also be used to refer to “a thin, flat piece of something,” or a “wedge shaped piece,” (as in a pie or pizza slice). See *Id.* The term may also refer to the “flight of a ball that deviates from a straight course in the direction of the dominant hand of the player propelling it,” (i.e., a “golf slice,”), and refer to synonyms such as a “portion” or “share” (i.e., “he was entitled to a *slice* of the profits from the deal”). Therefore, even with regard to the term “slice” itself, it is capable of a large number of differing interpretations. When this factor is taken into account, it requires even more “imagination” on the part of consumers to figure out the nature of Applicant’s mark. See *McCarthy, infra*. When encountering this mark in the context of Applicant’s product line, consumers are just as likely to consider the “thin” and “flat” definition of SLICE (as many of Applicant’s products are exactly that), than they are the “slicing” aspect of Applicant’s goods.

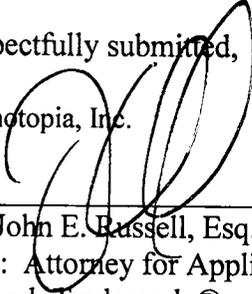
In sum, Applicant’s SLICE logo mark connotes an efficiency of both “form” and “function.” When applied to Applicant’s “letter opener” products, this mark will not be automatically be understood to involve the “opening of letters, envelopes, etc.” Instead, consumers must use “more than a small amount of imagination,” to make this determination. This is especially true with regard to Applicant’s novel logo design, which is at worst is “suggestive” of any underlying function. As a result of these factors, Applicant’s mark for SLICE is “suggestive” at worst, and should be permitted on the Principal Register.

C. Conclusion:

Given the forgoing arguments, Applicant respectfully requests that the likelihood of confusion refusal be withdrawn and that this application proceed to publication in the Official Gazette in International Class 21.

Respectfully submitted,

Promotopia, Inc.


By: John E. Russell, Esq.

Title: Attorney for Applicant

Allmark Trademark ®

4041 Sugar Maple Drive, Suite A

Danville, CA 94506

Phone: (925)648-4839

Fax: (925)648-4358

Dated: 5/8/2009

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6 th <i>Circuit Court in Jet Inc., v. Sewage Aeration Systems</i> 990 F.2d 368 (8th Cir. 1993)	8

OTHER AUTHORITIES:

Kirkpatrick, <i>Likelihood of Confusion in Trademark Law</i> , §§ 4:9.4, 5-1 & 5-4.....	2,7 & 8
McCarthy, <i>Trademarks And Unfair Competition</i> , § 11.06.....	10,12

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whole home

Slice-Pro Kitchen Cutter

ZINJ
KILNE AND
CUTTINGBOARD

ERGONOMIC
HANDLE FOR
COMFORT
AND POWER

The advertisement features a dark, textured background. At the top left is a logo with the text 'whole home' and a circular emblem containing a stylized 'TH'. Below the logo, the product name 'Slice-Pro Kitchen Cutter' is written in a large, bold, sans-serif font. To the left of the product name are two columns of text. The first column reads 'ZINJ KILNE AND CUTTINGBOARD' and the second column reads 'ERGONOMIC HANDLE FOR COMFORT AND POWER'. Below the text are four small, square images arranged in a row, each showing a different view or use of the kitchen cutter. The first image shows the cutter being used to slice a round object. The second image shows the cutter being used to slice a round object. The third image shows the cutter being used to slice a round object. The fourth image shows the cutter being used to slice a round object.

A

Lexis Printout of Cases:

CLEVER CUTTER PRO, (STANDARD CHARACTER MARK), 76-631723, REGISTERED, MANUALLY OPERATED, HANDHELD KITCHEN CUTTING DEVICE IN THE NATURE OF A SCISSOR/KNIFE COMBINATION WITH A CUTTING BLADE AND AN OPPOSING FLAT SURFACE (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 3136379, May 25, 2006 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), RONAN TOOLS, INC. (CALIFORNIA CORPORATION), 1290 SOUTH SANTA FE STREET, SAN JACINTO, CA 92583, AS OF August 29, 2006, © 2008, CT Corsearch. All Rights Reserved.

SDS PRO, (STANDARD CHARACTER MARK), 79-005974, REGISTERED, MANUALLY OPERATED TOOLS, NAMELY SCREWDRIVERS, AND DRILLS (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44) ELECTRICALLY OPERATED POWER TOOLS, NAMELY CORDLESS SCREWDRIVERS AND PORTABLE ELECTRIC DRILLS, DRILLING MACHINES, HAMMER DRILLS, GRINDERS, ANGLE GRINDERS, ROUTERS, GRINDING MACHINES FOR METAL WORKING, AND ROTARY HAMMER DRILLS; ACCESSORIES FOR ELECTRICALLY OPERATED POWER TOOLS, NAMELY DRILL STANDS FOR DRILLING MACHINES, GRINDING DISCS, CUTTING DISCS, DIAMOND DISCS, DRILLS, AND CHISELS (INTERNATIONAL CLASS: 7; US CLASS: 13, 19, 21, 23, 31, 34, 35), 3076874, FIRST USE DATE NOT AVAILABLE (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44) FIRST USE DATE NOT AVAILABLE (INTERNATIONAL CLASS: 7; US CLASS: 13, 19, 21, 23, 31, 34, 35), ROBERT BOSCH GMBH (FEDERAL REPUBLIC OF GERMANY (WEST GERMANY), (PRIVATE LIMITED COMPANY)), D-70469 STUTTGART, , AS OF April 04, 2006, © 2007, CT Corsearch. All Rights Reserved.

TRADES PRO, (STANDARD CHARACTER MARK), 78-347479, REGISTERED, HAND TOOLS, NAMELY WRENCHES, SOCKETS, SOCKET RAILS, EXTENSION BARS, FLEX HANDLES, UNIVERSAL JOINTS, SOCKET SETS, AND KITS CONTAINING ONE OR MORE THEREOF (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44) AIR COMPRESSORS (INTERNATIONAL CLASS: 7; US CLASS: 13, 19, 21, 23, 31, 34, 35), 2916477, December 01, 2003 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44) December 01, 2003 (INTERNATIONAL CLASS: 7; US CLASS: 13, 19, 21, 23, 31, 34, 35), ALLTRADE TOOLS LLC (CALIFORNIA LIMITED LIABILITY COMPANY), 1431 VIA PLATA, LONG BEACH, CA 908101462, AS OF January 04, 2005, © 2008, CT Corsearch. All Rights Reserved.

OPTI-TORQUE PRO, (WORDS ONLY), 76-441069, REGISTERED, HAND TOOLS NAMELY, WRENCHES AND SOCKET SETS (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 2812316, June 30, 2001 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), NMTC, INC., DBA MATCO TOOLS (DELAWARE CORPORATION), 4403 ALLEN ROAD, STOW, OH 44224, AS OF February 10, 2004, © 2007, CT Corsearch. All Rights Reserved.

POWERSHOT PRO, (WORDS ONLY), 76-975619, REGISTERED, HAND TOOLS, NAMELY, STAPLE GUNS, NAIL GUNS (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44) POWER TOOLS, NAMELY, STAPLE GUNS, NAIL GUNS (INTERNATIONAL CLASS: 7; US CLASS:

13, 19, 21, 23, 31, 34, 35), 2768037, November, 2002 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44) August, 2002 (INTERNATIONAL CLASS: 7; US CLASS: 13, 19, 21, 23, 31, 34, 35), ARROW FASTENER CO., INC. (NEW JERSEY CORPORATION), 271 MAYHILL STREET, SADDLE BROOK, NJ 07663, AS OF September 23, 2003, © 2009, CT Corsearch. All Rights Reserved.

TAPER PRO, (WORDS ONLY), 75-605909, REGISTERED, HAND TOOLS, NAMELY SOCKETS (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44) METAL FASTENERS, NAMELY NUTS AND BOLTS (INTERNATIONAL CLASS: 6; US CLASS: 12, 13, 14, 2, 23, 25, 50), 2437491, August 15, 2000 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44) August 15, 2000 (INTERNATIONAL CLASS: 6; US CLASS: 12, 13, 14, 2, 23, 25, 50), GOURMET EQUIPMENT (TAIWAN) CORPORATION (TAIWAN CORPORATION), 6F, NO. 6, LANE 39, SEC 2, CHUNG SHAN NORTH ROAD, TAIPEI, AS OF March 20, 2001, © 2008, CT Corsearch. All Rights Reserved.

ROBO PRO, (STYLIZED LETTERS), 75-461166, REGISTERED, PLIERS (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 2421771, March 01, 1999 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), WF ACQUISITION, INC. (CORPORATION), 4607 FORGE ROAD, COLORADO SPRINGS, CO 80907, AS OF January 16, 2001, © 2008, CT Corsearch. All Rights Reserved.

ROBO PRO, (WORDS AND DESIGN), 75-461168, REGISTERED, PLIERS (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 2430244, March 01, 1999 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), WF ACQUISITION, INC. (CORPORATION), 4607 FORGE ROAD, COLORADO SPRINGS, CO 80907, AS OF February 20, 2001, © 2009, CT Corsearch. All Rights Reserved.

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PRECISE-A-SLICE, (STANDARD CHARACTER MARK), 78-510124, REGISTERED, HAND TOOLS, NAMELY PRECISION INDEXED SLICING AND CUTTING DEVICES, FOR CUTTING, SHAPING, SLICING, SCULPTING, AND SCORING CLAY, POLYMERS, POLYMER CLAYS, CERAMIC CLAYS, COMPOSITE POWDER CLAYS, PLASTIC CLAYS, PRECIOUS METAL CLAYS, POWDERED METALLURGICAL CLAYS AND COMPOUNDS, MODELING COMPOUNDS, AND DUCTILE AND MOLDABLE AND PLIABLE ARTISTIC MATERIALS (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 3035425, March 01, 2004 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), WRIGHT, VALERIE M. (UNITED STATES INDIVIDUAL), P.O. BOX 12563, COLUMBUS, OH 432120563, AS OF December 27, 2005, SHIELD, KATHRYN L. (UNITED STATES INDIVIDUAL), P.O. BOX 12563, COLUMBUS, OH 432120563, AS OF December 27, 2005, © 2006, CT Corsearch. All Rights Reserved.

MAGIC SLICE, (WORDS AND DESIGN), 78-414021, REGISTERED, CUTTING BOARD (INTERNATIONAL CLASS: 21; US CLASS: 13, 2, 23, 29, 30, 33, 40, 50), 2963414, June 10, 2004 (INTERNATIONAL CLASS: 21; US CLASS: 13, 2, 23, 29, 30, 33, 40, 50), MICROTHIN.COM, INC. (ILLINOIS CORPORATION), 330 FACTORY ROAD, ADDISON, IL 60101, AS OF June 21, 2005, © 2007, CT Corsearch. All Rights Reserved.

SQUEEZE-N-SLICE, (WORDS ONLY), 78-279480, REGISTERED, HAND HELD BAGEL AND BREAD HOLDER FOR USE WHEN SLICING (INTERNATIONAL CLASS: 21; US CLASS: 13, 2, 23, 29, 30, 33, 40, 50), 2879477, September 28, 1994 (INTERNATIONAL CLASS: 21; US CLASS: 13, 2, 23, 29, 30, 33, 40, 50), FIOLA, SALVATORE (UNITED STATES INDIVIDUAL), 12 VALLEY DRIVE, THIELLS, NY 10984, AS OF August 31, 2004, © 2004, CT Corsearch. All Rights Reserved.

ISLICE, (WORDS ONLY), 76-493298, REGISTERED, HAND HELD UNIT CONTAINING A CERAMIC CUTTING BLADE FOR THE OPENING OF COMPACT DISCS AND DVD CONTAINERS AND FOR CUTTING SINGLE-SHEET MATERIALS, NAMELY, PAPER AND PLASTIC (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 2871007, July 01, 2001 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), SCIMONE, THOMAS JOHN (UNITED STATES INDIVIDUAL), 1658 HICKS AVE, SAN JOSE, CA 95125, AS OF August 10, 2004, © 2004, CT Corsearch. All Rights Reserved.

EURO SLICER, (WORDS ONLY), 76-375487, REGISTERED, HAND-OPERATED ALL-IN-ONE CUTTER, SLICER, AND DICER FOR VEGETABLES (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 2796739, 1999 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), INTERNATIONAL BRANDS MARKETING, INC. (FLORIDA CORPORATION), 3111 UNIVERSITY DRIVE, SUITE 418, CORAL SPRINGS, FL 33065, AS OF December 23, 2003, © 2006, CT Corsearch. All Rights Reserved.

SLICE N POUR, (WORDS ONLY), 76-220415, REGISTERED, CUTTING BOARDS (INTERNATIONAL CLASS: 21; US CLASS: 13, 2, 23, 29, 30, 33, 40, 50), 2743399, June 17, 2002 (INTERNATIONAL CLASS: 21; US CLASS: 13, 2, 23, 29, 30, 33, 40, 50), KEENER, KIT

L. (UNITED STATES INDIVIDUAL), 140 CHEESEKOGILE WAY, LOUDON, TN 37774, AS OF July 29, 2003, © 2008, CT Corsearch. All Rights Reserved.

WONDER SLICER, (WORDS ONLY), 75-637621, CANCELLED - SEC. 8, KITCHEN SLICING SYSTEM FOR SLICING FOOD COMPRISING A BASE, A SLICING GUIDE AND A SLICING KNIFE (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 2505774, September 07, 1999 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), BRUCE PLASTICS, INC. (DELAWARE CORPORATION), 4100 STEUBENVILLE PIKE, PITTSBURGH, PA 15205, AS OF November 13, 2001, © 2008, CT Corsearch. All Rights Reserved.

EGG SLICER PLUS, (WORDS ONLY), 75-153085, RENEWED, HAND-OPERATED FOOD SLICER (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), 2162688, September 01, 1996 (INTERNATIONAL CLASS: 8; US CLASS: 23, 28, 44), COLUMBIA INSURANCE COMPANY (NEBRASKA CORPORATION), 3024 HARNEY ST., OMAHA, NE 68131, AS OF June 02, 2008, © 2008, CT Corsearch. All Rights Reserved.

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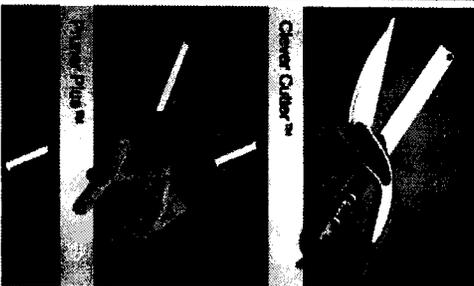
About Us

Ronan Tools, Inc. is an expert tool manufacturing company priding itself on 15 years of quality products and professional, friendly customer service. We manufacture U.S. made Sears Tools, including the Accu-Cut & Hand-Cut. We've had the pleasure of Bob Villa presenting our products on Sears commercials. Our tremendous success at Sears can be measured by one of our tools selling over 5 million to date! Our products are patented and uniquely designed with your everyday needs in mind.

Our first introduction into housewares was the ever-popular "Clever Cutter Pro" that sold through Sears as the "Slice-Pro". It was so successful that Ronan Tools, Inc. won the prestigious "Partners in Progress Award."

In March of 2004, we presented the "Clever Cutter Pro" at the International Home and Housewares show held in Chicago, which was featured by Global CNN. On June 20, 2005, we debuted the "Clever Cutter Pro" on QVC and sold out. Then, on October 23, 2004, during the show "In the Kitchen with Bob" we sold 10,449 units in just 8:42. We can now be seen regularly on QVC!

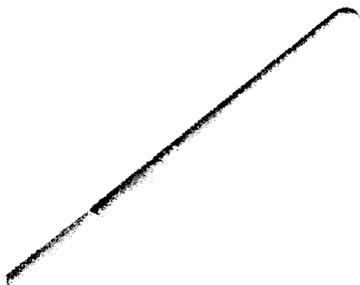
We are continually working to improve and develop new tools, so keep watching.



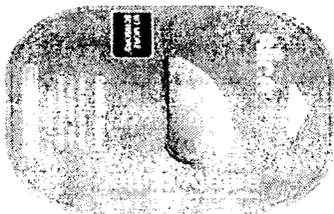
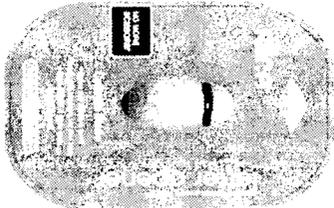
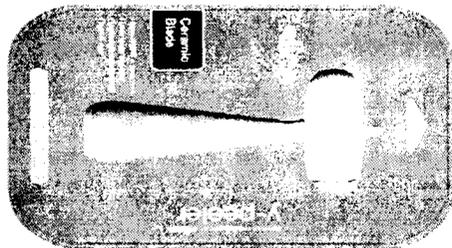
Clever Cutter™

Plus™

C



slice®



D

♦ **INTERJECT.** **COINSLICE** — used in phrases like *my way you slice it*

transitive verb

1 : to slice something

2 : to move with a cutting action *she ship sliced through the waves*

— **slice-able** ♦ *Ysh-sa-bal* *adjective*

— **slice-er** *noun*

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