

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re EH Europe

Serial No. 77374121

Kevin R. Casey of Stradley Ronon Stevens & Young LLP for
EH Europe

Sanjeev K. Vohra, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Bucher, Kuhlke and Ritchie, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

EH Europe seeks registration on the Principal Register
of the mark **ECOSAFE** (*in standard character format*) for goods
identified in the application, as amended, as follows:

"electrochemical cells and batteries,
excluding electrical cables, for use in
storage of electrical energy produced from
renewable sources, namely, wind, wave, solar
or geothermal energies and backup power for
wind turbines, sold to manufacturers and
distributors of equipment that produces
energy from renewable sources and to
consumers of such equipment" in International
Class 9.¹

¹ Application Serial No. 77374121 was filed on January 17, 2008
based upon applicant's allegation of a *bona fide* intention to use
the mark in commerce.

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles the mark **ECOSAFE** (*in standard character format*) for "electrical cables,"² also in International Class 9, as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have fully briefed the case. We affirm the refusal to register.

Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., 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 any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relationship between the goods and/or

² Registration No. 2744511 issued on July 29, 2003; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Inasmuch as the marks are identical, the first *du Pont* factor (i.e., whether applicant's mark **ECOSAFE** and registrant's mark **ECOSAFE** are similar) weighs heavily in favor of a finding of likelihood of confusion.

We turn next to a consideration of the goods, channels of trade and classes of purchasers as identified in the application and the cited registration. It is well settled that goods need not be similar or even competitive in nature in order to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods themselves, but rather whether purchasers are likely to confuse the source of the goods. 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 classes 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, when the marks are identical, the relationship between the goods of the respective parties need not be as close in order to support a finding of likelihood of confusion as might apply where differences exist between the marks. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert. denied 506 U.S. 1034 (1992).

In support of his argument, the Trademark Examining Attorney submitted several third-party use-based registrations to show that numerous entities have adopted a single mark for both batteries and electrical cables":

SOLAR MARKET

for "batteries; battery chargers, electrical cables" in Int. Class 9 and "solar collectors; solar heating panels" in International Class 11;³

³ Registration No. 2613834 issued to Talmage Solar Engineering, Inc. on September 3, 2002; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.



Military Power

for "batteries; battery chargers, electrical cables" in International Class 9
and
"solar collectors; solar heating panels" in International Class 11;⁴

for "apparatus for converting electronic radiation to electrical energy, namely photovoltaic solar modules; automatic electrical distribution apparatus; batteries; batteries for vehicles; battery cables; battery cases; battery charge devices; battery chargers; cables for electrical or optical signal transmission; circuit breakers; connecting electrical cables; connection cables; converters; converters for electric plugs; distribution transformers; electric converters; electric distribution consoles; electric fuse boxes; electric storage batteries; electrical cables; electrical cells and batteries; electrical distribution boxes; electrical fuses; electrical power distribution blocks; electrical storage batteries; frequency converters; fuse clips and panel-mounted fuse holders for use with electronic glass and ceramic fuses; fuses; high-frequency switching power supplies; inverters; jumper cables; mounting racks for computer hardware; mounting racks for telecommunications hardware; power cables; power controllers; power distributing boxes; power line conditioners; power supplies; power switches; rechargeable electric batteries; threaded cable connectors of metal; voltage regulators for electric power" in International Class 9;⁵

⁴ Registration No. 2826805 issued to Talmage Solar Engineering, Inc. on March 30, 2004.

⁵ Registration No. 3153783 issued to Paul Daniel Madden on October 10, 2006.

See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993). These three registrations, each having both batteries and electrical cables, were issued to two separate registrants.

The Trademark Examining Attorney acknowledges that applicant's batteries are different goods than registrant's electrical cables. However, the correct focus is on the relationship of the goods. Although the above is not overwhelming evidence of the complementary nature of these goods, they support the logical conclusion that storage batteries are necessarily used with cables that transmit electricity. These Talmage Solar Engineering identifications of goods also fail to support the position of applicant that cables used with these storage batteries will always be called "battery cables," and that by contrast, the nomenclature "electrical cables" suggests high voltage cables of the type registrant allegedly markets. On the other hand, we do agree with applicant that many of the third-party registrations initially placed into the record by the Trademark Examining Attorney clearly involve batteries and power cords for mobile consumer electronics, rather than the clearly industrial/commercial goods of both applicant and registrant. Furthermore, there are no

websites or other evidence from this latter field showing entities marketing both batteries and electrical cables under a common mark. Accordingly, although registrant and applicant do not list any of the same goods, we find that the Trademark Examining Attorney has provided sufficient evidence to make a *prima facie* case that these goods, as identified, must be presumed to be complementary items.

With regard to the channels of trade, as noted above, because there are no specific limitations in either the registration or the subject application, we must presume that applicant's goods and registrant's goods move in all channels of trade normal for these respective goods, and that they are available to all classes of purchasers for the described goods. See *Linkvest S.A.*, 24 USPQ2d at 1716. While the Trademark Examining Attorney has failed to demonstrate from any specific websites that the channels of trade for these goods overlap, based upon their complementary nature, we must presume that the respective goods are sold together in the same trade channels.

Merely because both goods are presumably directed towards the same consumers, it is not a sufficient basis upon which to hold that there is a likelihood of confusion. However, that is not the only relevant factor in this case. The relatedness of these goods derives, in part, from the

fact that the relevant consumers (e.g., customers of manufacturers that produce energy from renewable sources and the distributors of such equipment and supplies) are accustomed to seeing batteries and electrical cables marketed together. Confusion is more likely here where the marks are identical.

As to the conditions under which the goods are sold and the buyers to whom sales are made, applicant argues that its potential purchasers will be discerning consumers. On the other hand, with identical marks, even sophisticated purchasers may still be subject to source confusion. Moreover, while applicant's purchasers generally may be regarded as fairly knowledgeable consumers, this presumption does not overcome the fact that registrant's sale of "electrical cables" must be read in this *ex parte* setting as possibly including relatively inexpensive consumer items.⁶ And nothing about the nature of the buyers to whom sales are made obviates the relationship between these batteries and electrical cables as demonstrated by the third-party registrations. In short, with identical marks on related goods, the degree of purchaser care factor is not sufficient to outweigh the other *du Pont* factors. At best for

⁶ Procedurally, this is a significant contrast with the situations in the *inter partes* cases cited by applicant.

applicant, we tally this as a neutral factor in our determination of likelihood of confusion.

As to the strength of the cited mark, while we acknowledge that these marks may be deemed to be somewhat suggestive of a claimed ecological or environmental benefit of the goods, none of the third-party registrations for marks containing the term **ECOSAFE** involves goods in any way related to the respective goods at issue herein.

In conclusion, we find that because the marks are identical and because the goods are related and will presumably be sold through the same channels of trade to the same classes of purchasers, confusion is likely between applicant's mark and the mark in the cited registration.

Decision: The refusal to register under Section 2(d) of the Lanham Act is hereby affirmed.