

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

Mailed:  
February 25, 2011

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Ridgefield Farm LLC

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Serial No. 77758560

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Terrell W. Mills of Wyche, Burgess, Freeman & Parham, P.A., for  
Ridgefield Farm LLC.

Rudy R. Singleton, Trademark Examining Attorney, Law Office 102  
(Karen M. Strzyz, Managing Attorney).

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Before Holtzman, Mermelstein, and Ritchie, Administrative  
Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Ridgefield Farm LLC ("applicant") filed an application to  
register the mark shown below for goods identified as "beef,"



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in International Class 29.<sup>1</sup>

The Trademark Examining Attorney refused registration of applicant's mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the registered mark RAISED RIGHT,<sup>2</sup> in standard character form, for "poultry, meat and game," in International Class 29, that when used on or in connection with applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Upon final refusal of registration, applicant filed a timely appeal. Both applicant and the examining attorney filed briefs, and applicant filed a reply brief. For the reasons discussed herein, the Board affirms the refusal to register.

We base our determination under Section 2(d) on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); see also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d

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<sup>1</sup> Serial No. 77758560, filed June 12, 2009, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a *bona fide* intent to use in commerce, and disclaiming the exclusive right to use the terms "BEEF" and "REAL BEEF," apart from the mark as shown. The application includes the following description: "The mark consists of a brown bull in profile facing left. Underneath the bull are the words 'Brasstown Beef' in gold letters. Under those words are 5 gold stars. In a circle around the bull and words are the words "REAL BEEF RAISED RIGHT AROUND HERE' in black letters."

<sup>2</sup> Registration No. 3075982, issued April 4, 2006, alleging dates of first use and first use in commerce on January 9, 2001.

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1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The 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").

#### The Goods and Channels of Trade

Applicant's identification of goods identifies "beef," which is subsumed in the "meat" identified in the cited registration. Accordingly, the goods are legally identical. Applicant does not dispute this point.

Because the goods described in the application and the cited registration are identical, we must presume that the channels of trade and classes of purchasers are the same. *See Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade"); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of

purchasers"). Additionally, there is nothing in the recital of goods in either the cited registration or the application that limits either registrant's or applicant's channels of trade. *See In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because there are no limitations as to channels of trade or classes of purchasers in either the application or the cited registration, it is presumed that the registration and the application move in all channels of trade normal for those services, and that the services are available to all classes of purchasers for the listed services). In other words, there is nothing that prevents the applicant's "beef" from being sold in the same channels of trade and to the same classes of consumers that purchase registrant's "meat." Accordingly, we find that these *du Pont* factors weigh heavily in favor of finding a likelihood of consumer confusion.

#### The Marks

Preliminarily, we note that the more similar the goods at issue, the less similar the marks need to be for the Board to find a likelihood of confusion. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

In comparing the marks, we are mindful 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 so that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The mark in the cited registration consists solely of the words "RAISED RIGHT," in standard character form. Registrant's mark "RAISED RIGHT" is incorporated in full in applicant's mark. The phrase, "REAL BEEF • RAISED RIGHT • AROUND HERE" in sight and sound is several syllables/words longer than the mark in the cited registration. However, the term "RAISED RIGHT," set off by raised dots, is a visually significant part of applicant's mark and it creates an impression apart from the other wording. Furthermore, the term "RAISED RIGHT" is significant in creating the commercial impression of applicant's mark as a whole. It is displayed prominently in the top portion of applicant's mark directly above the image of a cow, and it gives the same connotation and commercial impression as registrant's mark, both

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suggesting beef (or meat) from cattle that have been raised in the right manner.

We recognize that this is not the entirety of applicant's mark, and indeed is balanced by the term "Brasstown Beef," appearing prominently in the mark under the image of a cow. The image of the cow, and the appearance of the word "Beef" do not change the connotation or commercial impression of the mark as being offered for "beef" products however. See *In re National Data Corp.*, 224 USPQ 749, 751 (Fed. Cir. 1985) ("[T]here 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."); *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 2001); *In re Appetito Provisions Co., Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987).

On the balance, we find the dissimilarities of the marks to be outweighed by their similarities. Certainly, although applicant's mark includes the term "Brasstown," it also contains the term "RAISED RIGHT," prominently displayed in the mark. Accordingly, we find this *du Pont* factor to also weigh in favor of finding a likelihood of consumer confusion.

#### Consumer Sophistication

We take note that "beef," as identified in the application, and "meat," as identified in the cited registration are staple, relatively inexpensive items that may be subject to impulse purchases. As our primary reviewing court has noted,

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"purchasers of such products have long been held to a lesser standard of purchasing care." *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). Accordingly, this weighs in favor of finding a likelihood of consumer confusion.

#### Conclusion

In summary, we have carefully considered all of the evidence and arguments of record relevant to the pertinent *du Pont* likelihood of confusion factors. As our precedent dictates, we resolve doubt in favor of the prior registrant. *Id*; See also *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988). We conclude that with legally identical goods travelling in the same channels of trade, and similar marks with similar connotations, being marketed to ordinary purchasers who may be expected to exercise no more than ordinary care in purchasing staple items, there is a likelihood of confusion between applicant's mark for which it seeks registration for "beef," and the registered mark RAISED RIGHT for "meat."

Decision: The refusal to register is affirmed.