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

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Applicant	C. H. Hanson Company
Applied for Mark	C.H. HANSON
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

Applicant/Appellant: C. H. Hanson Company

Serial No.: 77/983,232

Filing Date: June 8, 2009

Mark: C.H. Hanson

Law Office: 108

Examining Attorney: Meghan M. Reinhart

EX PARTE APPEAL

APPLICANT'S BRIEF

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Applicant, the C. H. Hanson Company, by Counsel, hereby respectfully appeals the Examining Attorney's refusal to register the mark C.H. HANSON in standard characters.

DESCRIPTION OF THE RECORD

I. PROSECTUION HISTORY

The C.H. HANSON Application was initially refused on September 13, 2009 in a Non-final Office Action. Applicant filed a Response to the Office Action on March 13, 2010. The C.H. HANSON Application was again refused on July 11, 2011 in another Non-final Office Action. Applicant filed a Response to the Office Action on January 12, 2012. The C.H. HANSON Application was again refused on February 1, 2012 in a Priority Action. Applicant filed a Response to the Priority action on August 1, 2012.

After the present application was divided out from a parent application, the C.H. HANSON application was again refused on October 8, 2012 in a "Final" Office Action. The Examining Attorney thereafter withdrew the "Final" Action and again refused the C.H. HANSON application on October 22, 2013 in a subsequent Non-final Office Action. Applicant filed a Response to the Office Action on April 23, 2013. A Final Refusal of Registration for the mark C.H. HANSON was issued by the Examining Attorney on May 20, 2013 based on the Examining Attorney's conclusion that the proposed mark was confusingly similar to Registrant's mark under Trademark Act Section 2(d). Applicant's Notice of Appeal was timely filed on November 19, 2013.

II. EXAMINING ATTORNEY'S EVIDENCE

September 13, 2009; Office Action

Printouts from the USPTO X-Search database, purporting to show third-party registrations of marks used in connection with the same or similar goods and/or services as those of Applicant and Registrant.

July 11, 2011; Office Action

Additional third party registrations, and web pages purporting to show the relatedness of Applicant's and Registrant's goods.

III. APPLICANT'S EVIDENCE

March 13, 2010; Response to Office Action

Exhibit J: Brochure of Registrant illustrating the description of specialized "wrenches" as "drives" and "stocks"; and

Exhibit K: Web site of Registrant illustrating the description of general wrenches not branded with the mark HANSON, but instead branded with the IRWIN mark of Registrant's registration no. 2978383.

January 12, 2012; Response to Office Action

Exhibit J: Brochure of Registrant illustrating the description of specialized "wrenches" as "drives" and "stocks"; and

Exhibit K: Web site of Registrant illustrating the description of general wrenches not branded with the mark HANSON, but instead branded with the IRWIN mark of Registrant's registration no. 2978383.

August 1, 2012; Response to Office Action

Exhibit A: Listing of USPTO trademark registrations, including those demonstrating the common-place nature of the word "HANSON" for a common class.

April 23, 2013; Response to Office Action

Exhibit A: Photo illustrating the specialized drive or stock and associated tap of Registrant's goods;

Exhibit B: Photo illustrating the specialized drive or stock and associated die of Registrant's goods;

Exhibit C: Photo illustrating common wrenches;

Exhibit D: Excerpt from Registrant's on-line catalog illustrating how Registrant refers to its "wrenches" as "drives" or "stocks";

Exhibit E: Excerpt from Registrant's on-line catalog illustrating how Registrant refers to its other tools "wrenches"; and

Exhibit F: USPTO trademark on-line data sheet illustrating the punctuation utilized in a goods recitation of another trademark registration owned by Registrant.

ARGUMENTS

I. LEGAL STANDARD

The Board's likelihood of confusion determination under Section 2(d) of the Lanham Act is a legal conclusion, based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). See In re E. I. du Pont de Nemours & Co., 177

USPQ 563, 567 (CCPA 1973). “In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services.” In re Max Capital Group, Ltd., 93 USPQ2d 1243, 1244 (TTAB 2010)(*citations omitted*); see In re Chatham Int'l, Inc., 71 USPQ2d 1944, 1945 (Fed. Cir. 2004) (referring to these as “two key considerations”).

II. ANALYSIS

The mark at issue here is not confusingly similar to Registrant’s mark. In this case, the mark C.H. HANSON, when viewed in its entirety, is not similar to the mark HANSON. Nor are the respective goods of the Applicant and Registrant similar to one another.

A. Similarity or Dissimilarity of the Goods

1) **Registrant’s “Wrenches” are Dissimilar from Applicant’s Hand Tools and Thus Would Not be Encountered By The Same Person in Situations That Would Create the Incorrect Assumption That They Originate From the Same Source.**

Registrant’s “wrenches” should not be grouped with Applicant’s chalk lines, squares, sharpening tools, pliers and/or snips as emanating from a single source. As any consumer in the tool marketplace would recognize, Registrant’s “wrench” is a specialized tool used solely to rotate taps and dies to create internal or external threads on a piece of metal. Because the Applicant’s goods are not related in such a way to that of the Registrant that they would be encountered by consumers of the Registrant’s products to create an incorrect assumption that they originate from the same source, any confusion in the market place is highly *unlikely*.

Registrant’s goods recitation accompanying its registered HANSON mark reads as follows: “wrenches and accessories for wrenches, namely, die taps and die sets, taps and tap sets.” Applicant’s goods recitation accompanying its C.H. HANSON mark reads as follows: “Hand tools, namely, squares; Hand-operated sharpening tools and instruments; Hand-operated tin snips; Snips.” Due to the wording and punctuation used in its goods recitation, Registrant has expressly limited its goods to a specific type of wrench used in relation to taps and dies, with such goods not encompassing those of Applicant. According to TMEP 1402.01(a), commas should be used in the identification to separate items *within a particular category of goods or services*.

When the items are preceded by the word “namely,” a comma should always be used before and after that term. For example, “clothing, namely, hats, caps, sweaters, and jeans” is an acceptable identification of goods in Class 25 and shows proper use of commas.

TMEP 1402.01(a).

In contrast, semicolons should generally be used to separate *distinct categories of goods or services* within a single class. TMEP 1402.01(a)(*emphasis added*).

For example, “cleaners, namely, glass cleaners, oven cleaners, and carpet cleaners; deodorizers for pets” is an acceptable identification in Class 3. In this example, the word “cleaners” names the category covering “glass cleaners, oven cleaners, and carpet cleaners.” The semicolon prior to “deodorizers for pets” indicates that the deodorizers are a separate category of goods from the cleaners.

Id.

The foregoing interpretation is further supported by TMEP 1402.03(a), which recites that the term “namely” is definite and used *whenever setting forth an identification that requires greater particularity*. TMEP 1402.03(a)(*emphasis added*). When read in accordance with TMEP 1402.01(a) and 1402.03(a), the phrase “wrenches, and accessories for wrenches, namely, die taps and die sets, taps and tap sets” indicates that these terms fall within a common particular category of goods, with the terms “die taps and die sets, taps and tap sets” setting forth the identification of the term “wrenches, and accessories for wrenches” with greater particularity. Thus, because the term “wrenches” is not separated from the remaining words by a semicolon, the term does not fall into a distinct category separate from that of the taps and dies of class 8 to encompass Applicant’s goods. Cf In re Midwest Gaming & Entertainment, LLC, 106 USPQ2d 1163, 1166 (TTAB 2013)(holding that the semicolon separates goods or services to not be connected to, nor dependent on, the goods or services set out on the other side of the semicolon). Instead, the term wrenches is identified with further particularity as relating specifically to taps and dies.

The Examining Attorney bears the burden of establishing a prima facie case that the goods of the Applicant are related to the goods of the Registrant. E.g. In re Princeton Tectonics, Inc., 95 USPQ2d 1509, 1512 (TTAB 2010). As such, the Examining Attorney submitted third-party registrations to show the purported relatedness of the goods. However, because only one of these registrations recites both Applicant’s goods and Registrant’s tap and die-related goods, the Examining Attorney has provided insufficient evidence to carry this burden. See In re Princeton Tectonics, Inc., 95 USPQ2d 1509 at 1510-11.

Furthermore, the single registration (Reg. No. 2,978,383) submitted by the Examining Attorney reciting both Applicant’s goods and Registrant’s tap and die-related goods also belongs to the Registrant and supports the foregoing punctuation-based distinctions where the registration separates the word

“wrenches” from the words “taps and dies” with a semicolon to indicate their distinct categories. (See the highlighted portions of Exhibit F accompanying Applicant’s 04/23/2013 Response). Had the Registrant intended the term “wrenches” to constitute a separate category from “die taps and die sets, taps and tap sets” within the present, cited registration, the Registrant would have merely separated the terms with a semicolon as in the 2,978,383 registration.

Finally, in relation to the terms “die taps and die sets, taps and tap sets” setting forth the identification of the term “wrenches” with greater particularity in accordance with TMEP 1402.03(a), Registrant’s “wrench” should be interpreted as a specialized “drive” or “stock” (each a term of art) used solely to rotate taps and dies to create internal or external threads on a piece of metal. (Compare Exhibits A and B of Applicant’s 04/23/13 Response to Exhibit C.) Registrant, in its own brochures, describes the tool, not as a “wrench,” but as a “drive” or “stock.” (See Exhibit J of Applicant’s 03/13/10 and 01/12/12 Responses and Exhibit D of Applicant’s 04/23/13 Response). Furthermore, Registrant’s web site advertising the goods associated with the above-discussed 2,978,383 registration illustrates common wrenches and not the “wrench” of the present, cited registration. (See Exhibit K of Applicant’s 03/13/10 and 01/12/12 Responses and Exhibit E of Applicant’s 04/23/13 Response).

The foregoing “extrinsic” evidence is admissible by the Board because it is submitted, not in an attempt to impermissibly narrow the description of goods set forth in the cited registration, but rather to further clarify the type of wrenches comprising registrant’s goods. See In re Trackmobile, Inc., 15 USPQ2d 1152, 1153-54 (TTAB 1990). In In re Trackmobile, Inc., the applicant was allowed to present extrinsic evidence that further defined the cited registrant’s broad description of “light railway motor tractors” to illustrate that the term had has a specific meaning within the related trades. In re Trackmobile, Inc., 15 USPQ2d 1152 at 1153. Because Registrant’s broad term “wrenches” also has a specific meaning within the related trades, Applicant should be permitted to submit the foregoing extrinsic to further define them. See Id.

In view of such evidence, Registrant’s wrenches, used to drive taps and dies, clearly do not include Applicant’s goods. Thus, it is incumbent upon the Examining Attorney to provide some evidence showing that the term “wrenches” has a broader meaning. In re Trackmobile, Inc., 15 USPQ2d 1152 at 1153. However, the Examining Attorney has failed to do so. Registrant’s recited goods, properly interpreted in view of TMEP 1402.01(a) and 1402.03(a) and In re Trackmobile, are thus sufficiently dissimilar from Applicant’s recited goods.

2) The Examining Attorney's Evidence Is Not Probative that Registrant's and Applicant's Products Move In The Same Channels of Trade

Because the identifications of goods in the application and registration are different, and registrant's identification is specifically limited, the recitations provide some basis for inferring that the channels of trade are distinct. In re SGS Tool Co., 24 USPQ2d 1382, 1385 (TTAB 1992). Furthermore, the Examining Attorney bears the burden of establishing a prima facie case that the goods of the Applicant are related to the goods of the Registrant. E.g. In re Princeton Tectonics Inc., 95 USPQ2d 1509, 1512 (TTAB 2010). However, the Examining Attorney has provided insufficient evidence to carry this burden.

While, the Examining Attorney has submitted internet printouts of various retailers selling both Applicant's and Registrant's goods, to include Ace Hardware, True-Value, Home Depot, Lowes, Menards, Sears and Grainger, these printouts are not probative that the products at issue move in the same channels of trade because it is common knowledge that virtually all products are sold through these outlets. See In re Princeton Tectonics Inc., 95 USPQ2d 1509 at 1512 (“ . . . the evidence is from sources which sell a broad range of varied and unrelated goods online); see Sheller-Globe Corp. v. Scott Paper Co., 204 USPQ 329, 335 (TTAB 1979) (“ . . . not everything that is sold by large retail establishment selling plethora of otherwise unrelated goods is necessarily connected, within the meaning Section 2(d), to every other product that happens to be displayed or offered under same roof.”); see also Federated Foods, Inc., d/b/a Hy-Top Products Division v. Fort Howard Paper Co., 192 USPQ 24, 29 (CCPA, 1976)(“ A wide variety of products, not only from different manufacturers within an industry but also from diverse industries, have been brought together in the modern supermarket for the convenience of the customer. . . [t]he mere existence of such an environment should not foreclose further inquiry into the likelihood of confusion arising from the use of similar marks on any goods so displayed.”)

Furthermore, it is noteworthy that the Examining Attorney has also provided internet printouts from the Stanley and DeWalt tool retail websites. Because these retailers provide only tools and none of the other non-tool products present at the Ace Hardware, True-Value, Home Depot, Menards, Lowes, Sears and Grainger retailers, Stanley and DeWalt thus arguably serve as more accurate retailers for use in the present channels-of-trade analysis. While the Stanley and DeWalt retailers provide many of the Applicant's goods, these retailers *do not* provide the Registrant's tap and die related goods. Thus, an absence of Registrant's tap and die-related goods within the Stanley and DeWalt retail websites illustrates that Applicant's and Registrant's goods do not necessarily travel together in the normal and usual

channels of trade and methods of distribution. The Examining Attorney has provided no evidence to show otherwise.

Based on the third-party retailer evidence discussed above, it is evident that the goods of Applicant and Registrant do not necessarily move in different channels of trade. In conclusion, the Examining Attorney has not established a sufficient commercial relationship between Applicant's goods and Registrant's tap and die-related goods such that consumers are likely to be confused as to source, even if the same mark is used on both Applicant's and Registrant's goods.

3) Purchasers of Registrant's and Applicant's Goods are Discerning and Discriminating Buyers Who Recognize that the Goods Originate from Different Sources

Applicant's goods are general hardware tools used primarily for lay-out and measuring operations (i.e., chalk line reels and squares), the cutting of sheet-form materials (i.e., snips) the manual sharpening operations (i.e., sharpening tools and instruments) and gripping operations (i.e. pliers). Registrant's goods are very specialized tools used within the machining industry to manually machine internal threads (i.e., taps) and external threads (i.e., dies) to metal stock via a drive that drives the taps and dies. Moreover, Applicant's are used primarily by carpenters and similar tradesmen while Registrant's goods are used primarily by machinists and similar tradesmen, all who utilize great care in selecting tools for a specific purpose.

If a machinist wants to create threads on the internal surface of a bore existing in a piece of metal, the machinist would utilize Registrant's drive or stock to rotate the tap into the bore to create the internal threads. If a machinist wants to create threads on the external surface of a tubular piece of metal, the machinist would utilize Registrant's drive or stock to rotate the die about the tube to create the external threads. Of course, the threaded tube (i.e., a bolt) can now be treaded into the treaded hole to bind the pieces to one another.

The foregoing internal or external threading of metal components is not an operation commonly performed by "do-it-yourselfers" or "fix-it-homeowner." Instead, the operations are typically performed by machinists, mechanics or other similar specialized trades personnel. The underlying tap and die-related tools are thus very precise in nature and typically require an informed buying decision to ensure that the tap-and die related components are capable of fulfilling the requirements of the threading operation (i.e., no. of threads per inch; thread pitch or angle, etc.). As such, the purchase of these goods is not an impulse buy, but instead a careful and informed one. Personnel experienced in such threading operations and related purchasers are thus careful and discerning buyers capable of recognizing the source

of the underlying goods and not confusing it with other sources. See in Re SGS Tool Co., 24 USPQ2d 1382, 1385 (TTAB 1992)(finding that registrant's specialized goods must be presumed, by its very nature, to be items purchased by sophisticated consumers who would buy with care).

The foregoing circumstances evidence differences in relevant purchasers, the sophistication of those purchasers and the care with which goods are purchased, and thus mitigate against a finding that the goods are related, even though they may be provided in the same general field. In re Digirad Corp., 45 USPQ2d 1841, 1844 (TTAB 1998).

B. Similarity or Dissimilarity of the Marks

1) The Term “C.H” of Applicant’s Mark Obviates any Similarity with Registrant’s Mark Where the Term “Hanson” is a Weak Surname

The common last name “Hanson” is inherently weak for the purpose of applying less significance to the term. See Brennan’s Inc. v. Brennan’s Rest. L.L.C., 360 F.3d 125, 132-133 (2d Cir. 2004)(holding that the common last name “Brennan” was inherently weak for the purpose of applying less significance to the term, and that the use of the first name “Terrance” in association therewith was meaningful when examining the mark as a whole to eliminate any likelihood of confusion with another mark utilizing the term Brennan therein). Thus, where the term "Hanson" is weak, the public will look to other elements to distinguish the source of the goods or services. See, e.g., In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991); Plus Prods. v. Star-Kist Foods, Inc., 220 USPQ 541, 544 (TTAB 1983). That other element is the “C.H.” portion of Applicant’s mark.

2) USPTO Examining Attorneys Have Allowed Composite Marks Utilizing the Term Hanson to Issue for the Same Class of Goods

In relation to the term "hanson," the USPTO has allowed registration of the below noted marks, *each in the same class* (* indicates a cancelled registration that was nonetheless live during the application of the remaining registrations):

Reg. No. 3701881, BETTY HANSON;
Reg. No. 2906514, ANDREW HANSON'S F;
Reg. No. 2828600, HILLARD & HANSON;
Reg. No. 2341732, HANSON;
Reg. No. 2341727, HANSON;
Reg. No. 1192177*, TOM HANSON; and

(Exhibit A of Applicant's 08/01/12 Response).

Applicant has not submitted the foregoing evidence of third party registrations (having goods differing from that of Applicant) simply to argue that this third party presence lessens any likelihood of confusion between Applicant's mark and that of the cited reference. Compare Nat'l Cable Television Ass'n, v. Am. Cinema Editors, Inc. 19 USPQ2d 1424, 1430 (Fed. Cir. 1991)(cited by Examining Attorney). Instead, Applicant submits evidence of the third party registrations to illustrate that, for marks all having a common class of goods and utilizing the term "hanson," *numerous* USPTO examining attorneys presumably concluded that "HANSON" was not the dominant term of the composite marks, thus allowing each registration to issue despite the other's existence within the same class. See Dubonnet Wine Corp. v. Schneider, 216 USPQ 331 335 (TTAB 1983)(Although third-party registrations are entitled to little weight on the question of likelihood of confusion, they may be considered to the extent that the Patent and Trademark Office has allowed the registration of one over another). In view of the conclusions of numerous other trademark examining attorneys, such a conclusion should be drawn in this case as well, utilizing Applicant's "C.H." term as the dominant term to distinguish its composite mark from that of the cited reference.

Applicant appreciates that each case before the Office must be decided on its own merits and that previous decisions by examining attorneys, in approving other marks, may be non-binding or without evidentiary value in relation to later examinations. Nonetheless, the issue of whether Applicant's and cited Registrant's marks are confusingly similar based upon the emphasis placed on the common term "hanson" has been independently considered by numerous other examining attorneys who have concluded that the common term "hanson" is weak and that the respective marks may coexist without any risk of confusion. Applicant agrees with this conclusion. While the Applicant understands that the present Examining Attorney is not bound by this conclusion, Applicant is nonetheless entitled to some consistency in Office examination.

C. Balancing the Factors

The balancing of factors strongly favors a finding of no likelihood of confusion between Applicant's and Registrant's marks: the term "Hanson" is weak thus lending more significance to Applicant's "C.H." portion of its composite mark; Registrant's recited goods, properly interpreted in view of TMEP 1402.01(a) and 1402.03(a) and In re Trackmobile, are sufficiently dissimilar from Applicant's

recited goods; no probative evidence of Applicant's and registrant's goods sharing common channels of trade has been provided by the Examining Attorney; and the sophistication of purchasers and the care with which Registrant's goods are purchased mitigate against a finding that the goods are related, even though they may be provided in the same general field.

Assuming, *arguendo*, that the term "Hanson" is considered the dominant term of Applicant's composite mark to render the term "C.H." little trademark significance, the remaining foregoing factors nonetheless favor a finding of no likelihood of confusion between Applicant's and Registrant's marks.

CONCLUSION

In conclusion, the relevant factors strongly favors a finding of no likelihood of confusion between Applicant's and Registrant's marks because: the term "Hanson" is weak thus lending more significance to Applicant's "C.H." portion of it composite mark; Registrant's recited goods, properly interpreted in view of TMEP 1402.01(a) and 1402.03(a) and In re Trackmobile, are sufficiently dissimilar from Applicant's recited goods; no probative evidence of Applicant's and registrant's goods sharing common channels of trade has been provided by the Examining Attorney; and the sophistication of purchasers and the care with which Registrant's goods are purchased mitigate against a finding that the goods are related, even though they may be provided in the same general field.

In view of the foregoing, Applicant respectfully requests that the Board grant this Ex Party Appeal and allow for the registration of the C.H. HANSON mark.

Respectfully submitted,

By: 

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