

ESTTA Tracking number: **ESTTA599978**

Filing date: **04/23/2014**

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

Proceeding	77983232
Applicant	C. H. Hanson Company
Applied for Mark	C.H. HANSON
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Submission	Reply Brief
Attachments	CHH-TM-CH_HANSON-reply brief-01a-signature-filing.pdf(148704 bytes)
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Date	04/23/2014

**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 REPLY BRIEF

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TMEP (for advisory purposes)

1402.01

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ARGUMENTS

I. 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

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.

1) The Applicant's Goods Identification Does Not Recite "Wrenches"; Nor Does Any Third Party Reference Recite "Wrenches" as Interpreted by Applicant

In the Examining Attorney's Appeal Brief, the Examining Attorney has stated that "both registrant's (1) wrenches and (2) die taps and die/tap sets are related to *applicant's wrenches* because they are likely to emanate from the same source . . ." Examining Attorney's Appeal Brief. However, as is evident from the Applicant's foregoing goods identification, "wrenches" are not recited by the Applicant.

Furthermore, of the approximately forty (40) third party references submitted by the Examining Attorney, only four (4) recite "wrenches" therein, with zero (0) reciting the wrenches as interpreted by Applicant (i.e., drives or stocks).

2) The Examining Attorney's Discounting of Registrant's Use of Commas to Limit its Identification of Goods Contradicts the Express Conclusion Set Forth by the Evidence, TMEP and Judicial Precedent

In contrast to the express conclusion set forth by the evidence, TMEP and Judicial precedent, the Examining Attorney has, without support, discounted Registrant's limitation of its identification of goods through its use of commas therein, as opposed to a use of semicolons (used by Registrant in another identification of goods).

With regard to semi-colons, the Examining Attorney has asserted that the TMEP does not mandate a use of semi-colons within goods descriptions for the underlying goods to be considered as separate from one another, noting that the TMEP utilizes the language “should generally be used” in relation to a use of said punctuation. However, this Board has recognized the use of a semicolon to separate distinct categories of goods within a description as “*standard examination practice.*” In re Midwest Gaming & Entertainment, LLC, 106 USPQ2d 1163, 1166 (TTAB 2013)(finding that a semicolon separates cited services into a discrete category not connected to or dependant on those services set out on the other side of the semicolon).

Also, of the approximately forty (40) third party references submitted by the Examining Attorney, only one (1) recites taps and dies, with the “taps and dies” term separated from the word “wrenches” *with a semicolon.* See Registration No. 78184268 (*emphasis added*).

Furthermore, in referring to the TMEP guidelines as “standard examination practice” in relation to the use of semi-colon punctuation, despite the TMEP commenting that such use “should generally be used,” it only makes sense that the use of commas to separate items within a particular category of goods also be considered by the Examining Attorney to be a “standard examination practice” as well.

Applicant notes that the Board of In re Midwest Gaming took judicial notice of Fowler’s Modern English Usage (3rd Edition) to support its finding that semicolons separate identified goods or services into discrete categories. 106 USPQ2d at 1166. In view of such judicial notice, Applicant too submits Fowler’s Modern English Usage to contradict the Examining attorney’s unsupported statement that “‘the comma after the word ‘wrenches’ . . . precludes the limitation that applicant suggests . . . [the] comma indicates a break between two separate sets of goods . . . [with] the word ‘and’ that follows the comma after ‘wrenches’ further support[ing] the examining attorney’s interpretation. . . .”

Respectfully, the Examining Attorney has provided no support for her interpretation of Registrant’s use of the comma and conjunction within its goods identification. In contradistinction to the Examining Attorney’s interpretation that the comma and conjunction “and” do not limit the word “wrenches” by the other language of the Registrant’s goods identification statement, Fowlers Modern English Usage states as follows:

[a] comma is customary in sentences containing two main statements joined by a conjunction, or having some kind of complementary relationship.

FOWLER'S MODERN ENGLISH USAGE (3rd Edition), p. 162, para. 5.

It thus follows that the word wrenches of the Registrant's goods identification has a "complimentary relationship" with the taps and dies recited therein and respectfully should be interpreted as such.

3) The Examining Attorney's Non-limiting Interpretation of Registrant's Goods Identification in Relation to Comma Punctuation and the "and" Conjunction Results in an Indefinite Identification of Goods

The TMEP requires that goods and services be "specific, definite, clear, accurate and concise." TMEP 1402.01. Furthermore, the TMEP recites that "terminology that includes items in more than one class is considered indefinite," with such a conclusion not to be drawn *unless reasonable in light of the record*. Id. (emphasis added).

Applicant notes that the term "wrenches" may be classified in more than one class, namely, classes 7 and 8. Applicant presumes that, in view of the foregoing TMEP requirements, that the respective trademark examining attorneys examining the Registration's underlying application and section 8 and 15 documents reasonably found the identification of goods to be definite when viewed in relation to the Registrant's specimens – each showing taps and dies and the "drives" and "stocks" (i.e., "wrenches") for driving them and not any other type of wrench.

In view of the multiple classes that wrenches may fall under, the Examining Attorney's present interpretation of the Registrant's goods identification (i.e., wrenches not related to or limited by taps and dies) is unreasonable and renders the goods identification indefinite. For example, if, *assuming arguendo*, we read Registrant's goods identification according to the Examining Attorney's interpretation, what type of wrench is being set forth therein? A golf shoe cleat wrench? An Impact wrench?

Because the Examining Attorney's interpretation of the punctuation of Registrant's goods identification renders the identification indefinite, the punctuation should be interpreted as limiting Registrant's wrenches to the drives and stocks related to its taps and dies.

CONCLUSION

In conclusion, because the Examining attorney's interpretation that Registrant's punctuation does not limit the goods therein is contradicted by evidence, the TMEP and Judicial precedent, and further because the Examining Attorney's interpretation renders Registrant's goods identification indefinite, Registrant's term "wrenches" should be interpreted as being limited by the other words of the identification to both render such goods dissimilar from that of Applicant and eliminate any likelihood of confusion between the two marks.

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,

Date: April 22, 2014

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