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July 12, 2007
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Masco Corporation of Indiana

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Serial No. 78607509

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Edgar A. Zarins of Masco Corporation for Masco Corporation of Indiana.

Susan Kastriner Lawrence, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

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Before Hohein, Taylor and Mermelstein, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Masco Corporation of Indiana has filed an application to register on the Principal Register in standard character form the mark "HANCOCK" for "plumbing products, namely[,] faucets" in International Class 11.[1]

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the mark "HANCOCK," which is registered on the Principal Register in standard character form for "valves, strainers, and cocks" in

[1] Ser. No. 78607509, filed on April 13, 2005, which is based on an allegation of a bona fide intention to use such mark in commerce.

International Class 6,[2] as to be likely to cause confusion, or to cause mistake, or to deceive.

Applicant has appealed and briefs have been filed.[3] We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity or dissimilarity in the goods at issue and the similarity or dissimilarity of the respective marks in their entireties.[4] Here, inasmuch as applicant's mark and registrant's mark are identical in all respects,[5] the focus of our inquiry is accordingly on the similarity or dissimilarity of the respective goods.

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[2] Reg. No. 59,681, issued on January 15, 1907, which sets forth a date of first use of the mark anywhere and in commerce of 1876; fifth renewal.

[3] It is noted that applicant's brief is not double-spaced as required by Trademark Rules 2.126(c) and 2.142(b)(2). Nonetheless, inasmuch as the Examining Attorney has not objected thereto and it is clear that applicant's brief would not exceed the 25-page limitation imposed by Trademark Rule 2.142(b)(2) if it were properly double-spaced, such brief has been considered.

[4] The court, in particular, pointed out that: "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." 192 USPQ at 29.

[5] Applicant, in its brief, "acknowledges that the marks are identical."

Applicant, asserting that "Hancock valve company has been in existence for more than a century," argues in its brief that the goods at issue are unrelated:[6]

> As the excerpts from their website clearly show, Hancock valves are heavy-duty industrial valves used to control the flow of high pressure and/or high temperature materials in industrial applications. These valves are large and heavy for inclusion in industrial pipelines. These devices are not intended for residential applications and are not marketed to retailer [sic] consumers. The channels of trade for Hancock valves are strictly industrial for specific heavy-duty applications. These goods would be specified by an industrial engineer constructing fluid control systems in a manufacturing setting.
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> In absolute contrast to the cited [registrant's] goods, applicant uses the mark HANCOCK to identify a collection of consumer faucets. Kitchen and bath faucets are typically purchased by retail consumers for their styling and no association to an industrial device would be made by the consumer. Although faucets also control the flow of a fluid, the application and channels of trade could not be more remote from the cited [registrant's] goods. These faucets are purchased through retail channels by consumers seeking to upgrade their bathroom or kitchen fixtures. Little thought is given to the operational aspects of the faucet, [as] styling is the primary influence.
>
> Thus, the respective goods and their channels of trade have no relationship whatsoever. The goods of the cited registration have an industrial application and are marketed to industrial experts seeking a specific fluid control solution. Applicant's goods are a retail product marketed to consumers seeking to change the appearance of their kitchen or bath. With such diverse channels of trade, there is no likelihood of confusion.

[6] Contrary to applicant's argument, the record does not contain any excerpts from registrant's website.

The Examining Attorney, however, correctly points out in her brief that:

> The goods ... [at issue] need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). The fact that the [respective] goods ... differ is not controlling in determining likelihood of confusion. ....
>
> Furthermore, a determination of whether there is a likelihood of confusion is made solely on the basis of the goods identified in the application and [cited] registration, without limitations or restrictions that are not reflected therein. *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595 (TTAB 1999). If the cited registration describes the goods broadly and there are no limitations as to their nature, type, channels of trade or classes of purchasers, then it is presumed that the registration encompasses all goods of the type described, that they move in all normal channels of trade, and that they are available to all potential customers. *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992); *In re Elbaum*, 211 USPQ 639 (TTAB 1981); TMEP §1207.01(a)(iii).

The Examining Attorney, in view of such principles, further observes that, in this case, "[n]either applicant nor registrant has narrowed the scope of its goods to identify specific uses, channels of trade, or type[s] of purchasers" and

that "limitations may not be read into either the application nor the registration." Consequently, she properly notes that:

> More specifically, applicant has "plumbing products, namely[,] faucets," while registrant has "valves, strainers, and cocks." Without any further information [than the respective identifications of goods], it is presumed that registrant's goods are of the type used in connection with applicant's goods. Material downloaded from the internet and attached to the Final Office Action demonstrates that there are types of valves, strainers and cocks which are used in connection with or actually considered plumbing products, e.g., shut off valves, sink strainers, and sill cocks. This material also shows that it is common for one entity to provide a variety of plumbing-related goods for retail purposes, and that applicant's goods and registrant's goods are not only likely to be sold through the same trade channels, but used in connection with one another as well. ....

In particular, she accurately observes that the website excerpts demonstrate that: (i) PlumbingProducts.com "offers a variety of plumbing products including faucets and different types of valves, strainers and cocks used in connection with plumbing fixtures"; (ii) Moen "offers a variety of plumbing fixtures including faucets as well as strainers and valves"; (iii) Watertown Supply "offers faucets, valves and strainers"; (iv) Banner Plumbing Supply "offers a variety of faucets and different types of valves"; (v) Sterling Plumbing "offers a variety of faucets as well as strainers and valves"; (vi) Zurn Plumbing Products Group "offers faucets and strainers and valves"; and (vii) Masco Corporation, which would appear to be applicant's corporate parent, "provides faucets as well as the goods of registrant, namely, valves."

Additionally, as support for her position, the Examining Attorney notes that the record contains "a sampling of registrations from this Office's database" showing that, in each instance, the same mark is registered for both applicant's goods and those of registrant. Specifically, the record contains copies of at least 22 use-based third-party registrations for marks which, in each instance, are registered for a variety of "faucets," on the one hand, and various "valves," "sink strainers", "sink, tub and drain strainers," and/or "cocks" (including "ball-cocks"), on the other. Although such registrations are not evidence that the different marks shown therein are in use or that the public is familiar with them, they nonetheless have some probative value to the extent that they serve to suggest that the goods listed therein are of the kinds which may emanate from a single source. See, e.g., In re Infinity Broadcasting Corp. of Dallas, 60 USPQ2d 1214, 1217-18 (TTAB 2001); In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993); and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 (TTAB 1988) at n. 6, *aff'd as not citable precedent*, No. 88-1444 (Fed. Cir. Nov. 14, 1988).

As the Examining Attorney has correctly pointed out, it is well settled that the issue of likelihood of confusion must be determined on the basis of the goods as they are respectively set forth in the particular application and the cited registration, and not in light of what such goods are asserted to actually be. See, e.g., Octocom Systems Inc. v. Houston Computer Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990);

Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815-16 (Fed. Cir. 1987); CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Moreover, where, as here, the goods in the application at issue and in the cited registration are broadly described as to their nature and type, such that there is an absence of any restriction as to the channels of trade and no limitation as to the classes of purchasers, it is presumed that in scope the identification of goods encompasses not only all goods of the nature and type described therein, but that the identified goods are provided in all channels of trade which would be normal therefor, and that they would be purchased by all potential buyers thereof. See, e.g., In re Elbaum, supra at 640.

In view thereof, and based on the evidence of record, we agree with the Examining Attorney that, as broadly identified in the respective application and cited registration, applicant's "faucets" and the cited registrant's "valves, strainers, and cocks" clearly are commercially related plumbing products which would be marketed to the same classes of purchasers and would share identical channels of trade.[7] Specifically, both

[7] To the extent that applicant may in effect be arguing that confusion is unlikely because the goods at issue are in different classes, suffice it to say that the purpose of the United States Patent and Trademark Office in using the classification system is for administrative convenience rather than as an indication of whether goods are related or not. See, e.g., Jean Patou Inc. v. Theon Inc., 9 F.3d 1171, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993); National Football

applicant's and the cited registrant's goods encompass the kinds of kitchen and bathroom plumbing products which would be sold to ordinary consumers and plumbing contractors through such channels of trade as mass merchandisers, hardware stores, home and garden centers, and plumbing supply houses. Circumstances accordingly are such that contemporaneous use of the mark "HANCOCK" by both applicant and the cited registrant for their respective goods would be likely to cause confusion as to the source or sponsorship of those goods.

Decision: The refusal under Section 2(d) is affirmed.

League v. Jasper Alliance Corp., 16 USPQ2d 1212, 1216 n.5 (TTAB 1990); and In re Leon Shaffer Golnick Advertising, Inc., 185 USPQ 242, 242 n.2 (TTAB 1974). The fact, therefore, that applicant's goods and those of the cited registrant are classified in different classes is not an indication that the respective goods are unrelated; instead, such fact is simply immaterial in determining the issue of likelihood of confusion. See, e.g., In re Clay, 154 USPQ 620, 621 (TTAB 1967) and cases cited therein.