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

Proceeding	86715358
Applicant	Corn Products Development, Inc.
Applied for Mark	INGREDION IDEA LABS
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Corn Products Development, Inc.	:	
	:	Law Office: 103
Serial No. 86/715358	:	
	:	Examining Attorney:
Filed: August 5, 2015	:	Kevon L. Chisolm
	:	
Mark: INGREDION IDEA LABS	:	
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Trademark Trial and Appeal Board
United States Patent and Trademark Office
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Alexandria, VA 22313-1451

APPLICANT'S APPEAL BRIEF

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I. DESCRIPTION OF THE RECORD AND RECITATION OF THE FACTS

Applicant Corn Products Development, Inc. (“Applicant”) seeks registration on the Principal Register of the mark INGREDION IDEA LABS for “food and beverage scientific research; food additive scientific research; scientific research for industrial products” in class 42. The subject Application No. 86/715,358 was filed on August 5, 2015.

By an Office Action of September 28, 2015, the Examining Attorney refused registration under section 2(d) on the basis that there was a likelihood of confusion between Applicant’s mark INGREDION IDEA LABS and Registration No. 3,885,176 for the mark “idealab” and design covering: “graphic design services; product design services, namely, design and testing of new products for others; new product development services” in class 42. The Examining Attorney also required Applicant to disclaim the word LABS.

Applicant filed a response on March 24, 2016, identifying (a) key differences between the marks resulting from the dominant portion INGREDION of Applicant’s mark, the fame of the INGREDION portion, and the weakness of the common “Idea Lab” portion, (b) differences between the services identified by each mark, and (c) the sophistication of prospective customers for the relevant services. Applicant also provided a declaration of Laurent Michoud, Applicant’s Vice President of Global Marketing, to substantiate the fame of the INGREDION portion of Applicant’s mark.

On April 19, 2016, the Examining Attorney issued a final Office Action, again refusing to register the mark INGREDION IDEA LABS based on a likelihood of confusion with Registration No. 3,885,176.

On September 18, 2016, Applicant submitted a Request for Reconsideration to submit additional evidence relevant to the issue of likelihood of confusion. Specifically, Applicant

submitted a dictionary definition of the word "idea," two registrations including the phrase IDEALAB, and a Google search that identified seven instances where the phrase "Idea Lab" was used descriptively by other entities to refer to an idea or concept laboratory.

On October 7, 2016, the Examining Attorney issued a Denial of the Request for Reconsideration. On October 14, 2016, Applicant filed a Notice of Appeal from the final Office Action of April 19, 2016. Applicant submits this Appeal Brief pursuant to 37 C.F.R. § 2.142(b)(1).

II. STATEMENT OF THE ISSUES

The issue on appeal is whether there would be a likelihood of confusion between Applicant's mark INGREDION IDEA LABS for Applicant's services, and the mark "idealab" and design for the services covered by Registration No. 3,885,176.

III. SUMMARY OF ARGUMENT

It is well settled that a likelihood of confusion analysis requires a consideration of evidence relevant to the 13 factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973). For the reasons that follow, Applicant submits that its mark INGREDION IDEA LABS and the cited registration for the mark "idealab" and design are not likely to result in confusion because of:

1. the dissimilarities between the entire marks as to appearance, sound, connotation, and commercial impression, particularly in view of the recognition of the dominant INGREDION portion of Applicant's mark and the weakness and suggestiveness of Registrant's "idealab" mark,

2. the dissimilarities between the services described in the application and the cited registration in that Applicant's services cover scientific research for food products or industrial products, and Registrant's services cover design and product development services, and

3. the conditions under which sales are made involving careful, sophisticated purchasers, not impulse purchases.

Therefore, Applicant respectfully requests that the decision of the Examining Attorney be reversed.

IV. ARGUMENT

A. Applicant's Mark And The Cited Registration Are Dissimilar In Their Entireties

Applicant's mark is shown below:

INGREDION IDEA LABS

The cited Registration is shown below:



The most significant difference between these two marks arises from the initial word INGREDION in Applicant's mark. INGREDION is the dominant feature of Applicant's mark. INGREDION is a fanciful term without descriptive or suggestive meaning, and the Examining Attorney did not contest that INGREDION is a fanciful term. Applicant's submitted declaration by Mr. Michoud establishes that INGREDION is Applicant's house mark, and a famous mark at that. Mr. Michoud states that INGREDION identifies a Fortune 500 company with sales in excess of \$3 billion in the United States in 2014. (Michoud Decl. ¶¶ 2-5.) INGREDION is also a separately registered trademark as shown by Registration No. 4,568,697.

In contrast to the fanciful nature of the INGREDION portion of Applicant's mark, the common "Idea Lab" portion of both marks would be considered weak and at best highly suggestive. The word "Lab" is a descriptive word as the Examining Attorney has conceded by requiring that Applicant disclaim "LABS" as descriptive. "Idea" is a highly suggestive word as

used for the Registrant's services, which relates to the design and testing of new products. "Idea" is used in its customary way to refer to a conception or thought. *See* Merriam-Webster's Collegiate Dictionary 615 (11th ed. 2004), listing synonyms for idea (Req. for Reconsideration Exh. A, Sept. 19, 2016.) The combined phrase "idea lab" refers to a laboratory for ideas or concepts. It is highly suggestive and weak.

The highly suggestive meaning of the phrase "idea lab" was confirmed by other evidence.

Applicant submitted two other registrations using the same phrase:

- Registration No. 2,651,245 for the mark IDEALAB for "educational services, namely, conducting seminars and workshops in the field of lighting, for continuing education credits, and distributing course materials in connection therewith."
- Registration No. 4,698,364 for the mark ANDREAS C. DRACOPOULOS FAMILY IDEAS LAB for the services in class 42 of "design of maps, graphics and data visualization materials in the areas of educational scholarship, forums, and presentations about global trends, and international policy and security."

(*Id.* Exhs. B, C.)

A Google search (*id.* Exh. D) of the words "Idea Lab" turned up the following uses of the name Idea Lab:

- a. *The New York Times* Idea Lab, a think tank that develops digital advertising innovations (Exh. E),
- b. the HHS (U.S. Department of Health and Human Services) IDEA Lab to support and promote innovation (Exh. F),
- c. the Idea Lab of the CAJM (Council of American Jewish Museums) for a conference (Exh. G),
- d. IdeaLab! by the WHU Founders Conference, a student run conference in Europe (Exh. H),
- e. IdeaLab by the Modern Museum of Art (MoMA) for a workshop (Exh. I),

- f. IdeaLab for a program at the Rochester Institute of Technology to link problems and challenges with technical and creative problem solvers at RIT (Exh. J), and
- g. IdeaLab at Carleton College having resources to help individuals create and share creative works (Exh. K).

In sum, this evidence shows that the common words “Idea Lab” between Applicant’s mark and the cited registration are a combination of the highly suggestive word “Idea” with the descriptive term Lab resulting in a highly suggestive phrase.

In addition to the differences between the word marks, we also note that the cited registration contains a distinctive design that serves as a further point of distinction between the two marks. Indeed, when considering Registrant's design mark with the word "idealab" in lower case, the unique design for the letter "i" is most striking for consumer perceptions. In contrast, Applicant’s mark has no similar design component.

Because the dominant portion of Applicant’s mark is the famous house mark INGREDION and the common portion with the cited registration is the highly suggestive phrase Idea Lab, prospective customers will be able to distinguish between these marks by looking to other elements of the marks. In this case, the other element is Applicant’s house mark INGREDION that renders the two marks sufficiently distinguishable, when viewed in their entireties, and makes confusion unlikely.

B. The Dissimilarity Of Applicant’s Mark And The Cited Registration Is Well Supported By Prior Decisions

The dissimilarity between marks where an applicant’s house mark is the dominant portion of its entire mark and the only words common with the registrant’s mark are highly suggestive is well supported by authority from the Trademark Trial and Appeal Board. In *Knight Textile Corp. v. Jones Investment Co.*, 75 U.S.P.Q.2d 1313 (T.T.A.B. 2005), the Board found a

dissimilarity of marks between applicant's NORTON MCNAUGHTON ESSENTIALS mark and opposer's ESSENTIALS mark, both used for men's clothing, and held that this dissimilarity outweighed contrary evidence on the other *du Pont* factors. The Board based this conclusion on the highly suggestive nature of the word ESSENTIALS for clothing and the presence of Applicant's house mark NORTON MCNAUGHTON:

In the present case, there are no recognizable differences between the product mark portions of the party's respective marks, i.e., ESSENTIALS. However, we find that ESSENTIALS is a highly suggestive term as applied to the articles of clothing identified in applicant's application and in opposer's registration, respectively, and that, under our case law, applicant's addition of its house mark therefore suffices to distinguish the two marks when they are viewed in their entireties.

....

Based on this evidence, we find that purchasers are able to distinguish among various ESSENTIALS marks by looking to other elements of the marks. In this case, that other element is the presence of applicant's house mark NORTON MCNAUGHTON. We find that ESSENTIALS is a highly suggestive term as applied to clothing, and that applicant's addition of its house mark NORTON MCNAUGHTON renders the two marks sufficiently distinguishable, when viewed in their entireties, that confusion is not likely to occur.

Id. at 1316.

Other decisions support this conclusion of no likelihood of confusion. For example, in *Kayser-Roth Corp. v. Morris & Co., Inc.*, 164 U.S.P.Q. 153 (T.T.A.B. 1969), the Board found no likelihood of confusion between applicant's mark PAUL JONES ESQUIRE and opposer's mark ESQUIRE both for hosiery because "the term 'ESQUIRE' is highly suggestive of things masculine," and applicant's mark PAUL JONES was also used separately as its trademark. *Id.* at 153-54.

More recently in *American Lebanese Syrian Associated Charities, Inc. v. Child Health Research Institute*, 101 U.S.P.Q.2d 1022 (T.T.A.B. 2011), the Board considered likelihood of confusion between an application for the mark CHILD HEALTH RESEARCH INSTITUTE

CURE KIDS and opposer's registered mark CURE4KIDS. The Board found these marks not to be similar because the common words CURE KIDS were highly suggestive, and the additional matter in applicant's mark distinguished it from opposer's mark:

As stated in the preceding sections, applicant's marks are similar to opposer's marks because they share the words "Cure" and "Kids." On the other hand, the marks are different because applicant's marks include other source identifying words and designs. The similar terms "Cure Kids" and "CURE4KIDS" are highly suggestive and, therefore, contribute relatively less to the marks' commercial impression. . . . The relevant public is not likely to assume a relationship between the parties or services because of the use of these highly suggestive terms in their respective marks. The additional matter, both words and designs, in applicant's marks distinguish them from opposer's marks when they are viewed in their entirety.

Id. at 1031.

In support of a conclusion that the presence of Applicant's house mark INGREDION does not obviate the similarity between the marks as to the "Idea Lab" portion, the Examining Attorney has cited inapplicable authorities. Each of the decisions cited by the Trademark Attorney involves the different situation that the common terms between applicant's and registrant's marks are not descriptive and the added term is weak. This is just the opposite from the facts here where the common terms "idea lab" are highly suggestive and the added term INGREDION is a strong house mark.

These differences from the present facts are most apparent from the Examining Attorney's reliance on *In re El Torito Restaurants Inc.*, 9 U.S.P.Q.2d 2003 (T.T.A.B. 1988), where the Board found Applicant's mark MACHO COMBOS to be confusingly similar to the registered mark MACHO, both marks used for virtually the same goods and services. But most important to the Board's decision was its finding: "There has been no showing that the word 'MACHO' has any descriptive significance or is weak as a trademark in the field of food or food services." To the contrary, the Board found MACHO to be the dominant and first portion of

both marks. As to the added word COMBO, the Court found it to be a “descriptive word.” *Id.* at 2004.

The Examining Attorney also relied on *Coca-Cola Bottling Co. v. Seagram & Sons, Inc.*, 188 U.S.P.Q. 105, 106 (C.C.P.A. 1975), where the court found that Applicant’s mark BENGAL LANCER was substantially similar to the registered mark BENGAL, both marks used for related products. Again, the common word BENGAL was the first and dominant portion of both marks. The court affirmed the Board’s decision because “the marks, considered as a whole, are substantially similar,” and that “the relationship between BENGAL LANCER and BENGAL is close.” *Id.* The term BENGAL is not descriptive for alcoholic drinks. Use of the word LANCER could not overcome the similarity resulting from use of the same dominant word BENGAL.

The third case cited by the Examining Attorney is *In re Toshiba Medical Systems Corp.*, 91 U.S.P.Q.2d 1266, 1269 (T.T.A.B. 2009), where the Board found the marks TITAN and VANTAGE TITAN, both for medical diagnostic apparatus, to be confusingly similar. Once again, in reaching this decision, the Board explained that the term TITAN for medical diagnostic apparatus “is only slightly laudatory, and it is not entitled to only a narrow scope of protection.” *Id.* at 1271. Considering that TITAN was entitled to a broad scope of protection, the Board found that “the additional of the word ‘VANTAGE’ is more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus.” *Id.* Although we recognize that each case is decided on its own facts, we note that prior decisions support Applicant’s position that INGREDION IDEAL LABS and “idealab” and design are dissimilar. And this dissimilarity supports a conclusion of no likelihood of confusion.

C. The Dissimilarity Between Applicant's Scientific Research Services And The New Product Design And Development Services Covered By The Cited Registration

1. Dissimilar Services Support No Likelihood Of Confusion

A second factor that supports no likelihood of confusion is the dissimilarity of the nature of the services as described in the application and cited registration. For there to be a likelihood of confusion, the respective services must be related in some manner such that the circumstances surrounding their marketing could give rise to the mistaken belief that the services emanate from the same source. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012). Indeed, when the goods or services in question are not related and the channels of trade and purchasers are different, those factors may provide substantial evidence that there is no likelihood of confusion between marks. *See M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 1382-83 (Fed. Cir. 2006).

Because the services at issue are entirely unrelated, they would not be encountered by the same persons in situations that could raise an incorrect assumption that they originate from the same source. Accordingly, there can be no likelihood of confusion. As noted by TMEP § 1207.01(a)(i):

Conversely, if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that the originate from the same source, then, even if the marks are identical, confusion is not likely.

Because Applicant's scientific research services are not related in function or use to the product design and development services covered by the cited registration, there can be no likelihood of confusion.

**2. Scientific Research And New Product
Design And Development Are Not Related**

Applicant's services and the services covered by the cited registration are greatly dissimilar in nature. Applicant's services are as follows:

Food and beverage scientific research; food additive scientific research; scientific research for industrial products in class 42.

In contrast, the services covered by the cited registration are:

Business development services, namely, providing start-up activities for businesses of others; business consultation services; business marketing consultation services; accounting services; human resources consultation and management services; product marketing services; business management assistance in the establishment of technology businesses of others and operation of technology businesses for others in class 35.

Financial consultation, advice, management and research in class 36.

Graphic design services; product design services, namely, design and testing of new products for others; new product development services in class 42.

In his analysis, the Examining Attorney referred only to the services in class 42 for the cited registration.

In contending that the parties' services are similar, the Examining Attorney glossed over the fundamental differences between the services involved. Applicant's services all involve scientific research for food or industrial products. In contrast, the services of the cited registration all involve design, development, and testing services for new products. The Examining Attorney has been unable to point to any overlap between these services. Companies looking for scientific research on food additives would contact Applicant. Companies looking for design, development, and testing services for new product ideas would contact Registrant. There is no overlap between the services provided by these companies.

3. Evidence From Other Registrations Does Not Establish That These Services Are Related

In an effort to establish a relationship between the parties' quite different services, the Examining Attorney has submitted results from a search on the USPTO's X-Search database consisting of third-party marks registered for the same or similar services. The Examining Attorney only referred to the search results and did not analyze them. Indeed, the search does not support the position that the same marks are typically used to identify scientific research for food products and new product development and design services generally.

We note the following limitations for these 12 references:

- Registration No. 3,957,951 (FUTURE/TOMORROW) and Registration No. 3,844,570 (MISSION ORIENTED. PERFORMANCE DRIVEN!) are marks registered by consultants for broad ranges of unrelated services. If such registrations were persuasive that all the services in class 42 were related, they would support a relationship between scientific research, attorney services, maintenance of websites, cosmetics research, engineering, package design, patent licensing, real estate research, underwater exploration.
- Registration No. 3,659,307 (MARS VETERINARY) covers scientific research and development activities, but only for veterinary diagnostics and animal genetics. It does not suggest a relationship between general new product development services and scientific research for veterinary products.
- Registration No. 4,372,828 (DUKE MEDICINE) is a registration for a university covering the broad range of services provided, including clinical research and new product development testing. Were it considered evidence of a relationship between the various services using the mark, it would support that scientific research is related to grief and bereavement counselling, nutrition counselling, drug counselling and charitable services.
- Registration No. 4,117,922 (SOETANTO) is yet another broad description by a consultant of unrelated services. In addition to chemical research and design and testing for new product developments, it includes such unrelated services as asbestos removal, brick laying, foundation contractor services, maintenance and repair of computer networks, and geophysical exploration for the oil, gas, and mining industries.

- Registration No. 4,667,883 (ROAD SCIENCE DIVISION OF ARMAZ CUSTOM CHEMICALS) has both scientific research and design and testing of new products, but only for the field of paving materials. Thus, it supports Applicant's position that such services directed to a particular industry (*e.g.*, food and beverage) do not overlap with general design and testing of new products.
- Registration No. 4,428,735 (VESCO) and Registration No. 4,635,178 (FOR A CLEANER ENVIRONMENT VESCO OIL) also support Applicant's position. They cover scientific research and new product development and design only in the field of automotive and industrial lubricants. Thus, they provide no support of a relationship between such services directed only to one industry and broad design and development of new product services.
- Registration No. 4,432,213 (AFFDEX) also is limited to medical and scientific research in the field of medical imaging and design and testing of new product developments in that same field. It provides no support of a relationship between such services directed only to one industry and broad design and development of new product services.
- Registration No. 4,697,991 (GEEKS AND NERDS) covers scientific research in the field of national security space exploration and technical support, including new product development and design and testing of new products for others. In context, one must read the scientific research and the new product development to relate to the same subjects as the other services.
- Registration No. 4,633,488 (CUSTOMER FOCUSED. SOLUTION DRIVEN.) has a lengthy and broad description of various consulting and engineering services in class 42. The design and testing for new products and scientific research are only in the field of airflow, fluid flow and various other specific areas. It does not suggest a relationship between broad new product design and development and scientific research in a narrow area.
- Registration No. 4,559,409 (INTEGRATED LIFE SCIENCE RESEARCH CENTER) also covers agricultural research and design and testing for new product development within that same area. It provides no support of a relationship between such services directed only to one industry and broad design and development of new product services.

This evidence from the Examining Attorney is simply unpersuasive in establishing a relationship between apparently unrelated services. For the most part, the registrations cited by the Examining Attorney do not support the point that the same marks have been registered, and presumably used, for scientific research in a particular field and general new product

development and testing services. Moreover, the fact that, from all the registered marks covering services in class 42, the Examining Attorney could find only 12 to even assert the relationship between services suggests that it is uncommon for the same mark to be used for both Applicant's and Registrant's services.

D. The Sophistication Of Customers Minimizes Any Likelihood Of Confusion

The fourth *du Pont* factor relates to: “the conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361. It is well recognized that services or products provided only to sophisticated customers may significantly lessen any likelihood of confusion. *See In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 U.S.P.Q. 969, 971 (Fed Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant good, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED).

There can be no doubt that Applicant’s services of food and beverage scientific research, food additive scientific research, and scientific research for industrial products are marketed to business professionals in the food and beverage industry. Thus, the relevant consumers who could possibly be exposed to both Applicant’s mark INGREDION IDEA LABS and the cited registration “idealab” and design would necessarily be sophisticated customers interested in scientific research services. These customers would likely recognize the famous INGREDION name that is the dominant portion of Applicant’s mark, and would easily distinguish the two marks based on that difference. These sophisticated customers would also be aware of the differences between Applicant’s scientific research services for food additives and Registrant’s general product development services. Accordingly, there should be no likelihood of confusion due to the sophistication of purchasers.

The Examining Attorney did not give suitable weight to the sophistication of customers. Instead, the Examining Attorney argued that, even though the purchasers are sophisticated or knowledgeable in a particular field, it does not mean they are immune from source confusion. But the Examining Attorney should have appreciated that the sophistication of customers would mean that they would be alert to the particular business that they are dealing with and would distinguish between the two marks based on the INGREDION name.

Without explanation, the Examining Attorney also claimed that the standard of care to be considered should be that of the general public. However, neither Applicant's services nor the services of the cited registration are directed to the general public. The cited registration covers "product design services, namely, design and testing of new products for others; new product development services" in class 42. These services would be directed to businesses involved in new product design. They are not directed to the general public.

In sum, the sophistication of customers should have been considered further support to find no likelihood of confusion.

V. CONCLUSION

In conclusion, the Board should reverse the decision by the Examining Attorney because:

1. the marks INGREDION IDEA LABS and "idealab" and design are dissimilar in view of the dominant portion of Applicant's mark INGREDION which is a famous house mark, and the weakness and suggestiveness of the common portion IdeaLabs, as demonstrated by evidence of descriptive third-party usage,
2. the services described in the application and the cited registration are unrelated in that Applicant's services cover scientific research for food products, and Registrant's services cover design and product development services, and

