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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Ferrotec (USA) Corporation and Ferrotec Corporation

v.

Ferro Labs, Inc.

Opposition No. 91174110  
to application Serial No. 78645892  
filed on June 8, 2005

Robert R. Deleault of Mesmer & Deleault, PLLC for Ferrotec  
(USA) Corporation and Ferrotec Corporation.

Dmitri I. Dubograev of International Legal Counsels PC for  
Ferro Labs, Inc.

Before Hairston, Drost and Walsh, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Ferro Labs, Inc.  
(applicant) to register the mark FERRO LABS and design,  
shown below,



for "colloid suspensions of magnetic particles combining  
magnetic characteristics and fluidity, ferrofluids and

magnetic fluids, ferrofluidic seals and suspensions that are used in the manufacture of industrial devices requiring minimized resistance and friction namely, dumpers, shock absorbers, seals, suspensions, cooling devices, rotating shafts, gyroscopes, bearings, image stabilizing devices for optical systems and other related devices, and user and instruction manuals supplied as a unit with each of the foregoing" in International Class 1.<sup>1</sup>

Registration has been opposed by Ferrotec (USA) Corporation and Ferrotec Corporation (opposers). Opposers allege that Ferrotec Corporation is a Japanese corporation which is in the business of manufacturing, selling and servicing ferrofluid and ferrofluidic products; that Ferrotec Corporation is the owner of a registration for the mark FERRO TEC in stylized form shown below,



for, inter alia, "ferrofluid compositions for use in the voice coil gap of loudspeakers; ferrofluid for domain detectors; ferrofluid for stepping-motor applications; magnetic fluid for use in a wide variety of industrial applications in the semiconductor and electronic

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<sup>1</sup> Serial No. 78645892, filed on October June 8, 2005, alleging dates of first use anywhere and in commerce of March 31, 2005.

industries"<sup>2</sup> in International Class 1; that Ferrotec (USA) Corporation is a wholly owned subsidiary of Ferrotec Corporation and is also in the business of manufacturing, selling and servicing ferrofluid and ferrofluidic products under the mark FERRO TEC; and that applicant's mark FERRO LABS and design for its identified goods so resembles opposers' previously used and registered mark FERRO TEC in stylized form as to be likely to cause confusion, mistake or deception.<sup>3</sup>

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<sup>2</sup> Registration No. 2842102, issued May 18, 2004. The registration also covers goods in International Classes 4, 7, 9 and 11. However, the most pertinent goods are the goods in Class 1.

<sup>3</sup> Opposers also pled ownership of registrations for the marks FERROSOUND for "ferrofluid composition for use in the voice coil gap of loudspeakers" (Registration No. 1266745 issued February 14, 1984; renewed); FERRODRIVE for a "machine, namely, a vacuum feedthrough machine with integrated coaxial motor and other motion control systems for generating controlled rotary motion outside of a sealed environment and transmitting that motion into a sealed environment" (Registration No. 2606062 issued August 6, 2002; Sections 8 and 15 affidavits accepted and acknowledged, respectively); and FERROFLUIDIC for "rotary seals" (Registration No. 1157003 issued June 9, 1981; renewed). Although opposers did not plead a likelihood of confusion vis-à-vis the individual marks FERROSOUND, FERRODRIVE, and FERROFLUIDIC and applicant's mark, they submitted certified status and title copies of these registrations under a notice of reliance. In their brief on the case, opposers argue that confusion also is likely between each of their individual marks FERROSOUND, FERRODRIVE and FERROFLUIDIC and applicant's mark. Applicant has not objected to this issue. Rather, in its brief, applicant argues that there is no likelihood of confusion between opposers' "marks" and its mark. Under the circumstances, we find that the issue of likelihood of confusion vis-à-vis opposers' FERROSOUND, FERRODRIVE and FERROFLUIDIC, marks and applicant's mark has been tried by the implied consent of applicant. See TBMP §507.03 and Fed. R. Civ. P. 15(b).

In addition, we note that in their brief on the case, opposers assert ownership of a family of FERRO marks and a likelihood of confusion vis-à-vis this family of marks and applicant's mark. Again, applicant has not objected to this issue. Rather, in its brief, applicant argues that opposers have

Applicant, in its answer, denied the salient allegations of the notice of opposition.

The record includes the pleadings; the file of the opposed application; and opposers' notice of reliance on certified status and title copies of Ferrotec Corporation's Registration No. 2842102 for the mark FERRO TEC, and Ferrotec (USA) Corporation's Registration No. 1157003 for the mark FERROFLUIDIC, Registration No. 2606062 for the mark FERRODRIVE, and Registration No. 1266745 for the mark FERROSOUND. In addition, opposers submitted copies of official records, and applicant's responses to opposers' interrogatories and request for admissions. Opposers also submitted the testimony depositions (with exhibits) of Joan Deicheler, corporate assistant and corporate archivist for Ferrotec (USA) Corporation; Eiji Miyanaga, President and Chief Operating Officer of Ferrotec (USA) Corporation; Vanessa Rene, Marketing Specialist for Ferrotec (USA) Corporation; Perry Barker, Regional Sales Manager for Ferrotec (USA) Corporation; and George Brooks, Customer Service Representative for Ferrotec (USA) Corporation.

Applicant submitted under notices of reliance copies of third-party applications and registrations for marks which

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not proven ownership of a family of FERRO marks nor a likelihood of confusion between the family and applicant's mark. Again, under the circumstances, we find that this issue has been tried by the implied consent of applicant.

include the term FERRO. In addition, applicant submitted entries from the New Oxford American Dictionary (2001) which show that the term "**ferro-**" is defined as "*containing iron*" and "**ferrofluid**" is defined as "*a fluid containing a magnetic suspension.*"

Opposers and applicant have filed briefs; opposers have filed a reply brief.

#### The Parties

The testimony of opposers' witnesses shows that Ferrotec Corporation is a public Japanese company and the owner of various subsidiaries, including those that produce ferrofluid and ferrofluid-based products. Ferrotec (USA) Corporation is a wholly-owned subsidiary of Ferrotec Corporation. Ferrotec (USA) Corporation was formerly known as Ferrofluidics Corporation and was founded in 1968. Ferrofluidics Corporation's business was the development of commercial applications for ferrofluid. During the 1970's Ferrofluidics Corporation developed ferrofluid for use in audio speakers, computer disk drives and stepper motors. In the 1980's Ferrofluidics Corporation expanded its ferrofluid sealing technology into the aircraft industry and other industries having applications requiring hermetic sealing of rotary applications. In the 1990's, it developed ferrofluid based products for use in optical applications. In 2000, Ferrotec Corporation purchased Ferrofluidics

Corporation and, as indicated, it is now named Ferrotec (USA) Corporation. As a subsidiary of Ferrotec Corporation, Ferrotec (USA) Corporation continues to offer ferrofluid and ferrofluid-based products.

Because applicant did not take testimony, the information we have concerning applicant comes from its responses to opposers' interrogatories and requests for admissions. These responses show that applicant began marketing ferrofluid under the applied-for mark in July 2004. Applicant acknowledges that it is a competitor of opposers. Applicant's customers include universities as well as biotechnology, pharmaceutical, cosmetics, semiconductor, optical, solar, nanotechnology, prosthetics, automotive, aviation, loudspeaker and robotics manufacturers.

Standing and Priority

Opposers have properly made of record Registration No. 2842102 for the mark FERRO TEC in stylized form (owned by Ferrotec Corporation); and Registration No. 1157003 for the mark FERROFLUIDIC, Registration No. 2606062 for the mark FERRODRIVE, and Registration No. 1266745 for the mark FERROSOUND (all owned by Ferrotec (USA) Corporation). The record also shows that Ferrotec (USA) Corporation is a wholly-owned subsidiary of Ferrotec Corporation.

In view thereof, we find that both opposers have standing. Furthermore, because these registrations are of record, there is no issue as to opposers' priority with respect to the marks and goods in such registrations. *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Likelihood of Confusion

This brings us to the issue of likelihood of confusion. Our determination of this issue is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E. I. duPont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the goods and/or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Family of Marks

We first consider opposers' claim to ownership of a family of FERRO marks. Our primary reviewing court has stated that:

A family of marks is a group of marks having a recognizable common characteristic, wherein the

marks are composed and used in such a way that the public associates not only the individual marks, but also the common characteristic of the family, with the trademark owner. Simply using a series of similar marks does not of itself establish the existence of a family. There must be recognition among the purchasing public that the common characteristic is indicative of a common origin of the goods.

J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991).

To establish a family of marks, opposers must prove:

(1) that prior to applicant's use of its mark, the marks comprising opposers' family of marks, or at least a substantial number of them, were used and promoted together by opposers in such a manner as to create public recognition coupled with an association of common origin predicated upon the family feature; and (2) that the family feature is distinctive (i.e., not descriptive, so highly suggestive, or so commonly used that it cannot function as a distinguishing characteristic of the party's mark). Marion Laboratories v. Biochemical/Diagnostics, 6 USPQ2d 1215 (TTAB 1988).<sup>4</sup>

Opposers' family of marks claim fails for two reasons. First, the family feature, FERRO, is descriptive of at least opposers' ferrofluids and ferrofluidic seals and suspensions. Based on the definition of the term "ferro," it is clear that such term describes a feature or

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<sup>4</sup> Contrary to applicant's contention, a party claiming ownership of a family of marks is not required to prove that any one of the marks comprising the family is famous.



characteristic of these goods, namely, that they contain iron. Furthermore, opposers' witness, Ms. Rene testified as follows:

Q. What is your understanding of what the term ferro means?

A. The term ferro refers to iron.

Q. Why is that term used in Ferrotec?

A. Because of the particles that are used in the ferrofluid. They are ferrite particles.

(Dep. at 55).

Because of the descriptive nature of the term FERRO, opposer's claim of a family of marks based on such term is unsustainable. See Specialty Brands Inc. v. Coffee Bean Distributors, Inc., 22 USPQ 1072, 1074 (TTAB 1983) ["In any event, given the generic nature of the word "SPICE" as applied to opposer's spices and the descriptive nature of the term as applied to at least some of opposer's teas, proof of a family of marks founded upon the word "SPICE" is an untenable proposition"].

Second, opposers' evidence does not show that the registered marks have been widely used and promoted together in such a manner as to create public recognition coupled with an association of common origin predicated on the term FERRO. Opposers have made of record product brochures which feature opposers' individual products and marks. In addition, opposers point to the testimony of their witness

Mr. Barker to support their contention that the public recognizes their family of FERRO marks. In this regard, Mr. Barker testified that when opposers' representatives talk to customers at trade shows "about FerroTec or Ferrofluidics [customers] would say the Ferro product" (Dep. at 21) and "[customers would] call Ferro, FerroTec or Ferrofluids, Ferro, because it is a mouthful to say the other." (Dep. at 22). In addition, he testified that opposers' representatives at the trade shows are "considered Ferro." (Dep. at 30).

The brochures covering individual products are insufficient evidence that opposers have promoted their registered FERRO marks as a family of marks. Also, Mr. Barker's testimony fails to demonstrate public recognition of the purported family. It is not clear from this testimony whether opposers' customers recognize a FERRO family of marks or simply use the term FERRO as a shortened name to refer to opposer Ferrotec (USA) Corporation and its representatives.

In view of the foregoing, we find that opposers have not proven their claim of a family of FERRO marks.

#### Fame

We next turn to consider the duPont factor of fame. Fame of the prior mark plays a dominant role in likelihood of confusion cases featuring a famous mark. *Bose Corp. v.*

QSC Audio Products Inc., 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002); Recot Inc. v. M.C. Becton, 214 F.3d 1322, 54 USPQ2d 1894 (Fed. Cir. 2000); and Kenner Parker Toys, Inc. v. Rose Art Industries, Inc., 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992). Fame for likelihood of confusion purposes arises "as long as a significant portion of the relevant consuming public ... recognizes the mark as a source indicator." Palm Bay Imports, Inc. v. Vueve Clicquot Ponsardin Maison Fondee En 1722, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). In this case, the relevant class of consumers would be companies that use ferrofluids, magnetic fluids, ferrofluidic seals and suspensions, and related products in commercial applications.

Fame may be measured indirectly by the volume of sales and advertising expenditures of the goods identified by the marks at issue, "by the length of time those indicia of commercial awareness have been evident," widespread critical assessments and notice by independent sources of the products identified by the marks, as well as the general reputation of the products. Bose Corp. v. QSC Audio Products Inc., 63 USPQ2d at 1305-1306 and 1309. Although raw numbers of product sales and advertising expenses may have sufficed in the past to prove fame of a mark, raw numbers alone may be misleading. Some context in which to place raw statistics may be necessary (e.g., the

substantiality of the sales or advertising figures for comparable types of products). Bose Corp. v. QSC Audio Products Inc., 63 USPQ2d at 1309.

Furthermore, because of the extreme deference that we accord a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting that its mark is famous to prove it.

Leading Jewelers Guild Inc. v. LJOW Holdings LLC, 82 USPQ2d 1901, 1904 (TTAB 2007).<sup>5</sup>

Opposers contend that their registered FERRO TEC and FERROFLUIDIC marks, in particular, are famous. The evidence of record shows that Ferrotec (USA) Corporation has used the FERRO TEC mark since at least 1995 and the FERROFLUIDIC mark since at least 1979. The sales figures and advertising expenditures for the products sold under these marks for the years 2000-2006 are designated confidential. While this evidence indicates that opposers have enjoyed a high degree of success in marketing and selling their goods under the marks FERRO TEC and FERROFLUIDICS, it falls short of establishing that such marks are famous. The first problem with opposers' sales figures and advertising expenditures is

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<sup>5</sup> Contrary to applicant's contention, however, a party asserting that its mark is famous is not required to produce a survey.

that opposers failed to put the numbers in any context. The second problem is that the sales figures and advertising expenditures are combined for both marks, rather than separated out for each mark. In other words, we cannot determine what amount is attributable to each mark, such that we could conclude that either mark is famous.

Opposers' evidence fails to demonstrate that the successful marketing of opposers' FERRO TEC and FERROFLUIDICS products translates into widespread recognition of each of these marks among the relevant purchasers. Accordingly, we do not find on this record that opposers' FERRO TEC and FERROFLUIDICS marks are famous for purposes of our likelihood of confusion determination.

Third-party use

The next duPont factor to consider is "the number and nature of similar marks on similar goods." Applicant has submitted copies of 134 third-party applications and registrations for marks that include the term FERRO for various goods and services. Third-party applications have no evidentiary value other than to show that the applications were filed. Furthermore, it is well settled that third-party registrations are not evidence of use of the marks shown therein and, thus are not probative of the duPont factor related to third-party use. Moreover,

we note that none of the third-party registrations covers the types of goods involved in this case.<sup>6</sup>

This duPont factor is therefore neutral.

Similarity/Dissimilarity of the goods, trade channels and purchasers

Applicant's goods are identified as "colloid suspensions of magnetic particles combining magnetic characteristics and fluidity, ferrofluids and magnetic fluids, ferrofluidic seals and suspensions that are used in the manufacture of industrial devices requiring minimized resistance and friction namely, dumpers, shock absorbers, seals, suspensions, cooling devices, rotating shafts, gyroscopes, bearings, image stabilizing devices for optical systems and other related devices, and user and instruction manuals supplied as a unit with each of the foregoing."

Ferrotec Corporation's Registration No. 2842102 for the mark FERRO TEC in stylized form covers the following pertinent goods: ferrofluid compositions for use in the voice coil gap of loudspeakers; ferrofluid for domain detectors; ferrofluid for stepping-motor applications; magnetic fluid for use in a wide variety of industrial

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<sup>6</sup> Rather, the third-party registrations cover such unrelated goods as "footwear" (Registration No. 3160495); "metal detectors" (Registration No. 3081582); "battery chargers" (Registration No. 2950042); and "medical syringes" (Registration No. 2995790). We note, however, that the third-party registrations, just as the definition of "ferro," show generally that "ferro" means "containing iron" or "iron."

applications in the semiconductor and electronic industries; Ferrotec (USA) Corporation's Registration No. 1157003 for the mark FERROFLUIDIC covers "rotary seals;" Registration No. 2606062 for the mark FERRODRIVE covers "machine, namely, a vacuum feed-through machine with integrated coaxial motor and other motion control systems for generating controlled rotary motion outside of a sealed environment and transmitting that motion into a sealed environment;" and Registration No. 1266745 for the mark FERROSOUND covers "ferrofluid composition for use in the voice coil gap of loudspeakers."

Insofar as the similarity of the goods, trade channels and purchasers is concerned, applicant's brief is silent on this point. In any event, the ferrofluid, ferrofluidic seals and magnetic fluids identified in applicant's application and the ferrofluid, rotary seals and magnetic fluids identified in opposer's registrations are legally identical and the parties' goods are otherwise related. Moreover, the fact that the goods are identical also means that we must assume that the trade channels and purchasers are the same. *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 on 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").

These duPont factors favor opposers.

Purchasing Conditions and Sophistication of Purchasers

It is clear that opposers' and applicant's goods are not the types of products that are purchased by ordinary consumers. Rather, they are specialized products purchased by companies for use in commercial applications. We note that opposers' witness, Mr. Miyanaga, testified that opposers' customers research the performance capabilities of opposers' products prior to purchasing such products. (Dep. at 137-138). Furthermore, opposers state in their brief that "the goods of the Applicant and Co-Opposers are expensive." (Brief at 23). Under the circumstances, we find that this duPont factor favors applicant.

Similarity/Dissimilarity of the marks

Finally, we turn to a determination of the likelihood of confusion factor regarding the similarity/dissimilarity of the marks. We must determine whether applicant's mark and each of opposers' marks, when compared in their entirety, are similar or dissimilar in terms of



appearance, sound, connotation and commercial impression. The test for confusing similarity 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 that confusion as to the source of the goods offered under the respective marks is likely to result. It is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Finally, where, as in this case, the marks would appear on identical goods, the degree of similarity between the marks which is necessary to support a finding of likelihood of confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ 1698 (Fed. Cir. 1992).

We begin our analysis of the marks by noting that applicant seeks registration of the mark FERRO LABS and design as shown below.



Opposers' registered marks are FERRO TEC in the stylized form shown below,

The logo for FerroTec is displayed in a large, bold, black, sans-serif font. The word "Ferro" is followed by "Tec", with the 'T' being slightly larger and more prominent than the other letters.

and FERROSOUND, FERRODRIVE, and FERROFLUIDIC (all in standard character form).

With respect to our likelihood of confusion analysis, we find that the design element of opposers' FERRO LABS mark is entitled to less weight in our likelihood of confusion analysis. In this regard, it is well settled that if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods. In re Appetito Provisions Co., 3 USPQ2d 1553 (TTAB 1987).

Comparing applicant's mark and opposers' marks first in terms of their respective meanings or connotations, we find that the marks are obviously identical to the extent that they all begin with the term FERRO. However, as we have previously found, FERRO is a descriptive term at least as to certain of the involved goods. In view thereof, we find that FERRO is not the dominant feature of any of the parties' marks, and that the mere presence of the term in all of the marks is insufficient, without more, to warrant a finding that the marks are confusingly similar in their entireties.

As for the rest of the parties' marks, we find that LABS in applicant's mark is different in meaning from TEC,

SOUND, DRIVE and FLUIDIC in opposers' marks. Insofar as the word "labs" is concerned, we take judicial notice of the definitions in The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2006) of "lab" as "A laboratory" and "laboratory" as "A room or building equipped for scientific experimentation or research." Based on these definitions, we find that LABS has a readily-recognized meaning and as used in connection with ferrofluidic compositions and products would be perceived as meaning a place where scientific experimentation or research is conducted in connection with such products. Thus, applicant's mark, FERRO LABS, has a meaning which is different from opposers' marks FERRO TEC, FERROSOUND, FERRODRIVE and FERROFLUIDIC.

For these reasons, we find that applicant's mark and opposers' marks are more dissimilar than similar in terms of meaning.

We also find that the marks are more dissimilar than similar when compared in terms of appearance. Obviously, the marks look similar to the extent that they all begin with the descriptive term FERRO, but as discussed above, LABS is a common word which would be readily recognized as such and which is readily distinguishable from the equally common words SOUND and DRIVE and the terms TEC and FLUIDIC. Also, opposers' FERRO TEC mark is displayed in highly

stylized letters which further distinguishes this mark from applicant's mark. We find that when the marks are viewed in their entireties in terms of appearance, their dissimilarities outweigh their similarities.

Comparing the marks next in terms of sound, again the marks obviously are similar to the extent that they begin with the term FERRO. However, we note that each of the marks is comprised of, and would be heard, as two recognizable words or terms, namely, FERRO LABS, FERRO DRIVE, FERRO FLUIDIC, FERRO SOUND and FERRO TEC. In short, we find that the differences in sound between the word LABS and the word/term DRIVE, FLUIDIC, SOUND and TEC suffice to render the marks, as a whole, dissimilar rather than similar in terms of sound.

In view of the foregoing, when we compare applicant's mark and opposers' marks in their entireties as to appearance, sound and meaning, we find that their dissimilarities outweigh their similarities, and that the marks likewise are dissimilar rather than similar in terms of their overall commercial impressions.

In reaching this conclusion, we have not overlooked opposers' argument that the commercial impression of the parties' marks "is strikingly similar" because the marks are all displayed in the same colors. (Brief, p. 17). We recognize that trade dress may provide evidence of whether

marks project confusingly similar commercial impressions. See Specialty Brands Inc. v. Coffee Bean Distributors, Inc., 748 F.2d 669, 223 USPQ 1281, 1284 (Fed. Cir. 1984). However, in this case, we are not persuaded that applicant's display of its FERRO LABS mark in the colors blue and red, the same colors that opposers use to display their marks, results in the marks projecting similar commercial impressions. As we have discussed, applicant's mark and opposers' marks are more dissimilar than similar in sound, appearance and meaning with resulting overall different commercial impressions.

In sum, the duPont factor of the similarity/dissimilarity of the marks favors applicant.

#### Conclusion

We find that because applicant's mark FERRO LABS and design is sufficiently different from opposers' marks FERRO TEC, FERRODRIVE, FERROSOUND and FERROFLUIDIC, and the involved goods would be purchased by sophisticated consumers who would exercise care in purchasing such goods, confusion is not likely to result from the contemporaneous use of the respective marks.

We reach this conclusion even when some of the goods are identical and are presumed to travel in the same trade channels to the same classes of purchasers. See Kellogg Co. v. Pack'Em Enterprises Inc., 14 USPQ2d 1545, 1550 (TTAB

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1990), aff'd 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991).

**Decision:** The opposition is dismissed.