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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

StonCor Group, Inc.
v.
Les Pierres Stonedge Inc.

Opposition No. 91181621
to application Serial No. 76650832
filed on November 22, 2005

Charles N. Quinn of Fox Rothschild for StonCor Group, Inc.

James R. Menker of Holley & Menker for Les Pierres Stonedge
Inc.

Before Quinn, Wellington and Wolfson, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Les Pierres Stonedge Inc. filed, on November 22, 2005,
an application to register the mark STONEDGE (in standard
characters) for "precast decorative stone" in International
Class 19.¹

StonCor Group, Inc. opposed registration under Section
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground

¹ Application Serial No. 76650832 based on a claim of priority
under Section 44(d) of the Trademark Act, 15 U.S.C. §1126(d);
Canadian Registration No. 664,702 issued on May 19, 2006.

Opposition No. 91181621

that applicant's mark, when applied to applicant's goods, so resembles opposer's previously used and registered marks (individually and collectively as a family), all of which begin with the four-letter string "STON-," for a variety of flooring, coating, sealing and bonding products, including mortar, grout, adhesives and bonding agents, for use in connection with building construction, as to be likely to cause confusion.

Applicant, in its answer, denied the salient allegations of opposer's claim of likelihood of confusion. Applicant also raised the affirmative defenses of laches, acquiescence and estoppel, none of which were pursued at trial.

We first turn to some evidentiary matters, and offer a bit of background on the record. Opposer submitted status and title copies of its pleaded registrations with the notice of opposition. See Trademark Rule 2.122(d)(1). Opposer did not submit testimony or any additional evidence during its testimony period, prompting applicant to file a motion to dismiss under Trademark Rule 2.132(b). In responding to applicant's motion, opposer moved to reopen its testimony period on the basis of counsel's illness during the testimony period. The Board, in an order dated April 15, 2009, found that opposer failed to show excusable neglect and, accordingly, the motion to reopen was denied.

Opposition No. 91181621

In reaching its decision, the Board relied upon the fact that counsel, despite his illness, nevertheless filed during that same time period motions to extend in other cases. The Board indicated that "there is nothing in [counsel's] declarations providing a reason as to why this case is any different from the others he was seeking extensions for." The Board went on, however, to deny applicant's motion to dismiss, stating that "[b]ecause opposer made its pleaded registrations properly of record with the filing of its notice of opposition, opposer has made a sufficient showing for this proceeding to go forward." In the order (p. 5), the Board stated the following: "We emphasize to opposer that, during its rebuttal trial period, it must limit its submissions to permissible rebuttal of applicant's testimony and evidence." The Board, on July 8, 2009, subsequently denied opposer's request for reconsideration.

Applicant, during its testimony period, neither took testimony nor offered any other evidence.

Opposer, during its rebuttal testimony period, took the testimony of Michael Jewell, vice president of marketing for opposer's Stonhard division. At the end of the direct examination of Mr. Jewell, applicant's counsel indicated that he had no cross examination. Counsel did state, however, that "for the record, the applicant objects to the testimony on the grounds that it's improper rebuttal."

Opposition No. 91181621

Opposer' counsel responded as follows: "We understand the objection. We do not agree with it. And we'll see what the [Board], how they react to Mr. Menker's objection." (Jewell dep., p. 98).

At the briefing stage, opposer identified the Jewell deposition as being part of the record. Applicant, in its brief (pp. 5-7), renewed its objection to the Jewell testimony as improper rebuttal. Applicant, in its brief, also requested that the Board take judicial notice of dictionary definitions of the terms "stone," "floor" and "decorative stone." The dictionary entries were attached as exhibits to the brief.

Opposer, on February 19, 2010, filed a motion to strike the exhibits or, in the alternative, opposer requested "an opportunity to be heard as to the propriety of judicial notice."

In view of the above, two evidentiary issues remain for our consideration:

- 1) Applicant's objection to opposer's rebuttal testimony; and
- 2) Applicant's request for judicial notice.

We first turn to applicant's request in its brief to take judicial notice of dictionary definitions. A request to take judicial notice should be made during the requesting party's testimony period, by notice of reliance accompanied by the necessary information. The taking of judicial notice

Opposition No. 91181621

is discretionary with the Board. TBMP §704.12 (3d ed. 2011).

Trademark Rule 2.122(e) provides the mechanism by which the Board and the adverse party may be apprised of material which the proponent thereof desires to be judicially noticed. A proper notice of reliance under this rule fulfills both requirements of Fed. R. Evid. 201(d): it serves notice of the request and supplies the necessary information. At the same time, a notice of reliance filed during the party's testimony period avoids the great loss of time that would be incurred if a party requested a fact to be judicially noticed for the first time in its brief at final hearing (as applicant has done) and the adverse party exercised its right to be heard under Fed. R. Evid. 201(e) (as opposer has alternatively requested). *Litton Business Systems, Inc. v. J.G. Furniture Co., Inc.*, 190 USPQ 431, 434 (TTAB 1976). See *Wright Line Inc. v. Data Safe Services Corp.*, 229 USPQ 769 (TTAB 1985); and *Sprague Electric Co. v. Electrical Utilities Co.*, 209 USPQ 88 (TTAB 1980).

Applicant easily could have and should have made the dictionary evidence of record during its testimony period by way of a notice of reliance on printed publications. Trademark Rule 2.122(e). See *Boswell v. Mavety Media Group Ltd.*, 52 USPQ2d 1600, 1603 (TTAB 2009) (Board declined to take judicial notice of slang dictionary definition when

Opposition No. 91181621

submitted as part of rebuttal testimony when it could have been submitted with the case in chief). By waiting until after trial during the briefing stage to request judicial notice, opposer is not afforded a chance to respond to this evidence. Further, to allow opposer an opportunity to be heard at such a late juncture as this would unduly delay a decision in this case. Here, we are not inclined to use judicial notice to remedy applicant's decision to do nothing during its testimony period.

Accordingly, applicant's request to take judicial notice is denied, and the dictionary evidence attached to the brief has not been considered.

We next turn to consider applicant's objection to opposer's rebuttal testimony as improper. Even a cursory review of portions of Mr. Jewell's deposition makes it crystal clear that his testimony is of a nature that is appropriate for introduction during a party's case-in-chief. On that basis alone, the rebuttal is improper. But, even more specifically in the context of this proceeding, applicant did not take testimony or introduce any other evidence. Thus, there was nothing for opposer to rebut. So as to be clear, when the defendant in a Board inter partes proceeding does *nothing* during its testimony period, there is *nothing* for the plaintiff to rebut. Opposer's argument that its testimony and evidence is admissible to rebut "the

Opposition No. 91181621

presumption of administrative correctness" accorded to the Office's "approval" of the involved application by having published the mark for opposition is ill-founded; to reiterate, Mr. Jewell's deposition comprises classic case-in-chief testimony. See *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 182-83 (TTAB 1980); and *General Electric Co. v. Graham Magnetics*, 197 USPQ 690, 692 n.5 (TTAB 1977).

With all due respect to opposer's counsel's remarks in the briefs at final hearing, and at the oral hearing, opposer's taking of Mr. Jewell's testimony after the adverse ruling on opposer's motion to reopen its case-in-chief testimony period was ill-advised. As indicated earlier, the Board, in its April 15, 2009 order, presciently stated: "We emphasize to opposer that, during its rebuttal trial period, it must limit its submissions to permissible rebuttal of applicant's testimony and evidence." This attempt added unnecessary costs to opposer, and increased the Board's time and effort in considering the merits of this proceeding.

Further, contrary to the gist of opposer's remarks, applicant followed an acceptable procedure for objecting to Mr. Jewell's testimony as improper rebuttal. Applicant first raised the objection during the deposition, and then it renewed the objection in its brief at final hearing. Contrary to opposer's position, a motion to strike the

testimony was unnecessary and applicant cannot be faulted for not filing such a motion. TBMP §707.03(c) (3d ed. 2011).² In fact, even had the objection not been raised during the deposition, the Board would consider such objection even if it were raised for the first time in applicant's brief. *Id.*

Accordingly, applicant's objection is sustained. Mr. Jewell's testimony is stricken, and it does not form part of the record.

In view of the evidentiary rulings, the record consists of the pleadings; the file of the involved application; and the status and title copies of opposer's pleaded registrations. Both parties filed briefs,³ and both were represented by counsel at an oral hearing.

Opposer's pleaded registrations, all valid and subsisting (and showing the marks in typed or standard character form), are of record⁴:

² We hasten to add, however, that given the absence of any testimony or evidence on behalf of either party at trial, we wonder why applicant did not move to quash the notice of deposition when it first learned of the scheduling of Mr. Jewell's deposition as rebuttal testimony. Nevertheless, given the situation, opposer acted at its own peril in scheduling a rebuttal deposition when applicant had done *nothing* during its testimony period, especially in view of the Board's cautionary language in the April 15, 2009 order.

³ Opposer's motion to extend the time in which to file its reply brief, to which applicant consented, is granted.

⁴ Opposer, in its brief, refers to a fifteenth registration, namely Reg. No. 1306662 of the mark STONCLAD-PT. A status and title copy of the registration did not accompany the notice of opposition. Applicant, in its brief (p. 1, fn. 1), pointed out this deficiency, and objected to the belated attempt to introduce

Opposition No. 91181621

STONHARD for "chemicals, namely two component epoxies; multicomponent mixtures of epoxies, curing agents and aggregates; multicomponent mixtures of urethanes, resins and hardeners; all for general industrial use" (in Class 1).⁵

STONCRETE for "cementitious grouts; non-shrink, non-metallic grouts; rapid setting grouts; expanding grouts; water-impervious grouts; water plugging grouts; self-leveling flooring underlayerments; cementitious flooring underlayerments; high strength grouts; cementitious anchoring and casting materials for use with masonry and concrete" (in Class 19).⁶

STONLOK for "liquid applied adhesives and admixtures for concrete or masonry surfaces which become integral with and impart superior stain, water and abrasion resistance to the surface; latex based bonding agents; epoxy bonding agents and embedding adhesives, all for use principally in industrial and commercial building applications on masonry, concrete and tile and in highway construction" (in Class 1).⁷

the registration. In its reply brief, opposer indicated that the reference to this registration was inadvertent, and that the registration is not of record. Accordingly, we have not considered this registration in making our decision.

⁵ Reg. No. 1487280, May 10, 1988; renewed.

⁶ Reg. No. 1645258, issued May 21, 1991; renewed.

⁷ Reg. No. 1655954, issued September 10, 1991; renewed.

Opposition No. 91181621

STONLUX for "epoxy hardeners, chemical epoxy additives, epoxy curing agents, epoxies for use as components in mixtures, chemical solvents all solely for use in industrial and institutional applications" (in Class 1); and "floors and flooring systems comprised of epoxy resins, hardeners/curing agents for use with epoxy resins, quartz aggregates, and, optionally, pigments for use in industrial and institutional applications; mortars; namely, epoxy resin based mortars for use in industrial and institutional applications" (in Class 19).⁸

STONLINER for "epoxy hardeners, chemical epoxy additives, epoxy curing agents, epoxies for use as components in mixtures, chemical solvents all solely for use in industrial and institutional applications" (in Class 1); and "mortars, including multi-component mortars for use in industrial and institutional applications" (in Class 19).⁹

STONSHIELD for "epoxy hardeners, chemical epoxy additives, epoxy curing agents, epoxies for use as components in mixtures, chemical solvents all solely for use in industrial and institutional applications" (in Class 1); and "floors and flooring systems comprised of epoxy resins,

⁸ Reg. No. 1687420, issued May 19, 1992; renewed.

⁹ Reg. No. 1688593, issued May 26, 1992; renewed.

Opposition No. 91181621

hardeners/curing agents for use with epoxy resins and quartz aggregates for use in industrial and institutional applications" (in class 19).¹⁰

STONSET for "epoxy hardeners, chemical epoxy additives, epoxy curing agents, epoxies for use as components in mixtures, chemical solvents all solely for use in industrial and institutional applications" (in Class 1); and "grout; namely, three-component epoxy-based grouts for industrial and institutional applications" (in Class 19).¹¹

STONKOTE for "epoxy resins used as components in mixtures, hardeners and curing agents for use for epoxy resins, all for use in new building construction and in repair and renovation of existing buildings" (in Class 1); and "two component epoxy-resin based coatings for use as protective floor coatings and in protecting other horizontal surfaces, used in new building construction and in repair and renovation of existing buildings; epoxy-resin flooring coating materials for use in new building construction and in repair and renovation of exiting buildings, particularly for use over concrete" (in Class 2).¹²

¹⁰ Reg. No. 1689713, issued June 2, 1992; renewed.

¹¹ Reg. No. 1691045, issued June 9, 1992; renewed.

¹² Reg. No. 1697228, issued June 30, 1992; renewed.

Opposition No. 91181621

STONPROOF for "epoxy hardeners, chemical epoxy additives, epoxy curing agents, epoxies for use as components in mixtures, chemical solvents all solely for use in industrial and institutional applications" (in Class 1); and "multi-purpose epoxy-based sealants and polyurethane membranes for use in industrial and institutional applications" (in Class 17).¹³

STONSEAL for "polyurethane and aliphatic polyurethane chemical solvents all solely for use in industrial and institutional applications" (in Class 1); and "protective coatings; namely, two-component polyurethane coatings and aliphatic polyurethane coatings for use in industrial and institutional applications" (in Class 2).¹⁴

STONFIL for "mortars; polymer modified mortars; mortars for filling voids in horizontal surfaces; grouts; waterproof and cementitious block fillers and coatings; gel mortars; trowelable and flowable mortars" (in Class 19).¹⁵

STONCLAD for "epoxy hardeners, chemical epoxy additives, epoxy curing agents, epoxies for use as components in mixtures, chemical solvents all solely for use in industrial

¹³ Reg. No. 1697229, issued June 30, 1992; renewed.

¹⁴ Reg. No. 1697230, issued June 30, 1992; renewed.

¹⁵ Reg. No. 1703299, issued July 28, 1992; renewed.

Opposition No. 91181621

and institutional applications" (in Class 1); and "floors and flooring systems composed of resins, curing agents, quartz aggregate for use in industrial and institutional applications" (in Class 19).¹⁶

STONBLEND for "epoxy hardeners, chemical epoxy additives, epoxy curing agents, epoxies for use as components in mixtures, chemical solvents all solely for use in industrial and institutional applications" (in Class 1); and "floors and flooring systems composed of epoxy resin, hardeners/curing agents for use with epoxy resins, and aggregates for use in industrial and institutional applications; mortars, including multi-component mortars for use in industrial and institutional applications" (in Class 19).¹⁷

STONCREST for "epoxy hardeners, chemical epoxy additives, epoxy curing agents, epoxies for use as components in mixtures, chemical solvents all solely for use in industrial and institutional applications" (in Class 1); and "protective epoxy coatings; namely, epoxy-polyamide coatings, two-component epoxy-based coatings and colorable

¹⁶ Reg. No. 1706070, issued August 11, 1992; renewed.

¹⁷ Reg. No. 1712857, issued September 8, 1992; renewed.

protective coatings for use in industrial and institutional applications" (in Class 2).¹⁸

Opposer has established its standing to oppose registration of the involved application by properly making its pleaded registrations of record. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); and *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

Priority is not in issue in view of opposer's ownership of valid and subsisting registrations. *King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). Inasmuch as opposer's only evidence of record in this case consists of opposer's pleaded registrations, consideration of these two

¹⁸ Reg. No. 1740723, issued December 22, 1992; renewed.

Opposition No. 91181621

factors is the foundation of the likelihood of confusion analysis herein.¹⁹ Opposer must establish that there is a likelihood of confusion by a preponderance of the evidence. *Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ2d 1001, 1007-08 (Fed. Cir. 1988).

It is well established that the issue of likelihood of confusion herein must be determined based on an analysis of the goods recited in applicant's application vis-à-vis the goods identified in opposer's pleaded registrations. *Cunningham v. Laser Golf Corp.*, 55 USPQ2d at 1846; and *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992). Thus, we can consider any of the goods listed in the identifications in opposer's registrations, regardless of the specific items that arguably comprise opposer's principal product (flooring). Moreover, likelihood of confusion may be found based on any

¹⁹ In its brief on the case, opposer contends that it owns a family of STON- marks, and that its marks are "well known" or "famous." Opposer's contentions are irrelevant given the complete lack of evidence relating to either a family of marks or fame. The mere fact of registration of several marks incorporating STON- does not in itself prove that a family of marks exists. *Polaroid Corp. v. Richard Mfg. Co.*, 341 F.2d 150, 144 USPQ 419 (CCPA 1965); *Trek Bicycle Corp. v. Fier*, 56 USPQ2d 1527, (TTAB 2000); and *Consolidated Foods Corp. v. Sherwood Medical Industries, Inc.*, 177 USPQ 279 (TTAB 1973). Insofar as fame is concerned, because of the extreme deference accorded to 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 fame to clearly prove it. *Lacoste Alligator S.A. v. Maxoly Inc.*, 91 USPQ2d 1594, 1597 (TTAB 2009); and *Leading Jewelers Guild Inc. v. LJOW Holdings LLC*, 82 USPQ2d 1901, 1904 (TTAB 2007).

Opposition No. 91181621

item that comes within the identification of goods in the involved registrations and application. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Thus, where the goods in an involved registration and/or application are broadly identified as to their nature and type (as in the cases of opposer's "mortars" and "grouts," as well as opposer's "adhesives" and "bonding agents", and applicant's "precast decorative stone"), such that there is an absence of any restrictions 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 all the goods of the nature and type described therein, that the identified goods are offered in all channels of trade which would be normal therefor, and that they would be purchased by all potential buyers thereof. *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973); *Kalart Co. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958); and *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Opposer, in its brief and remarks at the oral hearing, focused its attention on its mortars, grouts, adhesives and bonding agents. In comparing the goods, we likewise have focused our attention on these products as they are the ones arguably closest to

Opposition No. 91181621

applicant's precast decorative stone, thus presenting opposer's strongest case for sustaining the opposition.

It is well settled that the goods of the parties need not be identical or competitive, or even offered through the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978). The issue, of course, is not whether purchasers would confuse the goods, but rather whether there is a likelihood of confusion as to the source of the goods. *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

In view of the above legal constraints, we assume that opposer's "mortars" and "grouts," as well as opposer's "liquid applied adhesives...for masonry surfaces" and "latex based bonding agents" may be used in a variety of applications, including the installation of decorative stones; likewise, applicant's "precast decorative stone" may

Opposition No. 91181621

be used in a variety of applications, including certain applications that may require the use of mortar, grout, adhesives or bonding agents when being installed, such as architectural facades, patios, walkways, steps and walls.

Given the broad identifications of goods, opposer's "mortars," "grouts," "adhesives" and "bonding agents" are, at best, complementary to applicant's "precast decorative stone." We hasten to add, however, that the goods are distinctly different, and the record is devoid of any evidence to show that the goods are, in fact, complementary.

The goods, as identified, are presumed to move in similar trade channels (e.g., building supply outlets) and may be purchased by the same individuals (e.g., contractors, builders, and the like).

To the extent that the goods may be complementary (and we reiterate that the record does not establish this fact), this purported conjoint use, in and of itself, is an insufficient basis upon which to find that the goods are commercially related. There simply is no evidence to even suggest that the goods are of a type that ever emanate from a common source, much less that purchasers would expect them to, especially when, as in this case, the marks are different (*see discussion, infra*). That is to say, the record falls short in establishing that mortars, grouts, adhesives and bonding agents, on the one hand, and precast

decorative stone on the other, are the types of goods that are likely to have a common source.

We now turn to consider the marks. We must compare each of opposer's marks to applicant's mark in their entirety as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). Contrary to the gist of one of applicant's arguments (Brief, p. 12), the test, under the first *du Pont* factor, 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.

As alluded to above in our discussion of the goods, we are focusing our analysis of likelihood of confusion, as has opposer, on those marks of opposer that cover mortar, grout, adhesives and bonding agents. The marks for mortar and grout include STONFIL, STONCRETE, STONLUX, STONLINER, STONSET and STONBLEND, while the mark STONLOK covers adhesives and bonding agents. Thus, we will compare each of these marks to applicant's mark STONEDGE.

Opposition No. 91181621

As to appearance and sound, each of opposer's marks begins with the letters STON-, as does applicant's mark. As often stated, purchasers in general are inclined to focus on the first word or portion in a trademark. *Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is likely to be impressed upon the mind of a purchaser and remembered"). See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d at 1692. The second portions of the marks, however, are distinctly different in appearance and sound. In applicant's mark, we also recognize that the letter "E" plays a dual role, both in the word "STONE" and in "EDGE," resulting in a telescoped mark.

Each mark has no defined meaning in the context of the respective goods, although the first portion of each of the parties' marks may suggest a connection with stones.

As to overall commercial impressions, the specific differences between the marks, when considered in their entireties for the specific goods, result in marks that engender different commercial impressions.

In sum, the differences between each of opposer's marks and applicant's mark outweigh the similarities.

Based on the sparse record introduced by opposer, comprising only its pleaded registrations, and keeping in

Opposition No. 91181621

mind that opposer has the burden of proof of establishing its likelihood of confusion claim by a preponderance of the evidence, we see opposer's likelihood of confusion claim as amounting to only a speculative, theoretical possibility. The cumulative differences between each of the parties' marks and the goods sold thereunder, coupled with the suggestiveness of the STON(E)- portions of the marks, persuade us that confusion is unlikely to occur among consumers in the marketplace. Language by our primary reviewing court is helpful in resolving the likelihood of confusion issue in this case:

We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.

Electronic Design & Sales Inc. v. Electronic Data Systems Corp., 21 USPQ2d at 1391 (Fed. Cir. 1992), *citing* *Witco Chemical Co. v. Whitfield Chemical Co., Inc.*, 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g* 153 USPQ 412 (TTAB 1967).

Decision: The opposition is dismissed.