

**THIS OPINION  
IS NOT A PRECEDENT  
OF THE T.T.A.B.**

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

DUNN

Mailed: February 24, 2010

Cancellation No. 92050789

Nartron Corporation

v.

Hewlett-Packard Development  
Company, L.P.

**Before Quinn, Kuhlke, and Mermelstein, Administrative  
Trademark Judges:**

**By the Board:**

This case comes up on respondent's motion, filed September 30, 2009, for summary judgment on the pleaded issue of priority and likelihood of confusion. The motion is fully briefed.

On April 7, 1992, Registration No. 1681891 issued to Nartron Corporation for the mark SMART TOUCH for "electronic proximity sensors and switching devices." On April 7, 2009, Registration No. 3600880 issued to Hewlett-Packard Development Company, L.P. for the mark TOUCHSMART for "personal computers, computer hardware, computer monitors, computer display screens." On April 9, 2009, Nartron

Corporation filed the instant petition to cancel alleging priority of use and likelihood of confusion. Respondent's answer denied the salient allegations of the petition.

In support of its motion for summary judgment respondent contends that no confusion is likely because the parties' marks comprise two suggestive terms in general use, the transposition of the marks creates a different commercial impression, and respondent's mark TOUCHSMART is used with finished consumer products while petitioner's SMART TOUCH mark is used with internal electronics, so there are differences in both the prospective customers and channels of trade.

In opposition to the motion, petitioner contends that the marks are similar inasmuch as they comprise the same words in different order, and the goods are closely related inasmuch as the goods of both parties have applications in many industries, and petitioner's electronic proximity sensors and switching devices may be used to provide an interface on respondent's personal computers, computer hardware, computer monitors, computer display screens. Both parties submitted their registrations, and declarations and attached exhibits in support of their positions.

The party bringing a motion for summary judgment bears the burden of showing the absence of any genuine issue of material fact, and that it is entitled to judgment as a

matter of law. See Fed. R. Civ. Pro. 56(c); and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In assessing the motion, the evidence must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. See *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

Upon careful consideration of the parties' arguments and competing evidence, the Board finds that respondent has failed to carry its burden of establishing that it is entitled to judgment as a matter of law on the claim of likelihood of confusion. At a minimum, respondent has failed to demonstrate the absence of a genuine issue of material fact as to the dissimilarity of the marks or the goods. Accordingly, respondent's motion for summary judgment is denied.<sup>1</sup>

Proceedings herein are resumed, and dates are reset below.

Expert Disclosures Due	5/5/10
Discovery Closes	6/4/10
Plaintiff's Pretrial Disclosures	7/19/10

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<sup>1</sup> Although we have only mentioned a few genuine issues of material fact in this decision, that is not to say that there are not other factual issues that may be disputed.

The parties should note that evidence submitted in support of or in opposition to a motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial period. See *Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).

**Cancellation No. 92050789**

Plaintiff's 30-day Trial Period Ends	9/2/10
Defendant's Pretrial Disclosures	9/17/10
Defendant's 30-day Trial Period Ends	11/1/10
Plaintiff's Rebuttal Disclosures	11/16/10
Plaintiff's 15-day Rebuttal Period Ends	12/16/10

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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