

**THIS OPINION  
IS NOT A PRECEDENT OF  
THE TTAB**

Mailed: September 28, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Cedomir Repac

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Serial No. 76699640

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Myron Amer, Esq. for Cedomir Repac.

William M. Rossman, Trademark Examining Attorney, Law Office  
109 (Dan Vavonese, Managing Attorney).

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Before Quinn, Walters and Taylor, Administrative Trademark  
Judges.

Opinion by Walters, Administrative Trademark Judge:

Cedomir Repac has filed an application to register on  
the Principal Register the mark SALAD CHEF for "food storage  
device, namely, plastic food storage containers for  
household use," in International Class 21.<sup>1</sup> The application  
includes a disclaimer of SALAD apart from the mark as a  
whole.

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<sup>1</sup> Serial No. 76699640, filed September 25, 2009, based on an allegation  
of a bona fide intention to use the mark in commerce.

The examining attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark SALAD CHEF, previously registered for "electric hand-held mixer, in combination with a cruet, for mixing salad dressings and other food products," in International Class 7,"<sup>2</sup> that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive. The registration includes a disclaimer of SALAD apart from the mark as a whole.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We reverse the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65

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<sup>2</sup> Registration No. 2521220, issued December 18, 2001, and is now owned by Meyer Intellectual Properties Limited. [Sections 8 and 15 affidavits accepted and acknowledged.]

USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

#### *The Marks*

Considering, first, the marks, there is no question that the marks are identical. This *du Pont* factor weighs against applicant.

#### *The Goods*

We begin our analysis of the respective goods with the premise that, because the marks at issue are identical, the extent to which the applicant's and registrant's goods must be similar or related to support a finding of likelihood of confusion is lessened. See *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001). It is only necessary that there be a viable relationship between the two to support a finding of likelihood of confusion. See *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). The question of likelihood of confusion must be determined based

on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

In support of his position that the goods are related, the examining attorney submitted copies of many third-party registrations and excerpts from several Internet web sites. The majority of the third-party registrations listed numerous goods in multiple classes. Only two or three of these many third-party registrations include both mixers that could encompass or be similar to registrant's goods and items that could be considered the same or similar to applicant's plastic storage containers for household use.<sup>3</sup> Many of the third-party registrations include neither applicant's nor registrant's goods; or they include only either applicant's goods or registrant's goods. If probative of anything, the large number of these latter registrations suggests, in fact, that consumers may not be

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<sup>3</sup> The fact that several of the third-party registrations for retail or wholesale services include both of the respective products is not probative because there is no indication that the goods themselves are identified by the same trademarks.

accustomed to seeing these respective goods registered together under the same marks.

Again, some of the Internet websites made of record by the examining attorney are of very limited probative value. For example, several, such as Tootoo.com, are large retailers offering many goods identified by numerous different brands. Several, such as HamiltonBeach.com, list various kitchen appliances and categories, but no storage devices; or KitchenAid.com, which lists prep bowls with lids, but no mixers. Only on Amazon.com was there an entry for a Black & Decker mixer and a Black & Decker "1 liter container." We would like to add that the examining attorney submitted many extraneous pages of evidence, including an article about mixers; many pages from certain websites (rather than only those relevant herein), and third-party registrations containing long lists of goods for many classes, for example, one registration included 13 classes (and no items were highlighted).

The examining attorney argues that "both applicant's and registrant's goods may be used by the same consumers for common kitchen tasks such as preparing and storage of foodstuffs" (Brief, p.9); and "that [the respective goods] could be offered through the same channels of trade by the very same manufacturers ... because items such as storage containers and kitchen mixers are often sold in the same

retail or wholesale environments and manufactured by the same producers for similar and or complimentary uses in the kitchen" (Brief, p. 11). The examining attorney cites some of the evidence he submitted that is discussed above.

However, we have reviewed the registrations and the Internet excerpts of record and do not find the evidence either probative or definitive.

Therefore, despite the fact that the marks are identical, we conclude that the examining attorney has failed to establish any relationship between the goods. We find this latter point determinative and conclude that likelihood of confusion has not been established on this record.

*Decision:* The refusal under Section 2(d) of the Act is reversed.