

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

Mailed: February 25, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Almar Enterprises Ltd.

Serial No. 77650559

Joseph L. Lazaroff of Law Offices of Joseph L. Lazaroff, for
Almar Enterprises Ltd.

Sara N. Benjamin, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney).

Before Cataldo, Ritchie, and Wolfson, Administrative Trademark
Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Almar Enterprises Ltd. ("applicant") filed an application
to register the mark ALLENS NATURALLY, in standard character
form, for goods identified as "liquid and powder laundry
detergents, automatic dishwasher detergent, all purpose
cleaners, dishwashing liquid, glass cleaners, fruit and

vegetable wash."¹

The Trademark Examining Attorney refused registration of applicant's mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the following registered marks, all registered to the same entity, that when used on or in connection with applicant's identified goods, it is likely to cause confusion or mistake or to deceive:

1. KLEENALEN,² in typed drawing format, for "liquid all purpose cleaner";
2. ALEN PINOL,³ in typed drawing format, for "household liquid cleaning preparations";
3. ALEN'S FLASH,⁴ in typed drawing format, for "household liquid floor cleaner * but specifically excluding foaming antimicrobial cleanser *";

¹ Serial No. 77650559, in International Class 3, filed January 15, 2009, pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging dates of first use and first use in commerce on April 22, 1988. We note that a footnote in applicant's brief requested "if allowed" to amend the description of its goods, a request which the examining attorney denied in her brief. To the extent this was a request for remand, applicant's request should have been filed as a separate document, not buried in a footnote in its brief. See *In re Major League Umpires*, 60 USPQ2d 1059, 1060 (TTAB 2001). In any event, we do not find "good cause" for remand, and the request is denied. 37 CFR § 2.142(d); TBMP § 1207.02 (4th ed. 2004).

² Registration No. 1692309, in International Class 3, issued June 9, 1992, based on first use and first use in commerce on February 25, 1991. Sections 8 and 15 affidavits accepted and acknowledged. Renewed.

4. ALEN USA,⁵ in typed drawing format, for "all purpose liquid cleaning preparations";
5. ALEN AMERICAS,⁶ in typed drawing format, for "all purpose liquid cleaning preparations"; and
- 6.



for "all purpose household cleaning preparations."⁷

Upon final refusal of registration, applicant filed a timely appeal. Both applicant and the examining attorney filed

³ Registration No. 3516958, in International Class 3, issued October 14, 2008, based on first use and first use in commerce on March 24, 2008.

⁴ Registration No. 3036439, in International Class 3, issued December 27, 2005, based on first use and first use in commerce on May 29, 2005.

⁵ Registration No. 3127530, in International Class 3, issued August 8, 2006, based on first use and first use in commerce on May 12, 2006, and disclaiming the exclusive right to use the term "USA" apart from the mark as shown.

⁶ Registration No. 3127529, in International Class 3, issued August 8, 2006, based on first use and first use in commerce on May 12, 2006, and disclaiming the exclusive right to use the term "AMERICAS" apart from the mark as shown.

⁷ Registration No. 1954038, in International Class 3, issued February 6, 1996, based on first use and first use in commerce on December 31,

Serial No. 77650559

briefs, and applicant filed a reply brief. For the reasons discussed herein, the Board affirms the refusal to register.

We base our determination under Section 2(d) on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); see also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks"). For purposes of the likelihood of confusion analysis, we focus on the most relevant cited registration, Registration No. 3127529, ALEN AMERICAS. If we find a likelihood of confusion as to this registration, then we need not find it as to the others. On the other hand, if we do not find a likelihood of confusion with this cited registration, then we would not find it with the other cited registrations either.

1985. Sections 8 and 15 affidavits accepted and acknowledged.
Renewed.

The Goods and Channels of Trade

The items in the application are identical-in-part to those in the cited registration. Specifically, the "all purpose liquid cleaning preparations" identified in the cited registration are a subset of "all purpose cleaners" identified in the application. Accordingly, we find these goods to be overlapping and legally identical.⁸

The fact that some of applicant's goods are identical to registrant's goods is sufficient to support a finding of likelihood of confusion with regard to any item of Class 3 goods identified in in the involved application. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981). Regarding the channels of trade, there is nothing that prevents applicant from selling its "all purpose cleaners" and various other products in the same stores, and indeed on the same shelves, as registrant's "all purpose liquid cleaning preparations." This is particularly true where, as here, the goods are in-part identical. Accordingly, we find that these *du Pont* factors weigh heavily in favor of finding a likelihood of confusion.

⁸ The examining attorney also introduced evidence regarding the relatedness of the remaining goods identified in the application to the goods in the cited registration. Copies of use-based, third-party registrations may serve to suggest that the goods are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993). We note that applicant's proposed amendment would still include "all purpose cleaners."

The Marks

Preliminarily, we note that the more similar the goods at issue, the less similar the marks need to be for the Board to find a likelihood of confusion. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

In comparing the marks, we are mindful that the test 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 so that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer for the goods at issue, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The mark in the cited registration consists solely of the words ALEN AMERICAS, in typed drawing format. The term "AMERICAS" is geographically descriptive, and is disclaimed, rendering "ALEN" the dominant term in the mark. See *In re National Data Corp.*, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant's mark consists solely of the words ALLENS NATURALLY, in standard character format. The examining attorney has submitted a definition from Webster's dictionary of "Allen" as meaning "a masculine name." While there is no definition of record for "ALEN," (except as a "very rare" surname) we find the terms to be arbitrary for the goods in both the application and the cited registration. As applicant points out, the term NATURALLY serves a double meaning of either suggesting the "greenness" of its products (appl's brief at 14) or of emphasizing the brand -- ALLENS "of course." *Id.* In either case, while we view applicant's mark in its entirety, we find that the term "ALLENS" is emphasized, and creates the dominant commercial impression. Accordingly, again noting that the test is not a side-by-side comparison, consumers are likely to overlook the second "L" in applicant's mark, and view it as an additional product in applicant's line of cleaning products and preparations in the "Americas," perhaps either in a more "green" line "NATURALLY" or emphasizing that consumers should once again choose that brand "of course." The marks have a similar connotation and commercial impression.

As for the sight and sound, both marks contain very similar first terms, "ALEN" or "ALLENS." Both marks contain a flow of a

Serial No. 77650559

plural, either with the first word or the second. When spoken, "ALEN" and "ALLENS" are highly similar in sound.

We note that our precedent has found that adding a word to a mark does not necessarily obviate likelihood of confusion. See *In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (GASPAR'S ALE and JOSE GASPAR GOLD); *Cola-Cola Bottling Co. v. Joseph E. Seagrams & Sons, Inc.*, 526 F.2d 556 188 USPQ 105 (CCPA 1975) (BENGAL and BENGAL LANCER); *Lilly Pulitzer, Inc. v. Lilly Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (CCPA 1967) (THE LILLY and LILLY ANN); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) ("CAREER IMAGE" AND "CREST CAREER IMAGES"); *In re Riddle*, 225 USPQ 630 (TTAB 1985) ("ACCUTUNE" and "RICHARD PETTY'S ACCU TUNE").

Finally, applicant argues that the cited registration is weak. In support of this argument, applicant mentions that "A review of TESS records in October, 2009 showed 722 records with 'allen' or 'alen' in a combined word mark." (appl's brief at 15). Applicant did not submit the actual registrations (if indeed there even are registrations), however, and further acknowledged that "we concede the Examiner's point that these records have limited weight because they were not shown to be for cleaning preparations, but at the same time the prevalence of a mark component in many other places subtracts from its ability to convey distinctiveness." *Id.* Since applicant did not submit registrations into the record, we are not able to gauge this assertion. In order to make a third-party registration of record, a copy of the registration, either a

copy of the paper USPTO record, or a copy taken from the electronic records of the Office should be submitted. *In re Volvo Cars of North America Inc.*, 46 USPQ2d 1455, 1456 n. 2 (TTAB 1998); and *In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB 1974). Merely listing such registrations, or simply referring to them without any specificity at all, as applicant has done here, is certainly insufficient to make them of record. *In re Dos Padres Inc.*, 49 USPQ2d 1860, 1861 n. 2 (TTAB 1998). The examining attorney's objection to the discussion of the TESS records is sustained. Furthermore, even weak marks are entitled to protection against registration of a similar mark for in-part identical goods. See *Giant Food Inc. v. Rosso and Mastracco, Inc.*, 218 USPQ 521 (TTAB 1982).

In sum, we find the similarities of the marks to outweigh their dissimilarities, and this *du Pont* factor to also favor finding a likelihood of confusion.

Actual Confusion

Applicant argues that there is no evidence of actual confusion despite years of overlap in the marketplace. A lack of evidence of "actual confusion" carries little weight in our analysis however, especially in an *ex parte* context. *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003). Accordingly, we find this *du Pont* factor to be neutral.

Conclusion

In summary, we have carefully considered all of the evidence and arguments of record relevant to the pertinent *du*

Serial No. 77650559

Pont likelihood of confusion factors. We conclude that with in-part identical goods, legally identical channels of trade, and similar marks with similar connotations, there is a likelihood of confusion between applicant's mark ALLENS NATURALLY for "liquid and powder laundry detergents, automatic dishwasher detergent, all purpose cleaners, dishwashing liquid, glass cleaners, fruit and vegetable wash," and the registered mark ALEN AMERICAS for "all purpose cleaning preparations."

Decision: The refusal to register is affirmed.