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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Ex Parte Appeal - Serial No.	88072187
Appellant	B. Fernandez & Hnos., Inc.
Applied for mark	DEL CAMPO
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Submission	Appeal brief
Attachments	Appeal Brief Del Campo.pdf(313610 bytes)
Appealed class	Class 029. First Use: May 6, 2015 First Use In Commerce: May 6, 2015 All goods and services in the class are appealed, namely: Instant or pre-cooked soup; Soup mixes; Soups; Vegetable soup preparations
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Date	11/22/2024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

B. FERNÁNDEZ & HNOS., INC. Applicant	Applicant's Mark: DEL CAMPO Application Serial Number: 88072187 Registered Mark: DOÑA GALLINA DEL CAMPO Registration Number: 5620113

APPEAL BRIEF

TO THE UNITED STATES PATENT AND TRADEMARK OFFICE:

COMES NOW, Applicant, B. Fernández & Hnos., Inc. ("BFH"), by and through the undersigned counsel and, respectfully, alleges and prays as follows:

I. Introduction

Applicant, BFH, respectfully appeals the refusal to register the mark "DEL CAMPO" on the grounds of a likelihood of confusion under Section 2(d) of the Lanham Act, 15 USC sec. 1052(d). Applicant submits that the determination by the Examiner of the United States Patent and Trademark Office ("USPTO") is erroneous because (1) the "DEL CAMPO" mark and the registered "DOÑA GALLINA DEL CAMPO" mark differ significantly in their overall commercial impression; (2) the shared term with the registered mark "DOÑA GALLINA DEL CAMPO" is weak and/or descriptive; (3) the goods are not sufficiently related; and (4) the nature of the purchasing process minimizes confusion.

II. Arguments in favor of registry of Applicant's mark

A. The Marks Differ in Appearance, Sound, Meaning, and Overall Commercial Impression

The Applicant's mark, "DEL CAMPO," and the registered mark, "DOÑA GALLINA DEL CAMPO," are distinguishable when considered in their entireties. The registered mark incorporates the dominant prefix "DOÑA GALLINA," which translates to "Mrs. Hen" in Spanish. This prefix not only adds substantial length but also imbues the registered mark with a specific, memorable identity that is absent from Applicant's more general and succinct mark, "DEL CAMPO." The added and predominant terms "DOÑA GALLINA" alter the visual, phonetic, and conceptual identity of the registered mark, creating a distinctive commercial impression. Remember that marks "must be considered […] in light of the fallibility of memory" and "not on the basis of side-by-side comparison." San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp., 565 F.2d 683, 685 (1977).

Pertinent to this analysis, in In re Hearst Corp., 982 F.2d 493, 494 (Fed. Cir. 1992), the Federal Circuit held that the marks "VARGA GIRL" and "VARGAS" were not confusingly similar because the addition of "GIRL" in the applied-for mark altered the connotation and overall commercial impression. Similarly, the addition of "DOÑA GALLINA" to the registered mark creates a dominant and distinguishing feature that significantly diminishes the likelihood of confusion with Applicant's mark. See, Lang v. Retirement Living Publ'g Co., 949 F.2d 576 (2d Cir. 1991): "[i]n [determining whether marks are confusingly similar], a court should look at the general impression created by the marks, taking into account all factors that potential purchaser will likely perceive and remember." Id., 581.

The conceptual difference between the marks reinforces the mentioned distinction. While "DEL CAMPO" evokes a generic connection to the countryside, "DOÑA GALLINA DEL CAMPO" suggests a rustic, character-driven brand centered around a personified hen. This difference in meaning is sufficient to prevent confusion, particularly when consumers encounter

the marks in the marketplace. Differences in connotation and placement, like in this case, can be decisive. See, Nabisco, Inc. v. Warner-Lambert Co., 220 F.3d 43 (2000): "DENTYNE ICE AND ICE BREAKERS are at best marginally similar because of the common use of "Ice." Of course, the varying placement of "Ice" is a major difference." Id., 47.

B. The Shared Term "DEL CAMPO" is Weak and Descriptive

The term "DEL CAMPO," meaning "from the countryside," is descriptive in the context of food products. This descriptiveness significantly weakens its source-identifying power and limits the scope of protection for the registered mark. When a mark contains somewhat descriptive or commonly used terms, as here, even a small difference between the marks is sufficient to avoid confusion.

For example, in Juice Generation, Inc. v. GS Enters. LLC, 794 F.3d 1334, (Fed. Cir. 2015), the Federal Circuit found that the presence of numerous third-party uses of the term "PEACE" in similar marks demonstrated the weakness of that element and reduced the likelihood of confusion. In this case, the term "DEL CAMPO" is widely used in the food industry to evoke qualities associated with freshness and rural origins. As such, the USPTO Examiner should have given less weight to this shared element in evaluating the marks.

Moreover, the inclusion of "DOÑA GALLINA" in the registered mark introduces a dominant element that draws consumer attention away from the somewhat descriptive term "DEL CAMPO." In In re Covalinski, 113 USPQ2d 1166 (TTAB 2014), the Board held that the addition of distinguishing elements, even to marks that share a common word, can render the marks sufficiently different. Here, "DOÑA GALLINA" serves this exact function, eliminating any realistic possibility of confusion. See also, Steve's Ice Cream, Inc. v. Steve's Famous Hot Dogs, 3 USPQ2d 1477 TTAB 1987) ("[e]ven with the word "STEVE'S appearing above the hot dog

figures, applicant's mark is distinguishable from the registered mark of opposer, which is simply the word "STEVE'S" in block letter form." Id., pag. 1479).

C. The Goods are not Closely Related in a Way that Would Create Confusion

Although both Applicant and Registrant offer food-related goods, the specific nature and purpose of the products differ substantially. Applicant's goods include instant or pre-cooked soup, soup mixes, soups, and vegetable soup preparations, which are ready-to-eat or nearly ready-to-eat products. In contrast, the registered mark covers beef stock, chicken stock, soup concentrates, stock, and stock cubes, which are primarily used as ingredients in cooking. The distinction is telling. The mere fact that both marks are associated with soup-related products does not necessarily establish that the goods are closely related. For instance, in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098 (1976), the court emphasized that goods must not only be related but also be of a type that consumers would reasonably believe emanate from the same source: "[a] wide variety of products, not only from different manufacturers within an industry but also from diverse industries, have been brought together in the modern supermarket for the convenience of the customer. The mere existence of such an environment should not foreclose further inquiry into the likelihood of confusion arising from the use of similar marks on any goods so displayed. The means of distribution and sale, although certainly relevant, are areas of peripheral inquiry. 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." Id., pg. 1103 (citations omitted). Here, the substantial differences in the purpose and use of the goods reduce the likelihood that consumers would assume a common origin.

Clearly, in this case the relatedness of the goods is less evident. The non-obviousness requires "something more than the mere fact that the goods and services are used together." In re

St. Helena Hosp., 774 F.3d 747, 753-754 (2014); see, also, In re Coors Brewing Co., 343 F.3d 1340 (2003): "[i]n light of the requirement that "something more" be shown to establish the relatedness of food and restaurant products for purposes of demonstrating a likelihood of confusion, the Board's finding that beer [(BLUE MOON)] and restaurant services [(BLUE MOON)] are related is not supported by substantial evidence. While the evidence produced by the examining attorney shows that some restaurants brew or serve their own private label beer, that evidence does not support the Board's conclusion that consumers are likely to conclude that beer and restaurant services with similar marks emanate from the same source." Id., pg. 1346.

Additionally, the marketplace context further distinguishes the goods. Stocks and soup concentrates are typically sold in different aisles or sections of a supermarket or grocery store than pre-cooked or instant soups. This separation minimizes the likelihood that consumers would encounter the marks in a way that could cause confusion.

D. Sophistication of Consumers and Purchasing Conditions Reduce Likelihood of Confusion

Consumers of food products, including soups and soup ingredients, exercise a reasonable degree of care in their purchasing decisions, particularly when choosing among competing brands in a crowded marketplace. Both the Applicant's and Registrant's goods are sold under distinct brands in a highly competitive environment where brand names play a critical role in consumer choice. The presence of the distinctive prefix "DOÑA GALLINA" in the registered mark ensures that consumers can readily distinguish between the two brands. It could be reasonable inferred that the significant portion of the registered mark ("DOÑA GALLINA") is how the consumer of the product refers to the mark in its entirety.

Furthermore, it is important to take into consideration that the application for the "DOÑA GALLINA DEL CAMPO" trademark has its genesis in the intention of an international company

to register a mark used in the Republic of Colombia. The parent company of this application is Quala S.A. ("Quala"), which is a consumer goods company of various kinds, including soup and broth products. One of Quala's marks registered in the Trademark Registry of the Superintendence of Industry and Commerce of Colombia is the "DOÑA GALLINA DEL CAMPO" trademark for use in a product that would presumably be broths and preparation thereof. However, there is no image of this product, except for a broth product registered under the name "Doña Gallina" (also, there is no "specimen" submitted to the United States Patent and Trademark Office). The following is the image of the product:

Looking at the image above it is noted that Quala's "DOÑA GALLINA" has as its focus an image of a hen under the title "DOÑA GALLINA" and that underneath the hen are the words "CALDO DE GALLINA". Notably, the wording "DEL CAMPO" does not appear in any way on Quala's product. In addition, the product itself is classified as broth, as opposed to soup or cream. The omission of the words "DEL CAMPO" in the product is revealing and speaks loudly in favor of registry of Applicant's mark. It is also revealing, as stated before, the predominant name "DOÑA GALLINA" to describe the registered mark.

The central argument for not registering Applicant's mark is the "DEL CAMPO" wording and its similarity to Quala's registered mark. Nonetheless, a side-by-side comparison of the goods destroys the assertion that the marks are confusingly similar. Applicant's specimen is the following:

Certainly, the portrayal of Applicant's mark does not come into collision with the registered mark. In other words, the marks are so dissimilar in their commercial impression that a "likelihood of confusion" is inexistent. This is a conclusion that can also be derived comparing both marks.

It should also be considered that, typically, consumers buying goods in a supermarket can distinguish one mark from another with ease. They are sophisticated consumers and less likely to be confused by the perceived similarities between the marks. See, Electronic Design & Sales, Inc. v. Electronic Data Sys. Corp., 954 F.2d 713, 717 (Fed. Cir. 1992). While the instant case involves everyday food products rather than highly technical goods, the sheer number of competing soup brands ensures that consumers pay attention to brand distinctions when making purchasing decisions. Moreover, as the Federal Circuit observed in In re N.A.D. Inc., 754 F.2d 996, 998 (Fed. Cir. 1985), even small differences in marks can prevent confusion when consumers are likely to

encounter the marks in distinct contexts. Here, the additional wording "DOÑA GALLINA" ensures that the marks create distinct commercial impressions, even for less discerning purchasers.

III. Conclusion

Respectfully, Applicant contends that the USPTO Examiner's refusal to register Applicant's mark "DEL CAMPO" based on a perceived likelihood of confusion with "DOÑA GALLINA DEL CAMPO" is unfounded. The marks differ significantly in their appearance, sound, meaning, and overall commercial impression. Furthermore, the shared term "DEL CAMPO" is relatively weak and descriptive, and the goods, while related, are not sufficiently similar to create confusion. Finally, the conditions of sale and consumer sophistication further mitigate any potential for confusion.

WHEREFORE, Applicant respectfully requests that the Trademark Trial and Appeal Board reverse the refusal to register the "DEL CAMPO" mark and allow the application to proceed to publication.

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