

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

Mailed:
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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

ConAgra Foods RDM, Inc. f/k/a ConAgra Brands, Inc.

v.

Candwich Food Corporation

Opposition No. 91170341
against Serial No. 78337608

Christopher M. Bikus, Michaela A. Smith, Patrick C.
Stephenson and Tracy Deutmeyer of McGrath North Mullin &
Kratz, PC LLO for ConAgra Foods RDM, Inc.

Julie K. Morriss of Morriss O'Bryant Compagni, P.C. for
Candwich Food Corporation

Before Quinn, Bucher and Drost, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Candwich Food Corporation seeks registration on the
Principal Register of the mark **CANDWICH** (*in standard
character format*) for goods identified in the application, as
amended, as follows:

"food items packaged in cans, namely,
vegetable-based snack foods" in International
Class 29; and

"food items packaged in cans, namely meat-
based sandwiches, candy, popcorn, candy

popcorn and dessert puddings" in
International Class 30.¹

ConAgra Brands, Inc. (by merger, now known as ConAgra Foods RDM, Inc.) has opposed this application on the ground of priority of use and likelihood of confusion, alleging that applicant's mark, when used in connection with the identified goods, so resembles its **MANWICH** mark, which is the subject of two registrations, as follows:

MANWICH for "sandwich sauce" in International Class 30;²
and

MANWICH for "spice and seasoning mixes for meats" also in
International Class 30.³

as to be likely to cause confusion, to cause mistake or to deceive, under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). As a second ground for opposition, opposer alleges that applicant's **CANDWICH** mark should be refused registration because allowing such registration would result

¹ Application Serial No. 78337608 was filed on December 8, 2003 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

² Registration No. 0888780 issued to Hunt-Wesson Foods, Inc. on March 31, 1970; second renewal. According to the records of the Assignment Services Division of the United States Patent and Trademark Office, this registration was assigned to Conagra Foods RDM, Inc. during May 2007, recorded at Reel 3579, Frame 0821.

³ Registration No. 1349839 issued to Hunt-Wesson Foods, Inc. on July 16, 1985; renewed. According to the records of the Assignment Services Division of the United States Patent and Trademark Office, this registration was assigned to Conagra Foods RDM, Inc., during May 2007, recorded at Reel 3579, Frame 0821.

in dilution of the distinctive quality of opposer's **MANWICH** mark in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

Applicant, in its answer, denied all the salient allegations of these claims.

I. THE RECORD

By operation of Trademark Rule 2.122, 37 CFR § 2.122, the record includes the pleadings and the file of the involved application.

The record also includes the following testimony and evidence:

A. Opposer's Evidence

1. Testimony Deposition of Joseph Anthony Bybel, Vice President of Marketing for a portfolio of brands, including **MANWICH**, taken on August 6, 2007 (with Exhibit Nos. 1-4) ("Bybel Dep.");
2. Opposer's First Notice of Reliance filed on August 27, 2007 on ConAgra's pleaded Registration No. 0888780;
3. Opposer's Second Notice of Reliance filed on August 27, 2007 on ConAgra's pleaded Registration No. 1349839.

4. Opposer's Third Notice of Reliance filed on August 27, 2007 on the discovery deposition of Mark R. Kirkland taken on February 27, 2007 ("Kirkland Dep.").
5. Opposer's Fourth Notice of Reliance filed on August 27, 2007 on printed publications; and
6. Opposer's Fifth Notice of Reliance filed on August 27, 2007 on third party Registration Nos. 2899796; 2928755; 2156879; 1222755; and 3229262.

B. Applicant's Evidence:

1. Applicant's First Notice of Reliance filed on October 24, 2007 on printed publications;
2. Applicant's Second Notice of Reliance filed on October 24, 2007 on the discovery deposition of Mark R. Kirkland (with Exhibit Nos. 1-6); and
3. Applicant's Third Notice of Reliance filed on October 24, 2007 on certain additional portions of the discovery deposition of Mark R. Kirkland earlier relied upon by opposer.

II. FACTUAL FINDINGS

The record establishes all of the following facts in this case.

According to the testimony of Mr. Bybel, opposer began sales of sloppy Joe sandwich sauce under the **MANWICH** mark

in 1969 (through its predecessor in interest). Hence, the **MANWICH** mark has been in continuous use on these sauces for almost forty years. As seen above, opposer owns two incontestable registrations for the **MANWICH** trademark.

Annual sales in 2007 reached approximately \$75 million, making the **MANWICH** brand one of the largest selling sloppy Joe sandwich sauces in the country. Opposer expends \$10 million annually on promoting its **MANWICH** branded products nation-wide. This effort includes television advertising, free-standing inserts and coupons in local newspapers, advertisements in retailers' circulars and over the Internet, as well as movie tie-ins that include joint promotions with DVD's such as "*Shrek*."

A typical can of **MANWICH** sauce costs approximately \$1.⁵⁰ and the primary customer of the **MANWICH** brand sauce is the individual responsible for purchasing household groceries. Opposer has also marketed under the **MANWICH** brand a ready-to-eat, refrigerated product having fully-cooked ground beef.

Applicant seeks to register the mark **CANDWICH** for use with shelf-stable, ready-to-eat, sandwiches that are contained within vending-sized cans. While the identification of goods lists meat-based sandwiches, the sample labels in the record were for peanut butter and jelly

sandwiches. Other types of sandwiches under development include barbecue chicken, barbecue beef, pizza, French toast and bacon & cheddar. Applicant also contemplates that the vendable-sized cans will contain vegetable-based snacks such as potato chips and crackers, as well as dessert puddings, etc. In addition to being sold through vending machines, applicant's canned products will likely be sold in retail stores. The ultimate consumers are projected to be primarily persons looking for a convenient, on-the-go food having a long shelf life and no need for refrigeration.

III. ANALYSIS

A. Standing

Opposer's standing is a threshold inquiry made by the Board in every *inter partes* case. In *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999), the Federal Circuit has enunciated a liberal threshold for determining standing, i.e., whether one's belief that one will be (is) damaged by the registration is reasonable and reflects a real interest in the case. See also *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987); and *Lipton Industries, Inc. v. Ralston Purina Company*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Opposer has submitted evidence of its ownership of

its **MANWICH** registrations. We consider this evidence as sufficient to establish opposer's interest and, therefore, standing, in this proceeding.

B. Priority

Because opposer has established that it owns valid and subsisting registrations of its pleaded mark, priority is not an issue. See *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); and *Carl Karcher Enterprises Inc. v. Stars Restaurants Corp.*, 35 USPQ2d 1125 (TTAB 1995).

C. Likelihood of Confusion

We turn, then, to the issue of likelihood of confusion under Section 2(d) of the Trademark Act. Our determination must be based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). 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." See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Fame

As to the strength of opposer's involved mark, the record shows that opposer's **MANWICH** mark is truly well-known. Opposer has enjoyed almost forty years of continuous usage of the **MANWICH** mark for sloppy Joe sauce. It expends approximately \$10 million annually in promotional costs, and during fiscal year 2007, opposer exceeded \$75 million in annual sales. There is no evidence in the record of any third-party use of similar marks for related goods. Accordingly, we find that the **MANWICH** mark is strong and entitled to a broad scope of protection.

More significantly, for our purposes, the *du Pont* factor focusing on the fame of the prior mark plays a dominant role in the process of balancing the *du Pont* factors in cases featuring a strong mark. *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992); see also *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005); *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303 (Fed.

Cir. 2002); and *Recot, Inc. v. M. C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894 (Fed. Cir. 2000). As the fame of a mark increases, the degree of similarity between the marks necessary to support a conclusion of likely confusion declines. *Bose Corp.*, 63 USPQ2d at 1309.

Moreover, the Federal Circuit has stated repeatedly that there is no excuse for even approaching the well-known trademark of a competitor. See *Nina Ricci S.A.R.L. v. E.T.F. Enterprises*, 889 F.2d 1070, 1074, 12 USPQ 1901, 1904 (Fed. Cir. 1989), inasmuch as "[a] strong mark... casts a long shadow which competitors must avoid"; and *Kenner Parker Toys Inc.*, 22 USPQ2d at 1456.

We agree with opposer that this evidence confirms that the **MANWICH** mark is famous. The evidence in this case certainly exceeds the extensive public recognition and renown found sufficient to establish fame in other cases.⁴

⁴ See *Bose Corp.*, 63 USPQ2d at 1308 [**ACOUSTIC WAVE** mark famous based on seventeen years of use, annual sales over \$50 million, annual advertising in excess of \$5 million, and extensive media coverage]; *Nina Ricci, S.A.R.L. v. E.T.F. Enters., Inc.*, 12 USPQ2d at 1902 [**NINA RICCI** famous for perfume, clothing and accessories based on \$200 million in sales, over \$37 million in advertising, and over 27 years of use]; *Kimberly-Clark Corp. v. H. Douglas Enter., Ltd.*, 774 F.2d 1144, 227 USPQ 541, 542 (Fed. Cir. 1985) [**HUGGIES** famous for diapers based on over \$300 million in sales over nine years and \$15 million in advertising in a single year]; *Specialty Brands Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 223 USPQ 1281, 1284 (Fed. Cir. 1984) [**SPICE ISLANDS** for teas, spices and seasonings famous based on use for 40 years, \$25 million annual sales for spices, \$12 million sales for tea between 1959 and 1981, and "several million" in advertising].

There is no implication in this record that applicant chose its mark to trade on the goodwill developed by opposer, but applicant's president, Mark R. Kirkland, admitted that he had known of the **MANWICH** brand for many years prior to the filing date of this application.

In view of the above, we find that the du Pont factor focusing on the fame of the mark weighs in favor of finding a likelihood of confusion herein.

Relatedness of the goods

We turn, next, to the relatedness of the goods as listed in the cited registrations and in the involved application. It is well-established that goods need not be identical or even competitive in order to support a determination of likelihood of confusion. Rather, it is enough that goods are related in some manner such that their marketing would be likely to be seen by the same persons which give rise to a mistaken belief that the goods are associated. *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978). Furthermore, the Board must base its determination of whether there is a relationship between the goods of the parties on the basis of the goods as identified in the respective application and registrations. *Octocom Systems, Inc. v. Houston Computer*

Services, Inc., 918 F.2d 937, 16 USPQ2d 1783, 1788 (Fed. Cir. 1990).

Applicant has characterized its intended products as vendable food items such as sandwiches, snacks such as chips and desserts such as puddings, all of which would be "packaged in cans."

Registrant's '780 Registration covers "sandwich sauce." As shown in the record, this is a tomato-based sauce for making sloppy Joe sandwiches when mixed with ground beef.

Applicant's identification of goods specifically enumerates "meat-based sandwiches." A sample label shows **CANDWICH** used in connection with a barbeque chicken sandwich. Applicant's president testified about his interest in pursuing barbeque beef and barbeque chicken sandwich pockets. In fact, applicant's president mused during his trial testimony that he thought to himself, as he was driving to the deposition, that it might be mutually beneficial to co-brand with opposer, creating the **CANDWICH** brand beef sandwich pocket using **MANWICH** brand sauce.

Moreover, the existence of the following third-party registrations for sandwich sauces as well as sandwiches and vendable snacks, all offered under the same mark, further supports the conclusion that the goods described in the **CANDWICH** application fall within the natural zone of

expansion for goods described in the **MANWICH**

registrations:

STOUFFER'S	for "prepared, preserved foods-namely, meats; fish; shellfish; poultry; vegetables; fruits; [and] soufflés" in International Class 29; "prepared, preserved foods-namely, pizza; crepes; sandwiches; [and] sauces" in International Class 30; ⁵
TRADER JOE'S	for, <i>inter alia</i> , " ... barbecue sauce, ... candy coated popcorn, ... caramel popcorn, ... cereal-based <i>snack food</i> , ... cheese flavored puffed corn <i>snacks</i> , ... corn <i>chips</i> , <i>corn curls</i> , ... cracker and cheese combinations, crackers, ... flour-based <i>chips</i> , ... grain-based <i>chips</i> , ... pizza sauce, popped popcorn, ... pretzels, ... processed popcorn, puddings, puffed corn <i>snacks</i> , ... rice-based <i>snack foods</i> , ... <i>sandwiches</i> , <i>sauces</i> , ... <i>snack mix</i> consisting primarily of crackers and/or pretzels and/or candied nuts and/or popped popcorn, ... <i>taco chips</i> , ... <i>tortilla chips</i> , ... and wheat-based <i>snack foods</i> " in International Class 30; ⁶
A TASTE OF INDONESIA	for, <i>inter alia</i> , "processed foods, namely, ... banana chips; ... beef jerky; processed blueberries; banana chips; ... cassava chips; ... yucca chips; ... cheese and cracker combinations; ... <i>shelf stable meat</i> , fish, poultry or vegetables; ... fruit-based <i>snack food</i> ; ... jams; jellies; ... marmalade; ... food package combinations consisting primarily of cheese, meat, seafood, vegetable and/or processed fruit; ... peanut butter; pork rinds; ... potato chips; potato crisps; ... <i>snack mix</i> consisting primarily of processed fruits; processed nuts and/or raisins; ... cheese spreads; <i>meat-based spreads</i> ; ... <i>tomato paste</i> ; <i>tomato puree</i> ; <i>canned, cooked and otherwise processed tomatoes</i> ; vegetable-based spreads; processed, fresh, and canned vegetables; ..." in International Class 29; "food products and ingredients of foods, namely, ... barbecue sauce; ... candied popped popcorn; ... candy coated popcorn; ... caramel popcorn; caramels; ... cereal based <i>snack food</i> ; cereal-based energy <i>snack food bars</i> ; ... cheese flavored puffed corn <i>snacks</i> ; ... corn chips; corn curls; ... cracker and cheese combinations; crackers; ... flour-based chips; ... glazed popcorn; ... grain-based chips; ... granola-based <i>snack bars</i> ; ...

⁵ Registration No. 1222755 issued on January 4, 1983; renewed.

⁶ Registration No. 2156879 issued on May 12, 1998; renewed.

*hamburger sandwiches; ... popped popcorn; ... pretzels; ... processed popcorn; ... puddings; puffed corn snacks; ... rice-based snack foods; ... granola-based snack bars; sloppy Joe sauce; sloppy Joe seasoning mix; ... tomato sauce; ... tortilla chips; ... wheat-based snack foods; ...: in Intl. Class 30;*⁷

**PLANET
COOK**

for, *inter alia*, " ... fruit and soy based *snack food*, fruit chips, ... fruit-based *snack food*, ... jams, jellies, ... marmalade, ... processed nuts, ... peanut butter, ... *potato chips*, ... *potato-based snack foods*, ... cheese or *chicken sandwich spread*, ... snack mix consisting primarily of processed fruits, processed nuts and/or raisins; ... soy-based *snack foods*, ... vegetable-based spreads, ..." in Intl. Class 29;
"... bakery goods, *barbecue sauce*, ... candy coated popcorn, ... caramel popcorn, ... cereal based *snack food*, cheese flavoured puffed corn *snacks*, ... corn chips, ... cracker and cheese combinations, crackers, ... food package combination consisting primarily of bread, crackers and or cookies, ... granola-based *snack bars*, ... microwave popcorn, ... popped popcorn, ... puddings, ... ready-to-eat cereal derived food bars, ... *sandwiches*, *sauces*, ... *tomato sauce*, ... *tortilla chips*, tortilla shells, ..." in International Class 30;⁸

JIMANO'S

for "*barbecue dry rub; barbecue sauce; ... pizza sauce; ravioli; sandwiches; sauces for barbecued meat; ... spaghetti sauce; frozen, prepared, packaged meals consisting primarily of pasta or rice*" in International Class 30.⁹

Channels of Trade

Under applicant's business model, the unique feature of packaging these goods is putting combinations of sandwich pockets, chips and/or a dessert pudding in vendable cans. Hence, the founder and president of applicant envisions that many of these goods will eventually be marketed through

⁷ Registration No. 2899796 issued on November 2, 2004.

⁸ Registration No. 2928755 issued on March 1, 2005.

⁹ Registration No. 3229262 issued on April 17, 2007.

vending machines. However, applicant's president also testified that he thought retail operations, including big-box, discount stores, would be key components of the initial marketing strategy. This latter effort would involve a trade channel that overlaps with opposer's traditional retail channels of trade. Even in the absence of such testimony, any asserted limitation in the actual trade channels of applicant cannot be considered. *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764-65 (TTAB 1986) [extrinsic evidence and argument suggesting trade-channel restrictions not specified in application rejected]. Neither the involved application nor the registrations at issue include any restrictions as to the channels of trade. Therefore, it must be assumed that the goods as they are identified in the application for registration would travel in all appropriate trade channels to all potential purchasers of such goods. *See Cunningham v. Laser Golf Corp.* 55 USPQ2d 1842, 1844 (Fed. Cir. 2000).

Conditions under which sales are made, and to whom

Similarly, the evidence in the record reveals that the intended purchaser of applicant's **CANDWICH** product will be "anyone that intends to purchase a food item," and more specifically, the individual responsible for purchasing household groceries. *See* opposer's Third Notice of

Reliance, Kirkland Dep. at 22-23, 41; applicant's Second Notice of Reliance, Kirkland Dep. at 41-42. This is the same consumer to whom opposer targets its products.

Moreover, both the involved products are inexpensive - ranging between one and two dollars apiece - clearly qualifying them as "impulse items." When goods are purchased on impulse and without a great deal of care, consumers pay limited attention to the purchase of such goods and are thus more susceptible to confusion. "It has often been stated that purchasers of such products are held to a lesser standard of purchasing care and thus, are more likely to be confused as to the source of the goods." *Wet Seal, Inc. v. FD Management, Inc.*, 82 USPQ2d 1629 (TTAB 2007) [sustaining the opposition on the grounds of likelihood of confusion, in part, because the parties' goods were susceptible to impulse purchase and frequent replacement; also citing to *Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.* 748 F.2d 669, 223 USPQ2d 1281 (Fed. Cir. 1984)].

The Marks

We turn next to examine the similarity or dissimilarity of the parties' marks in their entireties as to appearance, sound, connotation and commercial impression. See *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En*

1772, 73 USPQ2d at 1692. In particular, opposer argues that the parties' marks are confusingly similar as to sight, sound and meaning.

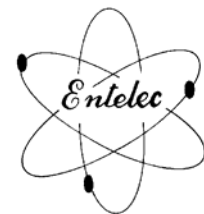
Under this *du Pont* factor, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions such that confusion as to the source of the goods offered under the respective marks is a likely result. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Comparing the marks, we agree with opposer that the linguistic component of applicant's mark and opposer's mark are similar in appearance and substantially identical in pronunciation. Both terms contain the same number of syllables and have the same stress pattern, with the primary accent on the initial syllable and the second syllable of each being identical. As to appearance and sound, the most noticeable difference between the marks is the fact that applicant's mark starts with the letter "C" while opposer's mark begins with the letter "M." In this context, slight differences in the sound of similar marks do not avoid a likelihood of confusion. *G.D. Searle & Co. v. Chas. Pfizer & Co.*, 265 F.2d 385, 387, 121 USPQ 74 (7th Cir. 1959)

[finding **BONAMINE** and **DRAMAMINE** confusingly similar

despite differences in the prefixes of both words]; see also *Interlego AG V. Abrams/Gentile Entertainment Inc.*, 63 USPQ2d 1862 (TTAB 2002) [finding **MEGO** confusingly similar to **LEGO**]; *American Cyanamid Co. v. U.S. Rubber Co.*, 356 F.2d 1008, 148 USPQ 729 (CCPA 1966) [given the similarity in sound and spelling, **PHYGON** confusingly similar to **CYGON**).

Certainly, no trademark owner can guarantee that the public will pronounce its mark perfectly. *Frances Denney, Inc. v. ViVe Parfums Ltd.*, 190 USPQ 302 (TTAB 1976) [**Vive** and fleur de lis design for perfume products are likely to cause confusion with **VIVA** cosmetic products]; *Nina Ricci S.A.R.L. v. Haymaker Sports, Inc.*, 134 USPQ 26 (TTAB 1962) [applicant's **RICCI OF HAYMAKER** is confusingly similar to opposer's **NINA RICCI** and **RICCI**]; *In re Electrons, Inc.*, 144 USPQ 442 (TTAB 1964) [applicant's **Di-EI-Trol** is confusingly similar to registrant's **DIALTRON**]; *In re Energy Telecommunications & Electrical Association*, 222 USPQ 350 (TTAB 1983) [**INTELECT** likely to be confused with the **ENTELEC** design shown at right:



In fact, applicant's president acknowledged that **CANDWICH** and **MANWICH** sound alike. (Opposer's Third Notice of Reliance, Kirkland Dep. at 39).

On the other hand, we do not find a strong similarity in connotation. To the extent the common suffix -WICH may

convey a relationship with sandwiches, prospective consumers may be inclined to look to the first syllable for distinguishing matter. In this context, opposer's mark may suggest a sandwich suitable for a "man," while applicant's proposed mark suggests a sandwich in a "can."

Hence, while the beginning consonants have a different appearance, these words sound very much alike when spoken. We find that this similarity in sound and appearance outweighs the dissimilarity in connotation.

While we cannot be sure what commercial impressions these respective marks will create, given the relatedness of the goods, we find it possible that consumers acquainted with opposer's **MANWICH** sauces, upon first encountering applicant's **CANDWICH** barbeque beef sandwich pockets, for example, may find the respective commercial impressions similar enough to assume that this may well be a logical brand extension by opposer.

We note that the record does not reveal the frequency with which manufacturers and merchants choose -WICH formative marks in connection with sandwich-related products. However, we should hasten to note that in finding these two marks in their entirety to be confusingly similar, we are clearly *not* finding that any one party could create for itself proprietary rights in the -WICH suffix in

connection with the manufacturing and/or merchandising of sandwiches.

Resolving any Doubt against applicant

Further, all doubt with respect to whether confusion, mistake or deception is likely must be resolved against the applicant. *Uncle Ben's, Inc. v. Stubenberg, Int'l, Inc.*, 47 USPQ 1310 (TTAB 1998) [finding a likelihood of confusion between **UNCLE BEN'S** and **BEN'S BREAD**].

In this case, it is clear that applicant adopted its mark knowing full well of opposer's well-known **MANWICH** mark. (Opposer's Third Notice of Reliance, Kirkland Dep. at 35). Applicant acknowledged that the goods offered under its mark could be used in conjunction with the goods offered under the **MANWICH** mark. (Opposer's Third Notice of Reliance, Kirkland Dep. at 38). "It is a well established principle that one who adopts a mark similar to the mark of another for the same or closely related goods or services does so at his own peril, and any doubt as to likelihood of confusion must be resolved against the newcomer and in favor of the prior registrant." *Starbucks U.S. Brands, LLC v. Ruben*, 78 USPQ2d 1741 (TTAB 2006). In this case, we find that applicant's mark is simply too similar to opposer's mark and as such, any doubt which may exist, must be resolved against applicant.

D. Dilution

Finally, we note that opposer also charges that given the demonstrated prior fame of opposer's **MANWICH** mark, applicant's use of its **CANDWICH** mark is likely to cause dilution of opposer's mark under the Federal Trademark Dilution Act of 1995. However, given our determination that opposer has priority of use and that there is a likelihood of confusion herein, we find it unnecessary to reach a determination on the question of dilution in this proceeding.

Decision: The opposition is sustained based on the ground of likelihood of confusion under Section 2(d) of the Lanham Act, and registration to applicant is hereby refused.