

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

FSW/JD

Mailed: April 3, 2008

Opposition No. 91170650

Hillyard Enterprises, Inc.

v.

Industrial Steam Cleaning  
Inc.

Before Hairston, Grendel and Cataldo, Administrative  
Trademark Judges.

By the Board:

Opposer, Hillyard Enterprises, Inc., filed a notice of opposition to registration of the mark GREASEBUSTERS, in standard character form, for "commercial cleaning of industrial kitchen exhaust systems," in Class 37.<sup>1</sup> In its notice of opposition, opposer alleges ownership of the mark GREASE BUSTER for "cleaning composition for removing fats from all types of surfaces intended for institutional and industrial use" in Class 3<sup>2</sup> and a likelihood of confusion among relevant purchasers of the parties' respective goods

---

<sup>1</sup> Trademark application Serial No. 76611948, filed September 20, 2004, claiming 1980 as the date of first use in commerce.

<sup>2</sup> Reg. No. 1019134, for the mark GREASE BUSTER, in typed mark form with GREASE disclaimed, issued September 2, 1975. Section 8 and 15 affidavits have been accepted and acknowledged.

and services. Applicant, in its answer, denied the salient allegations of the notice of opposition.

This case now comes before the Board for consideration of opposer's motion, filed January 16, 2007, for summary judgment on the pleaded issue of likelihood of confusion under Section 2(d) of the Trademark Act. The motion has been fully briefed.

For the reasons stated below, opposer's motion for summary judgment is granted.

**SUMMARY JUDGMENT STANDARD**

Generally, summary judgment is appropriate in cases where the moving party establishes that there are no genuine issues of material fact which require resolution at trial and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is material when its resolution would affect the outcome of the proceeding under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is genuinely in dispute if the evidence of record is such that a reasonable fact finder could return a verdict in favor of the nonmoving party. See *Lloyd's Food Products Inc. v. Eli's Inc.*, 25 USPQ2d 2027 (Fed. Cir. 1993). However, a dispute over a fact which would not alter the Board's decision on the legal issue will not prevent entry of summary judgment. See, for example, *Kellogg Co. v. Pack'em Enterprises Inc.*, 14 USPQ2d 1545

**Opposition No. 91170650**

(TTAB 1990), *aff'd*, 21 USPQ2d 1142 (Fed. Cir. 1991). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and all inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. See *Opryland USA, Inc. v. Great American Music Show, Inc.*, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy's Inc.*, 22 USPQ2d 1542 (Fed. Cir. 1992).

After a careful review of the record in this case, we find that there are no genuine issues of material fact relating to opposer's standing, priority, or likelihood of confusion.

**STANDING AND PRIORITY**

Opposer has made of record a status and title copy of its pleaded registration. In view thereof, opposer has established its standing and priority. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400 (CCPA 1974); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943 (Fed. Cir. 2000).

**LIKELIHOOD OF CONFUSION**

In determining whether there is any genuine issue of material fact relating to the legal question of likelihood of confusion, the Board must consider all of the probative facts in evidence which are relevant to the factors bearing on likelihood of confusion as identified in *In re E.I. du*

**Opposition No. 91170650**

*Pont de Nemours & Co.*, 177 USPQ 563 (CCPA 1973). As noted in the *du Pont* decision itself, various factors, from case to case, may play a dominant role. *Id.*, 177 USPQ at 567. Even a single *du Pont* factor may be dispositive in certain cases. See *Kellogg Co. v. Pack'em Enterprises Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 21 USPQ2d 1142 (Fed. Cir. 1991); *Ava Enterprises, Inc. v. P.A.C. Trading Group, Inc.*, Opposition No. 91175014 (TTAB Mar. 20, 2008).

Turning to the likelihood of confusion analysis, while we have considered each factor for which we have evidence, in this case, the key factors are the degree of similarity between the marks GREASE BUSTER and GREASEBUSTERS, the relatedness of the goods and services, and the channels of trade. *Han Beauty, Inc. v. Alberto-Culver Co.*, 57 USPQ2d 1557, 1559-1560 (Fed. Cir. 2001).

***Similarity Between the Marks***

There is no genuine issue of material fact that the marks are nearly identical in appearance, sound, meaning and commercial impression. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). Both marks consist of the terms "GREASE" and "BUSTER." The only differences between them is the pluralization of applicant's mark and the space between the words in that of opposer. Such minor differences are not sufficient to create a genuine issue as to the

**Opposition No. 91170650**

similarity or dissimilarity between the marks. Marks may be confusingly similar in appearance, sound, meaning and commercial impression despite the addition, deletion or substitution of letters or words, or the addition or deletion of spaces between words. *See, e.g., In re Pix of America, Inc.*, 225 USPQ 691 (TTAB 1985) (NEWPORTS likely to be confused with NEWPORT); and *Gastown Inc. of Delaware v. Gas City, Ltd.*, 187 USPQ 760 (TTAB 1975) (GAS CITY, with "GAS" disclaimed, likely to be confused with GASTOWN).

Applicant argues that the mark GREASE BUSTER merely combines descriptive terms without creating a new non-descriptive meaning and, as such, is entitled to a narrower scope of protection. In support thereof, applicant has submitted evidence consisting of dictionary definitions and third party usage of the term BUST or BUSTS in a descriptive sense. The foregoing evidence and the disclaimer of the term "grease" in opposer's mark are probative of the suggestive nature of the mark. *See In re Leiner Health Services Corp.*, 2004 TTAB Lexis 324. While we agree with applicant that the mark GREASE BUSTER is relatively weak, even a weak mark is entitled to protection against the registration of a nearly identical mark for closely related goods or services. *See King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400 (CCPA 1974).

***Relatedness of the Goods and Services; Channels of Trade***

Next, we consider whether the goods of the opposer and the services of the applicant and the channels of trade through which the goods and services travel are related.

In order to find that there is a likelihood of confusion, it is not necessary that the goods and/or services on or in connection with which the marks are used be identical or even competitive. It is enough if there is a relationship between them such that persons encountering them under their respective marks are likely to assume that they originate from the same source or that there is some association between their sources. *See, e.g., On-line Careline Inc. v. America Online Inc.*, 56 USPQ2d 1471 (Fed. Cir. 2000). It is well recognized that confusion may occur from the use of the same or similar marks for goods, on the one hand, and for services involving those types of goods, on the other. *See, e.g., In re Hyper Shoppes (Ohio) Inc.*, 6 USPQ2d 1025 (Fed. Cir. 1988).

Opposer's goods are a "cleaning composition for removing fats from all types of surfaces intended for institutional and industrial use." Applicant's services are "commercial cleaning of industrial kitchen exhaust systems." Opposer's goods clearly may be used for the same purpose and by the same end consumers as applicant's services, namely, owners of industrial kitchens seeking to clean their

**Opposition No. 91170650**

kitchens. Specifically, opposer's cleaning composition can be used to clean fats from "industrial kitchen exhaust systems." Likewise, one would typically remove fats from industrial kitchen exhaust systems while cleaning them.

In view thereof, applicant has not raised a genuine issue of material fact that the goods and services are not related.

Moreover, an applicant may not restrict the scope of its goods and services and/or the scope of the goods and services in the registration by extrinsic argument or evidence, for example, as to the quality or price of the goods. *See, e.g., In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986). Rather, the nature and scope of a party's goods or services must be determined on the basis of the goods or services recited in the application or registration. *See, e.g., Hewlett-Packard Co. v. Packard Press Inc.*, 62 USPQ2d 1001 (Fed. Cir. 2002); *In re Uncle Sam Chemical Co., Inc.*, 229 USPQ 233 (TTAB 1986) (SPRAYZON for cleaning preparations and degreasers for industrial and institutional use held likely to be confused with SPRA-ON and design for preparation for cleaning woodwork and furniture). Accordingly, applicant's argument that opposer "has not introduced any evidence ... [regarding] whether the products are used as or useful [sic] specifically by anyone for the cleaning of kitchen exhaust systems" is insufficient

**Opposition No. 91170650**

to raise a genuine issue that the goods and services are not related in view of the overlapping identifications.

Turning to the channels of trade, applicant contends that the channels of trade for the parties' respective goods and services will be limited and different. However, "regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which sales of the goods are directed," the determination of whether there is a likelihood of confusion must be based on the goods and services as they are identified in the registration and application. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 16 USPQ2d 1783, 1786 & 1787 (Fed. Cir. 1990).

Applicant provides commercial cleaning of industrial kitchen exhaust systems. Narrow though that is, it falls within the rubric of "institutional and industrial use" and, therefore, falls within opposer's trade channels. Moreover, opposer's goods clearly may be used for the same purpose and by the same end consumers as applicant's services, namely, owners of industrial kitchens seeking to clean their kitchens. Accordingly, applicant's industrial use and opposer's industrial and institutional use recite overlapping channels of trade.

**Other Factors**

Applicant argues that there exist genuine issues of material fact regarding the conditions under which, and the buyers to whom, sales are made. Specifically, applicant argues that the services are expensive and entered into only after discussions, and that the customers, being restaurant owners, are sophisticated. Applicant has not, however, introduced any evidence that the normal purchasers of the parties' goods and services are especially sophisticated or careful in making their purchasing decisions. Applicant may not restrict the scope of its services, as otherwise identified in the application, by extrinsic argument or evidence as to the price of the services or the length of time the service contracts are entered into. *See, e.g., In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986). Moreover, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are immune from source confusion. *See In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). For purposes of this summary judgment motion, we view these factors as favoring neither party herein, but they do not raise genuine issues of material fact.<sup>3</sup>

---

<sup>3</sup> Moreover, we note that had we found these factors favored applicant, they still would not alter the ultimate determination in this case.

Finally, applicant points to the lack of any evidence of actual confusion despite a long period of contemporaneous use as raising a genuine issue precluding summary judgment. Of course, opposer is not required to prove actual confusion in order to make out a prima facie showing of likelihood of confusion. See *Block Drug Co. v. Den-Mat, Inc.*, 17 USPQ2d 1315 (TTAB 1989); *Airco, Inc. v. Air Equipment Rental Co., Inc.*, 210 USPQ 492 (TTAB 1980). Nonetheless, we find that this factor slightly favors applicant in the overall likelihood of confusion analysis.

**SUMMARY**

For purposes of determining opposer's motion for summary judgment, we must determine whether any genuine issues of material fact exist with respect to opposer's claims of standing, priority and likelihood of confusion. We find no issues as to standing or priority. With respect to likelihood of confusion, while the *du Pont* factors of weakness of opposer's mark and lack of actual confusion weigh in applicant's favor, the critical factors of the similarities of the marks, the relatedness of the goods and services, and the similarities of channels of trade favor opposer. On balance, we find that no genuine issues of material fact remain for trial, and that opposer is entitled to judgment as a matter of law. There is no indication in the record that trial would produce additional or different

**Opposition No. 91170650**

evidence on these points so as to change their weight in the balancing of the *du Pont* factors. Nor is there any indication that applicant could produce at trial any evidence on other *du Pont* factors that would change the balance. See *Kellogg v. Pack'em*, 14 USPQ2d 1545.

Accordingly, opposer's motion for summary judgment is granted, the opposition is sustained, and registration to applicant is refused.