

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

HELEN OF TROY LIMITED)

Opposer,)

v.)

CONAIRCIP, INC.)

Applicant.)

TTAB

Opposition No. 91160544

09-01-2006

U.S. Patent & TMO/tm Mail Rpt Dt. #32

APPLICANT'S BRIEF IN SUPPORT OF TRADEMARK APPROVAL

Introduction

Applicant Conair Corporation, successor-in-interest to ConairCIP, Inc., hereby submits this brief in support of its application for registration of the trademark "CERAMIC PULSE," application Serial No. 78/133,197. As more fully set forth below, Applicant believes that its application for registration should be approved, as Applicant's mark is clearly distinguishable from Opposer's "PULSE TECHNOLOGY" mark, there is no evidence of consumer confusion between the marks, and Opposer's mark is a descriptive and generic term, notwithstanding its registration. For these reasons, registration of "CERAMIC PULSE" will not cause consumer confusion or dilute Opposer's "PULSE TECHNOLOGY" mark.

Opposer's Mark and Applicant's Mark Are Clearly Different

Both Applicant's "CERAMIC PULSE" mark and Opposer's "PULSE TECHNOLOGY" mark are unitary marks and should be viewed as such. In their entirety, the appearance and sound of the marks are markedly different, as there is a major differentiation in the phonetic flow of "CERAMIC PULSE" and "PULSE TECHNOLOGY" when the marks are read and spoken.

Clearly, a reasonable person would be able to ascertain the difference between these two marks, and it is Applicant's contention that there is no likelihood of consumer confusion between the marks.

Opposer argues in its brief that Applicant's mark cannot be distinguished from Opposer's mark because Opposer markets products using the word "ceramic" concurrently with its "PULSE TECHNOLOGY" mark. Opposer's argument is without merit, as Opposer is using the word "ceramic" in a strictly descriptive way to describe a product feature, in contrast to the suggestive nature of Applicant's mark.

Taken as a whole, Applicant's mark is clearly distinguishable from Opposer's mark in sound and appearance. Consequently, the fact that both marks may be used in conjunction with hair styling appliances and may appear in similar trade channels is not a dispositive factor.

There Is No Evidence Of Consumer Confusion Between the Two Marks

Applicant has been using its "CERAMIC PULSE" mark since approximately June 2002, so for over four (4) years the marks "CERAMIC PULSE" and "PULSE TECHNOLOGY" have co-existed in the marketplace. During this period, Applicant is not aware of any evidence of consumer confusion with respect to the source of the goods bearing the marks, nor has Opposer alleged any actual confusion.

In addition, the documents attached as Exhibit 2 to Applicant's Response to Opposer's First Request for Production of Documents indicate that Applicant's "CERAMIC PULSE" mark is used on the packaging of the products in conjunction with other, more prominent marks of

Applicant identifying the product's primary brand and/or trade name (i.e., "Jilbère de Paris™", "Ceramic Tools™", "Babyliss®PRO"). Under these circumstances, a consumer can readily ascertain the differences between Applicant and Opposer's product lines.

Opposer has not demonstrated any injury, damage or actual harm to Opposer's business since Applicant introduced products bearing its "CERAMIC PULSE" mark into the marketplace. Given that Opposer apparently has been using its "PULSE TECHNOLOGY" mark since March 1995 (Opposer's Brief, p. 2), consumers would readily know the difference between Opposer's products and Applicant's products.

Opposer's Mark Is A Generic Term

Notwithstanding its registration, there is nothing inherently protectible about Opposer's mark, as it is merely a descriptive and generic term used to describe a quality, feature or function of Opposer's products. "Pulse technology" is a term that describes the engineering concept of proportional power control, a common type of electronic power regulation used to regulate temperature but is employed in a variety of other applications as well. An internet search of "pulse technology" reveals other companies touting the benefits of their own "pulse technology" techniques and applications.

It should be noted that Opposer's mark was initially refused registration on descriptive grounds. The USPTO in its Office Action asked Opposer to indicate whether the term "pulse technology" had any significance in the relevant trade or industry, and whether "pulse technology" is used in the goods. Opposer stated in response that the only significance was as a trademark to identify the goods and type of heat controller used, without mentioning the significance of the term as an engineering concept that is utilized in a variety of applications.

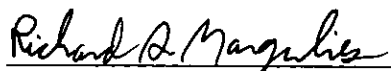
As confirmed by Opposer's Response to Applicant's Interrogatory No. 10, as well as the marketing materials attached as Exhibit A to Opposer's brief, Opposer utilizes the following language on the packaging of its products: "with Pulse Technology®," "features Pulse Technology®," or "patented Pulse Technology®," (emphasis added), all presumably to call attention to the temperature control feature within the product.

Under these circumstances, Applicant's mark should proceed to registration, as Opposer should not have the exclusive right to utilize the term "pulse" in connection with the products covered by its registration given the descriptive and generic nature of Opposer's mark.

Conclusion

Applicant's "CERAMIC PULSE" mark and Opposer's "PULSE TECHNOLOGY" mark are clearly different and Opposer has not proven consumer confusion or dilution in value of its "PULSE TECHNOLOGY" mark since the entry of Applicant's "CERAMIC PULSE" mark into the marketplace. Therefore, for the foregoing reasons, Applicant respectfully requests that the registration of its "CERAMIC PULSE" mark be approved.

Respectfully submitted,



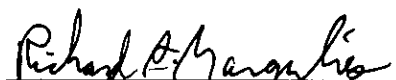
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Applicant's Brief In Support of Trademark Approval was served on Counsel for Opposer, by regular mail, postage prepaid, this 1st day of September, 2006, as follows:

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