Patent and Trademark Office
Trademark Trial and Appeal Board

Ipco Corp. v. Blessings Corp.

Opposition No. 69,106

Decided January 12, 1988

TRADEMARKS AND UNFAIR COMPETITION

1. Types of marks — In general (§327.01)

Types of marks — Slogans (§327.13)

Opposer's use of word "confidence" in phrase, "confidence to enjoy a normal and active life," which appears on its booklet describing incontinence and its incontinence products does not constitute mark, since opposer's use of word is merely integral and natural part of phrase.

2. Practice and procedure in Patent and Trademark Office — Opposition and cancellation — In general (§325.0305.03)

Opposer to "Confidence" as mark for reusable incontinence briefs has standing to oppose, even though opposer has not used word "confidence" as mark, since party is not required to have proprietary rights in mark in order to maintain opposition, and since opposer's use of word on brochures and its receipt of cease and desist letter from applicant demonstrate that it has real interest in outcome of proceedings.

Opposition brought by Ipco Corp. against application, serial no. 400,316, filed October 19, 1982, by Blessings Corp. Opposition dismissed.

Joseph J. Previto, New York, N.Y., for Ipco Corp.

Marvin N. Gordon, New York, for Blessings Corp.

Before Sams, Rice, and Seeherman, members.

Seeherman, Member.

Ipco Corporation has opposed Blessings Corporation's application to register "CONFIDENCE" for reusable incontinence briefs.[1] As grounds for opposition, opposer has alleged that it has used the word "CONFIDENCE" in connection with the promotion and sale of incontinent care products since prior to applicant's use of the mark; that the goods identified in the application are of the same descriptive properties as opposer's goods and are sold through the same trade channels and to the same customers; that applicant's mark for such goods is so similar to opposer's use of "CONFIDENCE" that it is likely to cause confusion, mistake or deception; and that applicant has requested that opposer discontinue its use of "CONFIDENCE", thereby indicating that applicant believes that confusion is likely and also indicating opposer's damage.

In its answer applicant admitted that it requested opposer to discontinue its use of "CONFIDENCE" and denied the remaining salient allegations in the notice of opposition.

The record includes the pleadings; the application file; opposer's responses to certain of applicant's interrogatories relied on by applicant; exhibits produced by applicant in response to certain of opposer's interrogatories, applicant's response to opposer's request for admission and, pursuant to Rule 2.120(j)(5), opposer's answers and supplemental answers to certain of applicant's interrogatories, all relied on by opposer; and the testimony, with exhibits, of Nancy K. Robinson, Senior Product Manager at opposer's Whitestone Products Division. Both parties have also attempted to rely on certain documents produced in response to document production requests. While such documents cannot be placed into evidence by means of a notice of reliance, because both parties have treated them as of record we will consider them as having been made of record by stipulation pursuant to Rule 2.123(b).

The record shows that opposer makes a variety of disposable incontinent care products, including briefs. These products are sold to grocery chains, drug chains, and home health care stores, to medical surgical supply houses, which in turn sell them to nursing homes and hospitals, and to drug wholesalers, which sell them to independent pharmacies.

In April, 1981 opposer had a pamphlet printed which described its "AMBEZE" incontinent pants and its Whitestone Disposable Liners, and also gave some information about the problem of incontinence. The front of the pamphlet, reproduced below, is headed "Confidence to Enjoy a Normal and Active Life."

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[1] Application Serial No. 400,316, filed October 19, 1982, and asserting a date of first use and first use in commerce on July 19, 1982.