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PRECEDENT OF THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Evonik Goldschmidt GmbH

Serial No. 85014843

William F. Lawrence and Marilyn Matthes Brogan of Frommer
Lawrence & Haug LLP for Evonik Goldschmidt GmbH.

Maureen Dall Lott, Trademark Examining Attorney, Law Office
117 (J. Brett Golden, Managing Attorney).

Before Seeherman, Holtzman and Lykos, Administrative
Trademark Judges.

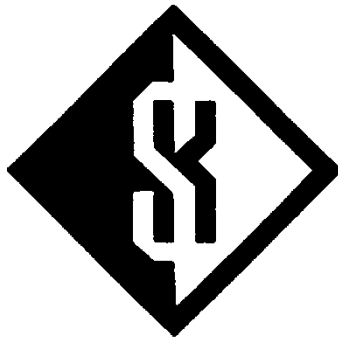
Opinion by Seeherman, Administrative Trademark Judge:

Evonik Goldschmidt GmbH has appealed from the final
refusal of the trademark examining attorney to register
SK-INFLUX, in standard characters, as a trademark for
"chemical products for use in industry, namely, additives
and auxiliary agents for the production of cosmetic and
pharmaceutical products."¹ Applicant has stated that "SK"

¹ Application Serial No. 85014843, filed April 15, 2010. The
application is based on Section 1(a) (use in commerce) and

and "INFLUX" appearing in the mark has no significance in the relevant trade or industry or as applied to the goods/services listed in the application, or any geographical significance.

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that applicant's mark, as used for its goods, is likely to cause confusion with the following marks, all owned by the same entity, SK Holdings Co., Ltd.:



for, inter alia, chemical additives for use in the manufacture of pharmaceuticals, cosmetics and plastic molding compositions; chemical additives for use in the manufacture of adhesives, pharmaceuticals, textile, plastics and paints; synthetic resins for use in the manufacture of adhesive, paint, cosmetics and binder.²

asserts first use and first use in commerce as early as March 31, 2000. Applicant also asserts a priority filing date of March 2, 2010, under Section 44(d) of the Trademark Act, based on a German application. Applicant subsequently submitted the German registration, thus perfecting the Section 44(e) basis for the application.

² Registration No. 2759298, issued September 2, 2003. The registration as originally issued was for goods in eight classes. The registration for six of the classes was cancelled as a result of the registrant's failure to file a Section 8 affidavit of continuing use for the goods in those classes. The goods that



for, inter alia, acetone and citric acid for industrial purposes;³

and for, inter alia, medicines for sensory organs, namely, central nervous system stimulants; oral contraceptive pills, gummed medical taffeta plasters; mouthwashes for medical purposes; breath refreshers for medical purposes; vermifuges; Goulard water for use as an astringent or anti-inflammatory lotion; bronchodilating preparations; antiparasitic preparations; eye-wash; tobacco-free cigarettes for medical purposes; cod liver oil; agents affecting metabolism; liniments; chilblain preparations, digitalin; synthetic narcotics, anesthetics; agents affecting peripheral nervous system; agents for immunity adjustment; agents for treating physically caused lesions; and oriental medicines for women's diseases, namely, hormonal imbalances or fertility treatments;⁴

remain, and for which a Section 8 affidavit has been accepted, are in Classes 1 and 4, and we have listed those goods in Class 1 that are most similar to the goods in applicant's application.

³ Registration No. 3422863, issued May 6, 2008. This registration lists hundreds of items in Class 1. The examining attorney has discussed and submitted evidence to show the relatedness of applicant's goods to the citric acid and acetone listed in the identification, and we therefore will not burden this opinion with a multi-page listing of the entire identification.

⁴ Registration No. 3411705, issued April 15, 2008. The registration is for a very large number of goods in Class 5, and we have listed a small number of the items that are in the nature of pharmaceutical products. The examining attorney has stated that the refusal with respect to this registration is limited to applicant's "chemical products for use in industry, namely, additives and auxiliary agents for the production of pharmaceutical products," i.e., not the additives and auxiliary agents for the production of cosmetics.

Registration No. 3422863 includes the description statement, "The mark consists of the color red appearing in the inside of the butterfly and in the letters SK. The color white appears separating the color red from the color orange which appears on the outside of the butterfly's wings." (The description of the mark in Registration No. 3411705 is essentially the same, but instead of the language "the inside of the butterfly," it says "the inside of the butterfly's wings.")

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

We consider the issue of likelihood of confusion with respect to each registration in turn.

Registration No. 2759298

Applicant's identified additives for the production of cosmetic and pharmaceutical products must be considered legally identical to the chemical additives for the manufacture of pharmaceuticals and cosmetics identified in

this registration and, because the goods are legally identical, they must be presumed to travel in the same channels of trade and be sold to the same classes of customers. See *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (absent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers). These two du Pont factors obviously favor a finding of likelihood of confusion. However, there are two other relevant du Pont factors that do not, and in this case they outweigh the other factors.

The mark in Registration No. 2759298 consists of letters in a design format in which the letters partially appear on the reverse tonality background, and part of each letter appears or is created by part of the other letter. As a result, it is not clear that the letters are, in fact, "SK"; for example, the mark may be perceived as the letter "S" next to an abstract line design. Even if we accept that consumers would view the letters in the mark as "SK," because the letters are depicted in a noticeable design format, we cannot treat the mark as though it were merely the letters SK, or that it would be pronounced as SK. "The nature of stylized letter marks is that they partake of both visual and oral indicia, and both must be weighed in

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