Paper No. 19
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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 9/16/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

MTD Products Inc.
v.
Snapper, Inc.

Opposition No. 105,924
to application Serial No. 75/099,534
filed on May 6, 1996

Roger D. Emerson of Emerson & Associates for MTD Products Inc.

Thomas E. Dorn of Dorn, McEachran, Jambor & Keating for Snapper, Inc.

Before Simms, Seeherman and Walters, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

MTD Products, Inc. (opposer), an Ohio corporation, has opposed the application of Snapper, Inc. (applicant), a Georgia corporation, to register the mark YARD CRUISER ("YARD" disclaimed) for lawn and garden equipment; namely, riding lawn mowers.[1] In the notice of opposition, opposer alleges that it and its predecessors have, since 1933, used

the marks YARD-MAN and MTD YARD MACHINES in connection with riding lawn mowers and other lawn and garden products. Opposer also asserts ownership of 15 registrations for these products. Opposer pleads that applicant's mark YARD CRUISER for riding lawn mowers so resembles opposer's marks YARD-MAN and MTD YARD MACHINES for competitive products that there is a likelihood of confusion.

In its answer, applicant has denied the essential allegations of the notice of opposition, but it has admitted that opposer owns the 15 pleaded registrations. While applicant admits that the parties are competitors, it has denied in its answer that the goods are directly competitive or identical. Applicant asserts, however, that the term "YARD" is a "generic descriptive term," and that others use marks with this term for similar goods.

The record of this case consists of notices of reliance submitted by both parties as well as affidavits submitted pursuant to stipulation under Trademark Rule 2.123(b). Applicant's application is also of record. The parties have filed briefs but no oral hearing was requested.

The Record

Opposer's record consists of status and title copies of its pleaded registrations. These registrations include

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[1] Application Serial Number 75/099,534, filed May 6, 1996, based upon applicant's allegation of a bona fide intention to use the mark in commerce.

those covering the mark YARD-MAN for lawn and garden tractors and structural parts thereof, hand and motor-propelled lawn mowers and riding mowers and other lawn and garden equipment, and for MTD YARD MACHINES ("YARD MACHINES" disclaimed) for riding mowers and other lawn and garden equipment, as well as lawn and garden tractors and structural parts thereof. According to the stipulated affidavits of record, opposer's executive vice-president indicates that opposer continues to use its registered marks and that opposer has developed valuable goodwill associated with these marks. Opposer has also submitted the affidavit of a former employee of applicant who indicates that he proposed and selected applicant's mark in 1995, and that he was aware of opposer's mark YARD-MAN at that time.

According to the affidavit of applicant's attorney, submitted pursuant to agreement, he has determined, by responsive letters from various registrants (attached to the affidavit), that, among others, the following registered third-party marks are in current use: YARD KING for lawn mowers; YARD PRO for power-operated edgers and trimmers as well as mowers; YARD WASTE MANAGEMENT SYSTEM for power-operated grinders for processing yard waste; and YARDWARE for power-operated grass trimmers, brush cutters, chain saws, hedge trimmers, leaf blowers and sprayers. Applicant has also submitted a status and title copy of its prior

registration covering the mark “TURF CRUISER” (“TURF” disclaimed) for riding lawn mowers, the same goods for which it is now seeking to register the mark YARD CRUISER.

Arguments of the Parties

Opposer argues that the word “YARD” is the dominant part of both parties’ marks, that applicant’s mark is “substantially incorporated in its entirety” in opposer’s “family” of marks and that the “YARD” portion of applicant’s mark will stimulate a recollection of opposer’s marks. Opposer contends that its marks are well-known and “command a [sic] enormously high degree of recognition … by the purchasing public.” Brief, 9. Opposer also contends that only one of the third-party registered marks is used in connection with lawn mowers. Since applicant’s mark and opposer’s marks will be or are used in connection with identical goods sold in the same retail outlets, such as lawn and garden retailers, opposer argues that the marks will “inevitably” lead to confusion. Finally, opposer maintains that any third-party registrations should not aid applicant in registering another confusingly similar mark, and that any doubt in this case should be resolved in favor of opposer, the prior user and registrant.

In its brief, applicant concedes that there is no dispute as to the issues of priority or relatedness of the goods in this case (riding lawn mowers). However, applicant

takes issue with opposer with respect to the dominant part of the parties' marks, contending that the word "YARD" is not dominant in the marks of either party. Indeed, applicant argues that if one word is dominant in its mark, it is the word "CRUISER". Applicant also points out that the words "YARD MACHINES" are disclaimed in all of opposer's registrations. Further, it is applicant's contention that "YARD" is either descriptive or suggestive of yard work or lawn mowing. Citing McCarthy's treatise, applicant argues that a weak portion of a composite mark should not generally be the basis for a finding of likelihood of confusion. Considering the marks in their entireties, applicant argues that the marks project different meanings and commercial impressions.

> Certainly, the mental image of a *person* [a 'yard man'] employed to do outdoor work, such as mowing lawns, will not be associated with the image of a YARD CRUISER, a land ship or a cruiser which is floating over tall grass, much as a more conventional ship would float over water. The over-all impression, when the marks are viewed as a whole, evokes vastly different images in the mind of the average purchaser and would not be confusingly similar.

Applicant's brief, 7.

Discussion and Opinion

Upon careful consideration of this record and the arguments of the parties, we agree with applicant that, on this record, confusion is unlikely. Although the parties' goods must, for our purposes, be considered identical, they

are nevertheless not inexpensive items, but are products which presumably are purchased after some deliberation and with some care. This fact, coupled with the obvious differences in the sound, appearance and meaning of the parties' marks as well as the demonstrated third-party use and obvious suggestiveness of the word "YARD" used in connection with lawn and garden equipment, convinces us that purchasers would not be likely to be confused if these marks were to be used, even on identical goods. See, for example, Maremont Corp. v. Air Lift Co., 463 F.2d 1114, 174 USPQ 395 (CCPA 1972)(LOAD-CARRIER for load-supporting and damping units for vehicles held not likely to cause confusion with LOADLIFTER for air springs for vehicles). Finally, the fact that applicant's mark may bring opposer's to mind, and we have our doubts that even that will occur, does not in and of itself establish likelihood of confusion as to source. See Jacobs v. International Multifoods Corp., 668 F.2d 1234, 212 USPQ 641, 642 (CCPA 1982).[2]

Decision: The opposition is dismissed.

R. L. Simms

E. J. Seeherman

[2] The cases cited on pages 10 and 11 of opposer's brief are distinguishable on their facts.

C. E. Walters
Administrative Trademark Judges,
Trademark Trial and Appeal Board