

This Opinion is not a
Precedent of the TTAB

Mailed: September 18, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Luv n' Care, Ltd.
v.
MAM Babyartikel GmbH

—
Cancellation No. 92071536
—

Robert M. Chiaviello, Jr., of NubyLaw
for Luv n' Care, Ltd.

Richard Z. Lehv, of Fross Zelnick Lehrman & Zissu, P.C.
for MAM Babyartikel GmbH.

—
Before Bergsman, English, and Casagrande,
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

MAM Babyartikel GmbH (Respondent) owns a Principal Register registration for the mark SKIN SOFT (in standard character form and with a disclaimer of exclusive rights to use SOFT apart from the mark) for the following:¹

¹ Registration No. 5233314 (the '314 Registration) issued on June 27, 2017. We note that Respondent filed a Combined Sections 8 and 15 declaration on June 27, 2023, even though Petitioner filed the Petition for Cancellation on June 11, 2019. *See* Section 15 of the Trademark Act, 15 U.S.C. § 1065 (a Section 15 declaration may be filed anytime provided

Pacifiers and dummies in the nature of pacifiers for babies; baby bottles and cups adapted for feeding babies with dummies; feeding bottles, teats, closures, caps and valves specially adapted for use with baby bottles with dummies; feeding bottles, teats, closures, caps and valves sold as an integral component of baby bottles with dummies; nipple shields for use in breastfeeding; parts and fittings of all aforementioned goods, namely, teats, closures, caps and valves; cases in the nature of sealable containers of plastic specially adapted for carrying or holding feeding bottles and dummies in the nature of pacifiers that are also suitable for sterilizing such bottles and dummies; cases in the nature of plastic containers specially adapted for baby bottles and dummies in the nature of pacifiers, in International Class 10; and

Sealable storage containers of plastic for storing feeding bottles and dummies for household or domestic use that are also suitable for sterilizing; plastic storage containers for dummies and baby bottles for household or domestic use; suction flasks in the nature of drinking flasks, insulated flasks, in International Class 21.

Luv n' Care, Ltd. (Petitioner) filed a petition to cancel the '314 Registration under Section 14 of the Trademark Act, 15 U.S.C. § 1064, alleging a likelihood of confusion under Section 2(d) of the Act, 15 U.S.C. § 1052(d). Petitioner bases its petition on its allegation of prior common-law rights in the mark SKIN SOFT for “nipples, baby bottles and teethers.”²

“there is no proceeding involving said rights pending in the United States Patent and Trademark Office or in a court and not finally disposed of.”).

² See Petition to Cancel, 1 TTABVUE ¶¶ 3, 4, 6, 7, 11, 12. Citations in this opinion to filings in proceedings before the Board are to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry, as paginated by TTABVUE, where any specifically cited portions of the document appear.

Respondent filed an answer denying the salient allegations in the petition and raising a laches defense.³ The case is fully briefed.⁴

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file for the '314 Registration. In addition, Petitioner introduced:

- A trial declaration of Nouri E. Hakim, attaching 11 exhibits comprising depictions of packaging for Petitioner's products as well as redacted sales summary documents⁵;
- Confidential unredacted versions of the sales summary documents that were referenced in the Hakim Declaration⁶; and
- A Notice of Reliance attaching the file of the '314 Registration and Respondent's responses to interrogatories and document production requests⁷;

³ See 8 TTABVUE. Under the heading "Affirmative Defenses," Respondent also includes an allegation that the Petition fails to state a claim upon which relief can be granted (§ 14). This is not an affirmative defense. See, e.g., *Shenzhen IVPS Tech. Co. v. Fancy Pants Prods., LLC*, 2022 USPQ2d 1035, at *3 n.5 (TTAB 2022). Respondent also pleaded the affirmative defenses of "acquiescence, waiver, and estoppel," but did not pursue them at trial, thus forfeiting them. See, e.g., *TiVo Brands LLC v. Tivoli, LLC*, 129 USPQ2d 1097, 1100-01 (TTAB 2018).

⁴ See 44 TTABVUE (Petitioner's Trial Brief); 49 TTABVUE (Respondent's Trial Brief (confidential version)); 50 TTABVUE (Respondent's Trial Brief (redacted public version)); 54 TTABVUE (Reply Brief); 54 TTABVUE (Petitioner's Reply Brief).

⁵ See 26 TTABVUE.

⁶ See 27 TTABVUE. We note that Petitioner unnecessarily filed several of the confidential exhibits to the Hakim Declaration twice, see 29 TTABVUE, thus increasing the size of the record and making our review of the evidence more difficult.

⁷ See 28 TTABVUE. Petitioner attached the file for the '314 Registration as part of this Notice of Reliance, but that was unnecessary because it is automatically part of the file in the cancellation proceeding by operation of 37 C.F.R. § 2.122(b). See, e.g., *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 92 USPQ2d 1626, 1628 (Fed. Cir. 2009) (entire file of subject registration, including any evidence made of record during prosecution of underlying application, is part of record in cancellation proceeding without any action of parties).

Respondent introduced:

- The trial declaration of Fritz Hirsch, in both nonconfidential form with some redactions to the declaration and some of the exhibits⁸ and in confidential, unredacted form⁹; and
- The transcript of Respondent's cross-examination of Mr. Hakim pursuant to 37 C.F.R. §§ 2.122(a)(1) and 2.125.¹⁰

II. Petitioner's Entitlement to Invoke a Cancellation Proceeding under Section 14.

In every inter partes case, the party who filed the case must establish that it is entitled to invoke the statute on which the proceeding is based. *See, e.g., Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at *3 (Fed. Cir. 2020). This cancellation proceeding is based on Trademark Act Section 14, 15 U.S.C. § 1064. To establish that it is entitled to bring a cancellation proceeding, Petitioner must demonstrate: (i) an interest falling within the zone of interests protected by Section 14; and (ii) proximate causation. *See, e.g., Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at *4 (Fed. Cir. 2020). Demonstrating a real interest in cancelling a registration satisfies the zone-of-interests requirement, and demonstrating a reasonable belief in damage by the registration of a mark demonstrates proximate cause. *Id.* at 7-8.

Petitioner has made the requisite showing by establishing it has used the designation in which it claims trademark rights (SKIN SOFT), which is identical to

⁸ *See* 37 TTABVUE.

⁹ *See* 38 TTABVUE.

¹⁰ *See* 39 TTABVUE.

Respondent's registered mark, and that it has done so in connection with goods that partially overlap with Respondent's identified goods. Petitioner thus has asserted a colorable likelihood of confusion claim against the involved registration, demonstrating that it has both a real interest in this proceeding beyond that of a mere intermeddler and a reasonable basis for its belief of damage. *See, e.g., Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982) (petitioner establishes entitlement to bring a cancellation proceeding by showing "a real commercial interest in its own marks, and a reasonable basis for its belief that it would be damaged" by the subject registration); *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1022 (TTAB 2009) (plaintiff's use of designation similar to the subject registered mark entitled it to petition to cancel).

III. Petitioner Failed to Establish Prior Common Law Trademark Rights in SKIN SOFT for "nipples, baby bottles and teethers."

The petition asserts only the claim that the '314 Registration should be cancelled under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Section 2(d) provides that no mark shall be registered if it "[c]onsists of or comprises a mark which so resembles a ... mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive" "[A] party petitioning for cancellation under section 2(d) must show that it had priority and that registration of the mark creates a likelihood of confusion." *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1378 (Fed. Cir. 2002).

Here, Petitioner alleges that it established prior common law rights in the alleged mark SKIN SOFT in connection with goods specifically identified as “nipples, baby bottles and teethers.”¹¹ Respondent, in its Answer, has denied the allegations that Petitioner owns trademark rights as to those goods.¹² In its trial brief, Respondent advances two reasons why it believes that Petitioner has failed to prove prior common law rights in SKIN SOFT for nipples, baby bottles, and teethers. First, it argues that the evidence shows that Petitioner has used SKIN SOFT merely to describe the tactile feel of its goods, i.e., that the silicone out of which parts of the goods are made is “as soft as skin.”¹³ And Respondent argues that, since the term SKIN SOFT is merely descriptive, Petitioner must overcome the merely descriptive nature of the term SKIN SOFT by proving acquired distinctiveness but has failed to do so.¹⁴

Respondent also argues that Petitioner has failed to establish prior common law trademark rights in SKIN SOFT, explaining that, as to nipples, baby bottles and teethers, SKIN SOFT “fails to function as a trademark because Petitioner does not use it in a source-identifying fashion. Petitioner uses the phrase to describe features of its baby care products”¹⁵ In particular, Respondent points out that the evidence shows that Petitioner has used SKIN SOFT only in connection with the silicone out

¹¹ See 1 TTABVUE ¶¶ 3, 4, 6, 7, 11, 12.

¹² See 8 TTABVUE ¶¶ 3, 4, 6, 7, 11, 12.

¹³ See, e.g., 49 TTABVUE 24.

¹⁴ See *id.* at 31-39.

¹⁵ See *id.* at 32.

of which parts of Petitioner's nipples, baby bottles and teethers are made and only as part of the phrase "Skin Soft Silicone."¹⁶

At his cross-examination deposition, Petitioner's witness Mr. Hakim repeatedly insisted that SKIN SOFT is its trademark for silicone:

Q. What does Skin Soft Silicone mean?

A. That's our trade name for the silicone.

Q. What is it intended to mean to the consumer?

A. It lets the consumer know that that's our trade name for the silicone. That's what we call our silicone, Skin Soft.

Q. Right.

I'm asking you what is it intended to convey -- what is the phrase Skin Soft intended to convey to the consumer?

A. That that's our trade name for the silicone.

Q. What else is it intended to convey?

A. That it's our trade name for the silicone.

Q. It's intended to convey nothing other than that it's the trade name for the silicone?

A. It's our trade name for the silicone.

See 39 TTABVUE 11.

¹⁶ See *id.* at 24-25.

Q. No, I'm not asking you if it's descriptive. I'm asking you what is it intended to convey to the consumer.

A. That we use a silicone, and we call it Skin Soft, on several products.

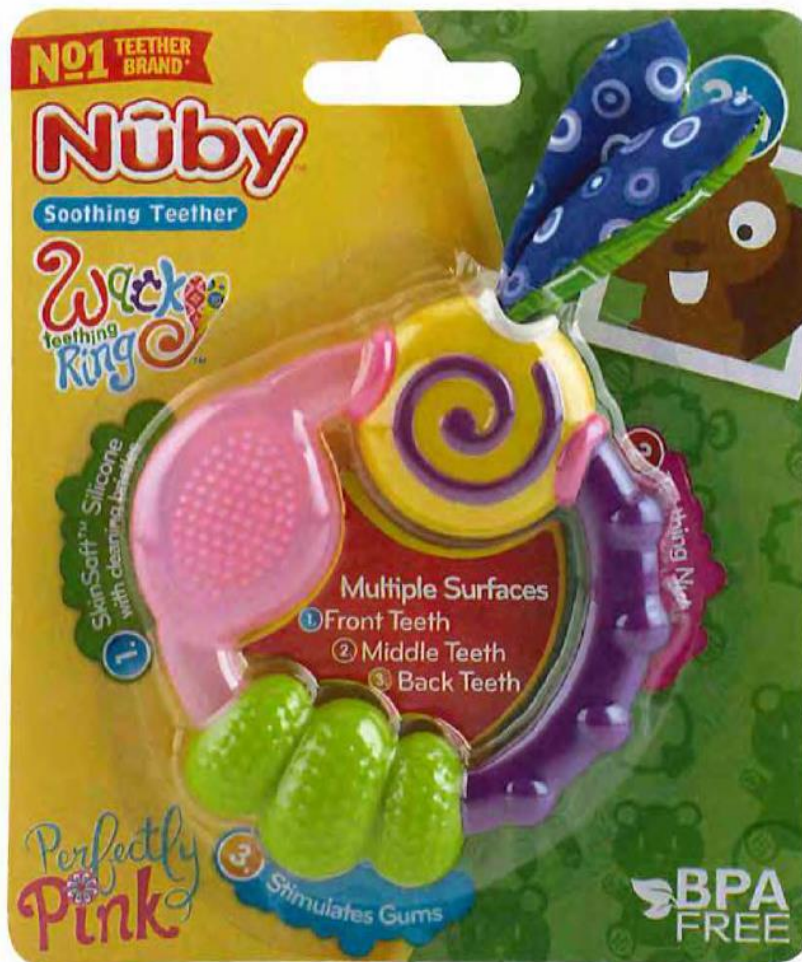
Id. at p. 12¹⁷; *see also id.* at p. 19, ll. 7-9 (“What we’re telling the consumer is that we’re using our Skin Soft material.”); *id.* at p. 20, ll. 7-10 (“We’ve labeled our silicone, and we want the consumer to identify that we are -- have labeled our silicone as Skin Soft Silicone. That’s what we call our silicone. Skin Soft Silicone”); *id.* at p. 21, ll. 4-11 (“That’s what we call our silicone. We’ll design an item, and I’ll tell the engineers, let’s put Skin Soft Silicone on this product. ... He knows that I want him to mark that product, when we tell the factory what to use, to use Skin Soft Silicone. That’s what we call it.”); *id.* at p. 22, ll. 9-11 (“We’ve labeled our silicone in these products, not all products, as Skin Soft Silicone.”).

The labels for the teethers submitted by Petitioner confirm that Petitioner uses SKIN SOFT exclusively in the phrase “Skin Soft Silicone” on its teethers:

¹⁷ We note that Mr. Hakim mostly refers to SKIN SOFT as a “trade name,” but also a “brand” (*id.* at p. 20, ll. 22-23) and a “trademark” (*id.* at p. 10, ll. 12-14; *id.* at p. 29, ll. 15-16 & p. 30, ll. 1-2; *id.* at p. 21, l.24 - p. 22, ll. 1-2). We understand him to mean it is a trademark, as alleged in the Petition and as he testified throughout his declaration.



(26 TTABVUE 64 (front of package without teether)).



LNC00072

(26 TTABVUE 63 (front of package with teether inside)). The front of the empty package shows that “SkinSoft™ Silicone” corresponds to one of the three different teething surfaces of the teether inside the package. These two packages show that the marks identifying the teether are NUBY, WACKY TEETHING RING, and possibly PERFECTLY PINK. As Mr. Hakim testified, SKIN SOFT (depicted as one word “SkinSoft”) is used in the phrase SkinSoft™ Silicone, which is the material for

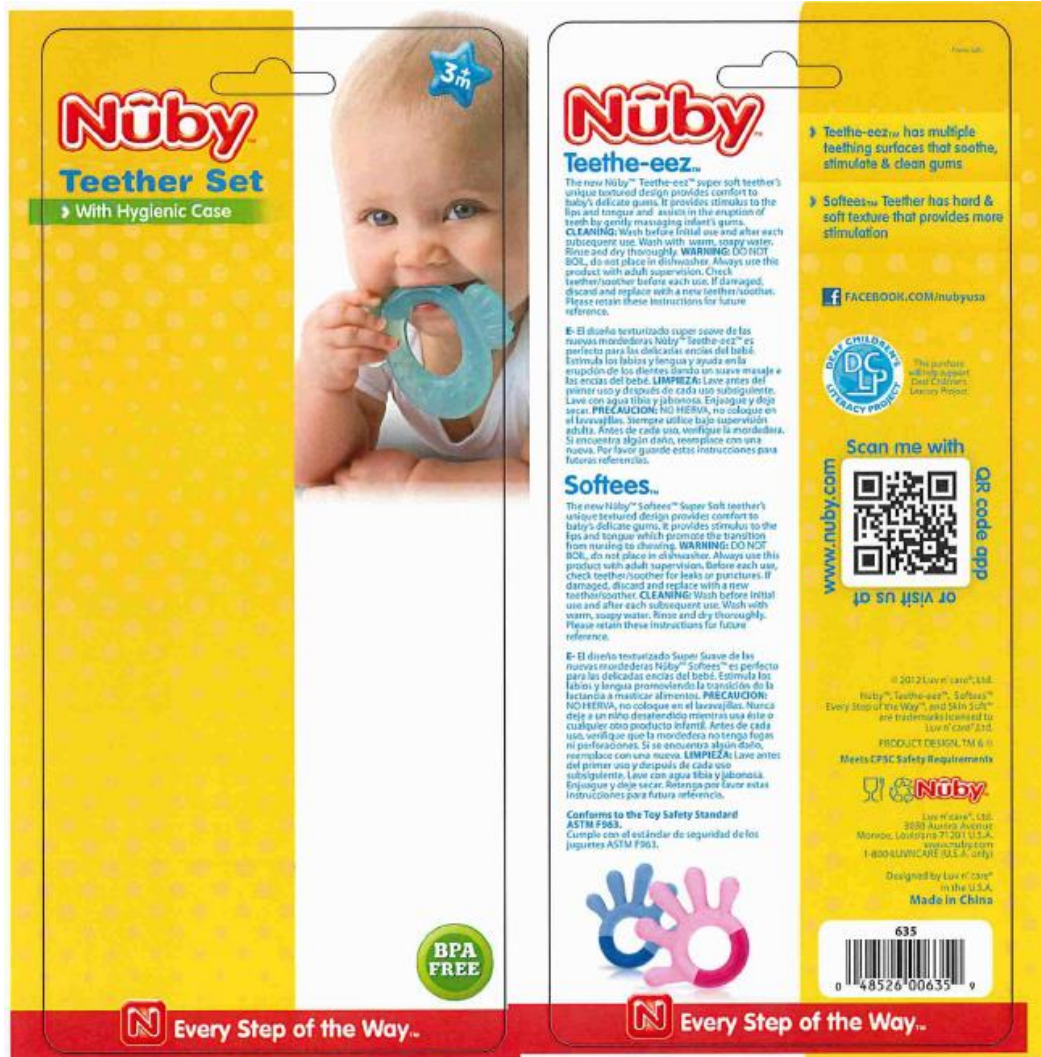
one part of the teething ring. The back of teether package below similarly shows that the marks identifying the teether are NUBY and WACKY TEETHING RING, with “SkinSoft™ Silicone” again used only in connection with the material used for one part of the teething ring:

In the teether set below, the two teethers included are both identified by NUBY. The clear teether is further identified by “Teethe-eez™” and the blue teether by “Softees™”. “Skin Soft™ Silicone” is used on an insert together with “Teethe-eez™.”



(26 TTABVUE 69.)

Below is the front and back of the package card without the product:



LNC00079

(26 TTABVUE 39 (package card front and back)).

Another of Petitioner’s NUBY teethers is further identified by the mark “SAFARI FRIENDS.” As seen below, it, too, uses a package sticker or insert pointing to one

component of the teether that uses “Skin Soft™ Silicone” to identify the material out of which the component is made:



(26 TTABVUE 71.)

Below is a close-up of the back portion of this package, showing that petitioner identifies the teether product as “Safari Friends™ by Nuby™”:

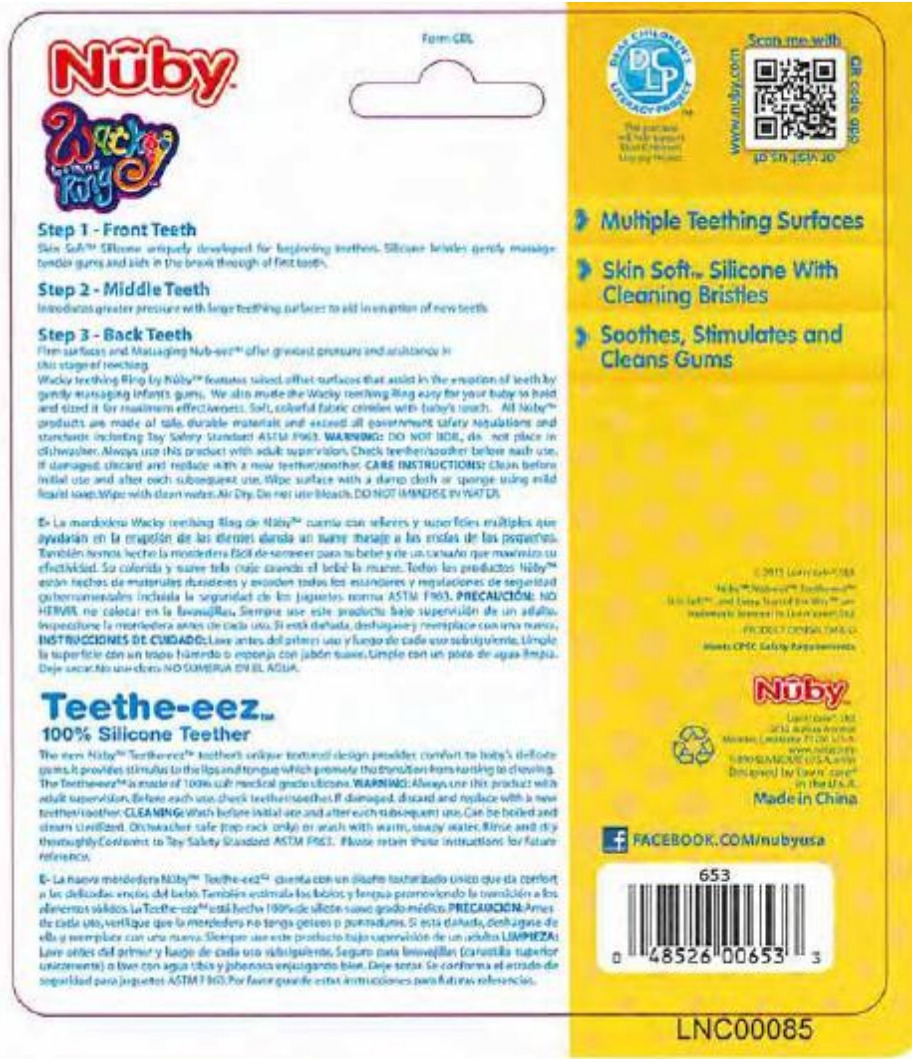


(Id.)

On one package for the NUBY WACKY TEETHING RING, Petitioner does not use SKIN SOFT on the front or the insert in the front (the first following image), but only on the back and only in connection with the material used on the front-teeth-targeted component (the second image):



(26 TTABVUE 76).



(Id.) (“Step 1 – Front Teeth

Skin Soft™ Silicone uniquely developed for beginning teethers”; (“Skin Soft™ Silicone With Cleaning Bristles”)

(Id.)

The other two products for which Petitioner provided evidence of packaging to show prior use are “Nursers” and “Feeding Bottles,” both of which appear to comprise a cylindrical container with a cap consisting of a circular element that affixes to the container and nipple portion for the baby to latch on to. Below is a depiction of one such package with the bottle in inside:



LNCO0091 (26 TTABVUE 82.)

Below is the same package depicted flat to show all sides:



(26 TTABVUE 81.) As can be seen, this package shows that the marks identifying the teether are NUBY and COMFORT. “Skin Soft SILICONE” is used on a side panel.

Below is another, very similar package, but with addition of a third product-identifying mark “360 PLUS+”:



(26 TTABVUE 86).

Another nurser not only uses NUBY™, but also Natural Touch™, SoftFlex™, and Natural Nurser™ as identifiers. The phrase “> Skin Soft™ Silicone” is used similarly to “> Breast Size Nipple,” which is listed as a product feature:



(26 TTABVUE 93 (left half of image). The right half of the image is depicted below:



(Id.)

Below is another package with the same usages of NUBY™, Natural Touch™, SoftFlex™ (with “Silicone Nurser™” in place of “Natural Nurser™”) as identifiers, with the phrase “> Skin Soft™ Silicone” listed adjacent to “> Breast Size Nipple”:



(26 TTABVUE 90).

Another variant uses NUBY™, Natural Touch™, SoftFlex™, and Natural Nurser™ as bottle identifiers, with the phrase “> Skin Soft™ Silicone” appearing underneath “> Helps REDUCE COLIC,” which is a purported feature of the product:



(26 TTABVUE 102.) The package below is depicted with the bottles inside:



LNC000115 (26 TTABVUE 108.)

The evidence depicting how Petitioner used the alleged mark thus supports what Mr. Hakim repeatedly testified: that SKIN SOFT is used as a mark for the silicone

material out of which components of its teething rings and baby bottles¹⁸ are made.¹⁹ It always appears only in the phrase “Skin Soft Silicone” (sometimes “SkinSoft Silicone”).

Citing *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375 (Fed. Cir. 2002), Respondent argues that Petitioner has failed to prove that “its alleged use of ‘Skin Soft’ was ‘sufficient to create proprietary rights’” because the phrase, as used by Petitioner, “fails to function as a trademark”²⁰ for the pleaded goods. We agree.

In *Herbko*, our primary reviewing court held that where the use alleged to create common law rights in CROSSWORD COMPANION did not function to identify source, then the required element of prior trademark rights failed. *Id.* at 1380 (“[T]here is no basis for holding that titles of single works are capable of inherently functioning to identify a source or origin of the book. ... As a result, the Board erred in holding ... that Kappa established proprietary rights sufficient to show priority to the CROSSWORD COMPANION mark.”); see also *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 209 USPQ 40, 44-45 (CCPA 1981) (§ 2(d) claim based on alleged prior common law rights cannot prevail “where [the plaintiff] has not proved that that which he claims identifies him as the source of goods or services actually does so”),

¹⁸ Mr. Hakim testified that the part of the bottles made out of “Skin Soft™ Silicone” is the nipple. See 39 TTABVUE 30-31.

¹⁹ Petitioner did not supply any evidence of packaging for “nipples” sold separately from the bottles/nursers to which they are attached.

²⁰ See 49 TTABVUE 17-18.

quoted in Towers v. Advent Software, Inc., 913 F.2d 942, 16 USPQ2d 1039, 1041 (Fed. Cir. 1990).

A trademark's "function" under the Trademark Act comes from the Act's definition of the trademark in Section 45: "The term 'trademark' includes any word ... used by a person ... to identify and distinguish his or her goods ... and to indicate the source of the goods." 15 U.S.C. § 1127. Thus, trademarks are defined by what they do: they identify, distinguish, and indicate the source of goods. When the words said to be a trademark do something other than that, they fail to function as trademarks as statutorily defined. For example, *Herbko* reaffirmed that, "a single book title serves to identify the book a purchaser desires but does not function to identify the source of that book." 64 USPQ2d at 1379 (citation omitted).

There are other ways in which alleged trademarks can fail to satisfy the definition of a trademark. An example pertinent to this case is where the party alleging trademark rights inaccurately specifies the goods the alleged mark identifies. In *In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213 (CCPA 1976), Bose applied to register SYNCOM for "loudspeaker systems." But the specimens submitted to show use of the mark showed that Bose used the mark INTERAUDIO for the speakers themselves, and used the applied-for mark SYNCOM only in connection with the speaker-testing computer that Bose touted was used in designing the loudspeakers. As a consequence, the Court held that:

the mark SYNCOM neither serves as an indication of origin of such goods, nor serves any other valid trademark function with respect to such goods. SYNCOM is not used as a trademark with respect to such goods.

192 USPQ at 216.²¹

Similarly, in *In re Griffin Pollution Control Corp.*, 517 F.2d 1356, 186 USPQ 166 (CCPA 1975), the goods as to which trademark rights were claimed were identified as a “mixture of gases used in a sewage treatment process.” 186 USPQ at 166. But the party asserting trademark rights in the term did not sell the gases. Rather, it sold (or leased) only a gas-generating apparatus that produced the gases. 186 USPQ at 167. As a consequence, the Court affirmed our finding that the alleged mark “has not been used as a trademark for the goods.” *Id.*²²

In *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861 (TTAB 2006), we found a failure to function where the alleged mark SPECTRUM was not used for the identified goods (“illuminated pushbutton switches, namely pushbutton switches with dimmable illumination for use in military and civilian aircraft cockpits, aviation crewstations, ships and command, communications, control and intelligence systems”). *See id.* at 1861. Rather, the evidence showed that the term was used to identify a feature of the illuminated switches, i.e., that they were illuminated in a “spectrum” of colors. *See id.* at 1863-64. We therefore found that SPECTRUM did not function as a trademark

²¹ *Cf. In re Gulf Coast Nutritionals, Inc.*, 106 USPQ2d 1243 (TTAB 2013) (applied-for mark did not function as a trademark for the listed goods (pet treats) because the specimen showed the product was actually a powdered mix that was stirred into a pet’s water bowl, which is not a “pet treat”).

²² *In re E. Kahn’s Sons Co.*, 343 F.2d 475, 145 USPQ 215 (CCPA 1965), is not to the contrary. There, the applicant applied to register THE WIENER THE WORLD AWAITED for goods identified as sausages and bacon. Reversing a refusal to register the slogan as to bacon, the Court held that the evidence showed that the applied-for mark was a “house slogan” that identified the company, not just a specific product (sausages), 145 USPQ at 216, and so “served the basic function of a ‘trademark,’ ... as specifically defined in the statute.” *Id.* at 217.

for illuminated stiches because “[a]s used by applicant, and as likely perceived by purchasers and prospective purchasers, the applied-for mark merely informs the potential purchaser of an aspect of the goods, namely, the multiple color feature.” *Id.* at 1864.

More analogous still are *Ex parte Joseph & Feiss Co.*, 114 USPQ 463 (Comm’r 1957), and *Ex parte Palm Beach Co.*, 114 USPQ 463 (Comm’r 1957). In both decisions, the parties asserted proprietary rights in their alleged marks for particular finished clothing articles (suits), but the evidence showed that both parties used their marks only for the fabric out of which the suits were made. *Id.* As a consequence, the applications as to suits were refused because there was no trademark use as to suits. And the *Palm Beach* decision made clear that this result obtained even though the applicant actually affixed the fabric mark to the suits. *Palm Beach*, 114 USPQ at 463. (“The specimens filed with the application are labels of the type ordinarily used as sleeve labels identifying the fabric or something else other than the garment.”). The holdings of these cases are reflected in the current Trademark Manual of Examining Procedure (TMEP) § 1402.054(a) (2023), which requires applicants seeking to register trademarks for components or ingredients that are sold as a component or ingredient of a finished product to specify that their mark is for only “the component or ingredient is sold as a component or ingredient of another finished product,” not the finished product.

Here, the only goods as to which the Petition asserts prior trademark rights in SKIN SOFT are “nipples, baby bottles and teethers.”²³ But the testimony of Mr. Hakim and the packaging Petitioner submitted convinces us that consumers will perceive SKIN SOFT only as identifying the silicone material out of which certain components of Petitioner’s teethers and baby bottles are made.

Petitioner’s only rebuttal to the argument that SKIN SOFT fails to function as a trademark for nipples, baby bottles, and teethers is that it appears on packaging for those finished goods and Petitioner always uses the “™” symbol with it.²⁴ This misses the point that the packaging evidence and Mr. Hakim’s testimony show that it is used only in connection with identifying that a feature of the finished products is the type of silicone materials out of which certain components are made.

Accordingly, we find that Petitioner has not proved that it has prior common law trademark rights in SKIN SOFT as to the specific goods pleaded: nipples; baby bottles; and teethers.²⁵ For this reason alone, the Petition must be denied. We do not reach Respondent’s additional arguments that SKIN SOFT is merely descriptive and

²³ See Petition to Cancel, 1 TTABVUE ¶¶ 3, 4, 6, 7, 11, 12.

²⁴ See 54 TTABVUE 10-11. We quibble with Petitioner’s assertion that “[e]very use” of SKIN SOFT on its product packaging employs the “™” symbol. See, e.g., 26 TTABVUE 80, 81, 82, 83 (not using the symbol). In any event, “the mere use of TM ... does not automatically transform a word, design, color or sound into a trademark.” *In re Vertex Grp. LLC*, 89 USPQ2d 1694, 1701 n.16 (citing *Aerospace Optics*, 78 USPQ2d at 1864); see also, e.g., *Univ. of Ky. v. 40-0, LLC*, 2021 USPQ2d 253, at *32 (TTAB 2021); *In re Remington Prods. Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987).

²⁵ As mentioned earlier, there is no evidence that Petitioner sells nipples separately from baby bottles/nursers.

without acquired distinctiveness and that there is no likelihood of confusion, nor do we reach Respondent's affirmative defense of laches.²⁶

IV. Conclusion

Decision: The Petition to Cancel is denied.

²⁶ We also need not address Respondent's objections to, and motion to strike, certain parts of Mr. Hakim's testimonial declaration, *see* 51 TTABVUE, because the challenged testimony relates only to likelihood of confusion and acquired distinctiveness, which are issues we do not reach.