

ESTTA Tracking number: **ESTTA379474**

Filing date: **11/19/2010**

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

Proceeding	77128897
Applicant	Millan, Jolinda
Correspondence Address	Michael I. Kroll Suite 105 115 Eileen Way Syosset, NY 11791 UNITED STATES EDSchindler@att.net, EdwinSchindler@gmail.com, EdwinSchindler@yahoo.com, patent@invention.net, kroll171@yahoo.com
Submission	Appeal Brief
Attachments	HUMBLE SOLJAH WEAR, Tmk. Appl. 77-128,897-Appeal Brief (11-19-2010).PDF ( 9 pages )(4059197 bytes )
Filer's Name	Edwin D. Schindler
Filer's e-mail	EDSchindler@att.net, EdwinSchindler@gmail.com, EdwinSchindler@yahoo.com, patent@invention.net, kroll171@yahoo.com
Signature	/Edwin D. Schindler/
Date	11/19/2010

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

*In re Application of:* **JOLINDA MILLAN**

**SERIAL NO.: 77/128,897**

**FILED: MARCH 12, 2007**

**MARK: HUMBLE SOLJAH WEAR**

**INTERNATIONAL CLASS: 25**

**TRADEMARK ATTORNEY: ELLEN J. PERKINS/LAW OFFICE 110**

**APPEAL BRIEF**

Hon. Commissioner for Trademarks  
United States Patent and Trademark Office  
P. O. Box 1451  
Alexandria, Virginia 22313-1451

*To the Trademark Trial and Appeal Board:*

**I. Introduction**

On Monday, September 20, 2010, Applicant, Jolinda Millan, Appellant herein, electronically-filed a *Notice of Appeal* from the Examining Attorney's final refusal-to-register, as issued in the final Office Action, dated March 18, 2010. The *Notice of Appeal* has been taken from the §2(d) "likelihood of confusion" refusal-to-register Appellant's mark in International Class 25, and Appellant now respectfully requests that The Trademark Trial and Appeal Board reverse the Examiner's decision not to pass to publication Appellant's trademark.

## II. Appellant's Mark

Appellant's trademark is a word mark in "standard" character format for the wording "HUMBLE SOLJAH WEAR." Appellant seeks registration of her mark on the Principal Register for the goods recited as a "Cloth bibs; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing, namely, arm warmers; Clothing, namely, folk costumes; Clothing, namely, knee warmers; Clothing, namely, neck tubes; Clothing, namely, wrap-arounds; Corsets; Hoods; Infant and toddler one piece clothing; Infant cloth diapers; Jerseys; Mantles; Mufflers; Nondisposable cloth training pants; Paper hats for use as clothing items; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Perspiration absorbent underwear clothing; Shifts; Short sets; Shoulder wraps; Swaddling clothes; Ties; Tops; Wraps; Bed jackets; Denim jackets; Down jackets; Fishermen's jackets; Fur coats and jackets; Fur jackets; Heavy jackets; Jacket liners; Jackets; Light-reflecting jackets; Long jackets; Men and women jackets, coats, trousers, vests; Rain jackets; Rainproof jackets; Ski jackets; Sleeved or sleeveless jackets; Smoking jackets; Sports jackets; Suede jackets; Waterproof jackets and pants; Wind resistant jackets; Wind-jackets; Balloon pants; Capri pants; Cargo pants; Denims; Jogging pants; Leather pants; Pants; Ski pants; Snow pants; Sweat pants; Dresses; Bathing suits; Bathing suits for men; Body suits; Flight suits; Gym suits; Jogging suits; Judo suits; Karate suits; Ladies' suits; Men's suits; Snow suits; Suits; Sweat suits; Track suits; Training suits; Warm up suits; Wet suits for water-skiing and sub-aqua; Blouses; Thermal underwear; Underwear; Woven or knitted underwear; Coats," in International Class 25.

Appellant has disclaimed the word “WEAR,” which is acknowledged to be descriptive of Appellant’s goods.

### III. The Refusal-to-Register and Pertinent Facts

Appellant filed an “intent-to-use” trademark application on March 12, 2007, to register the word mark “HUMBLE SOLJAH WEAR” on the Principal Register in International Class 25 for various clothing goods.

While the mark of the application was once passed to publication, more recently, on March 18, 2010, the Examining Attorney issued a “final” Office Action refusing registration, pursuant to §2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the contention that a likelihood of confusion would exist between Appellant’s mark and the “SOLJAH” mark of U.S. Trademark Registration No. 1,877,687 for goods recited as “t-shirts and hats.”

Appellant’s recitation of goods had originally included “caps” and “tops,” however, in an amendment to the goods filed May 13, 2009, Appellant deleted “caps” and “tops,” thereby removing any potential overlap between Appellant’s goods and those of the applied trademark registration.

No other issues remain outstanding in connection with the prosecution of the instant trademark application.

A timely *Notice of Appeal* was filed Monday, September 20, 2010, from the final Office Action issued March 18, 2010.

Accordingly, only the §2(d) likelihood-of-confusion refusal-to-register is outstanding and before the Board for resolution on this Appeal.

#### IV. Issue

The single issue for resolution on this Appeal is as follows:

Is confusion likely between Appellant's trademark, "HUMBLE SOLJAH WEAR," for clothing goods and the mark of U.S. Trademark Registration No. 1,877,687, "SOLJAH," for goods recited as "t-shirts and hats?"

#### V. Argument

*No Likelihood of Confusion Exists Between Appellant's Trademark and the Trademark of U.S. Trademark Registration No. 1,877,687 in View of the Understood or Slang Meaning of "SOLJAH," Which Justifies the Mark of the Applied Registration Being Accorded a Very Narrow Scope of Protection*

In the final Office Action, dated March 18, 2010, the Examining Attorney had refused registration of Applicant's trademark, "HUMBLE SOLJAH WEAR," pursuant to §2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the contention that a likelihood of confusion would exist between Appellant's mark and the mark of U.S. Trademark Registration No. 1,877,687 for the trademark "HUMBLE SOLJAH WEAR." The goods of Trademark Reg. No. 1,877,687 are "t-shirts and hats," while Appellant's goods are recited as a various clothing goods, but which do not include any type of hat or shirt.

More particularly, and addressing the overall merits of the Examiner's §2(d) likelihood-of-confusion refusal-to-register, while it is acknowledged that Appellant's

mark and the mark of the applied registration both include the term “SOLJAH,” which is apparently slang terminology that means, in effect, a “thug soldier” of the streets, as reported by the *Urban Dictionary* website. The term “soulja,” which appears to have a pronunciation similar to “soljah,” again, according to the *Urban Dictionary*, likewise has a definition or understood meaning that is similar to that of “soljah.” The relevant web-pages from the *Urban Dictionary* website are included with this *Appeal Brief*. Consequently, the term “SOLJAH, which is the totality of the mark of the applied registration is quite weak and is simply not entitled to the same scope of protection as would fanciful or arbitrary trademark terms, thereby rendering possible confusion as between Appellant’s mark and the cited registered mark as quite unlikely. See, e.g., *Sure-Fit Products Co. v. Saltzson Drapery Co.*, 45 CCPA 856, 254 F.2d 158, 117 USPQ 295, 297 (1958) (“It seems both logical and obvious to us that where a party chooses a trademark which is inherently weak, he will not enjoy the wide latitude of protection afforded the owner of strong trademarks. Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights.”); see, also, *Nestles Milk Products, Inc. v. Baker Importing Co.*, 37 CCPA 1066, 182 F.2d 193, 86 USPQ 80 (1950) (the presence of a common element of allegedly conflicting marks that is a word that is “weak” reduces the likelihood of confusion); *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 58 CCPA 735, 432 F.2d 1400, 167 USPQ 529 (1970); *In re Dayco Products-Eagle Motive Inc.*, 9 USPQ2d 1910, 1912 (T.T.A.B. 1988) (“[W]e find the term [“IMPERIAL”] to be a relatively weak mark and we agree with applicant that the scope of protection afforded such a mark is considerably narrower than that afforded

a more arbitrary designation.”); *Loctite Corp. v. Tubbs Cordage Co.*, 175 USPQ 663, 665 (T.T.A.B. 1972) (“The suggestiveness of the term manifestly is the reason why opposer, applicant and others in the hardware field as well as in other fields of endeavor have adopted and used and/or registered this term or a variant thereof as a trademark for their goods. \* \* \* [Third-party evidence] is admissible and competent when considered along with the nature of the term ‘LOCTITE’ to delineate opposer’s rights therein and thereby narrow the scope of protection to be afforded such a mark.”); *Knapp-Monarch Co. v. Poloron Products, Inc.*, 134 USPQ 412 (T.T.A.B. 1962) (portion of a mark may be “weak” in the sense that such portion is descriptive, highly suggestive or is in common use by many other sellers in the market). Hence, absent virtually the same mark for the same or overlapping goods – which is not the case now presented – the narrow scope of protection to which the common feature of the respective marks of the cited trademark registration and of the instant trademark application is entitled, no likelihood-of-confusion should be found to exist. This conclusion is reinforced by the inclusion of the term “HUMBLE,” which is the initial term of Appellant’s mark and not part of the mark of the applied registration.

In summation, as a consequence of the weakness of the registered mark, which consists solely of the slang term “SOLJAH,” the overall differences in the respective marks and the lack of any overlap of goods, it is respectfully submitted that any confusion between the marks of the instant trademark application and that of the applied trademark registration is unlikely and that the Examining Attorney’s §2(d) likelihood-of-confusion refusal-to-register should appropriately be reversed.

VI. Conclusion

In light of the foregoing, it is respectfully contended that the Examining Attorney's final refusal-to-register under §2(d) of the Trademark Act, pertaining to the Examiner's contention that Appellant's trademark "HUMBLE SOLJAH WEAR" is confusingly similar to the mark of Trademark Registration No. 1,877,687, should now be reversed and the trademark of the present application should be passed to publication. Such favorable action is respectfully requested and earnestly solicited.

Respectfully submitted,

JOLINDA MILLAN

By   
Edwin D. Schindler  
*Attorney for Appellant*

Michael I. Kroll  
171 Stillwell Lane  
Syosset, New York 11791

(516)367-7779

November 19, 2010

Enc.: Webpages from *Urban Dictionary* for the terms "SOLJAH" and "SOULJA."

The Commissioner for Trademarks is hereby authorized to charge the Deposit Account of Applicant's Attorney, Account No. 19-0450, for any fees which may be due in connection with the prosecution of the above-identified trademark application, but which have not otherwise been provided for.



Vote for soljah  
**Urban Word  
 of the Year 2010**

- [solitary](#)
- [Solitary bedcrumbing](#)
- [solitary confinement](#)
- [Solitary Gay](#)
- [Solitary Man](#)
- [solitary moments](#)
- [Solitary Popularity](#)
- [solitary vice](#)
- [solito](#)
- [solitude](#)
- [solizoque](#)
- [solja](#)
- [solja boy](#)
- [Solja Rags](#)
- [Soljafootitus](#)

### soljah

- [Soljas](#)
- [soljwl](#)
- [solkat](#)
- [Solko](#)
- [solla solew](#)
- [Sollebrunn](#)
- [Solleh](#)
- [solleks](#)
- [Sollenberger](#)
- [sollentology](#)
- [Sollest](#)
- [sollidelic](#)
- [Sollied](#)
- [sollified](#)
- [Sollini](#)
- [sollis](#)
- [Sollo](#)
- [sollomoss](#)
- [Sollus](#)
- [Solly](#)
- [solly vinroid](#)
- [sollygod](#)
- [solmangred](#)
- [solmao](#)
- [solmes rule](#)

soljah [souljah](#) [soldier](#) [soulja](#)

## 1. soljah

[buy soljah mugs, tshirts and magnets](#)

A thug soldier. A soldier of the streets.

*Don't mess with me! I'm a soljah! I'll blast your ass!*

by [gundamNIT](#) Jan 15, 2003 [share this](#)

## 2. Soljah

[buy soljah mugs, tshirts and magnets](#)

Blessed by the light of God. Sun God.

*He is a Soljah for God.*

[sun god](#) [jah](#) [dios del sol](#) [protector](#) [messenger](#) [souljah](#) [soldier](#)

by [Crimson\\_int](#) Nov 29, 2009 [share this](#)

## 3. soljah

[buy soljah mugs, tshirts and magnets](#)

to be someone who walks hard and carries a big stick claiming his territory and someone who can't be walked over.

*I run dis joint cuz I am a soljah!*

by [Tru Hood](#) Apr 3, 2003 [share this](#)

## 4. soljah

[buy soljah mugs, tshirts and magnets](#)

A faggot.

*You are such a soljah.*

by [\(Z\)](#) Apr 24, 2003 [share this](#)



Vote for soulja

**Urban Word  
of the Year 2010**

- [souflyer](#)
- [soufly](#)
- [soulfriend](#)
- [soulfuck](#)
- [soulful](#)
- [soulful eyes](#)
- [author soulfulzen](#)
- [soulgasm](#)
- [Soulhawk](#)
- [soulc](#)
- [Soulie](#)
- [Soulie Withdrawal](#)
- [soulin](#)
- [Soulism](#)
- [soulitis](#)
- [Soulja](#)

### • soulja

- [Soulja \(Souljah\)](#)
- [Soulja Bitch](#)
- [Soulja Boi](#)
- [Soulja Boy](#)
- [Soulja Boy](#)
- [Soulja Boy fan](#)
- [Soulja Boy Tee](#)
- [Soulja Boy Tell Em](#)
- [Soulja Boy Tell'em](#)
- [Soulja Boy Tellem](#)
- [Soulja Boy'd](#)
- [Soulja boyed](#)
- [soulja boyle](#)
- [soulja boyy](#)
- [Soulja Girl](#)
- [soulja girl](#)
- [Soulja Jew](#)
- [soulja rag](#)
- [Soulja rolled](#)
- [Soulja Slim](#)
- [Soulja Slim \(Magnolia Slim\)](#)
- [Soulja' Boy](#)
- [souljaboy](#)
- [souljaboyesque](#)
- [souljaboyner](#)

soulja [boy](#) [soulja boy](#) [crank](#) [superman](#) [dat](#) [rap](#) [that](#) [hoe](#) [crank dat](#) [tell](#) [crank that](#) [no](#)

[soldier](#) [shit](#) [boi](#) [man](#) [gay](#) [em](#) [ass](#) [snap](#) [hip](#) [you](#) [bapes](#) [go](#) [trick](#) [bitch](#) [roll](#) [snapstar](#) [crank](#)

[it](#) [boogie](#) [snap and roll](#) [merry](#) [hip-hop](#) [round](#) [walk it on the floor](#) [snap or die](#) [a](#) [music](#)

[getting boogie](#) [nigga](#) [getting on yuh in fac](#) [arab](#) [souljah](#) [souljaboy](#) [super](#) [black](#)

## 1. soulja

[buy soulja mugs, tshirts and magnets](#)

Soulja or Souljah Not to be (stereotypically) confused with Jesus freaks or aimless gang members, A Soulja, is anyone who has gone through hard times and fought against adversity. A Soulja's strength comes from within, strength of mind, body, soul, and character. A true Soulja would have learned from his/her mistakes, taken responsibility for his/her actions and gained strength to never back down. Someone who knows no limits to his/her own power and God given abilities. A person who serves their people, lives by a strict code, and is never afraid to stand up for what they believe in. Someone who is willing to fight for their home, family, property, etc, but is not necessarily part of a conventional service (Army, Marines, Navy, Air Force, etc). A Soulja cannot be defined by race, age, background, location, or economic status.

*"Did the crime and got caught up, fuck it, did my time like a soulja!"  
After a lifetime of toil, a true soulja wakes up each morning optimistic.*

[real](#) [true](#) [honest](#) [honorabile](#) [relentless](#)

by [JGSR](#) Jun 14, 2006 [share this](#)

## 2. soulja

[buy soulja mugs, tshirts and magnets](#)

Usually a man who grew up on the streets. Slang for "soldier" like in the army. Battles in combats knows how to use a gun to kill. Their ghetto being their "turf" or warzone.

*Soulja Slim, No Limit Soldiers (No Limit Souljas) etc.*

by [INfaMousgUrtL2002](#) Aug 1, 2004 [share this](#)

## 3. Soulja

[buy soulja mugs, tshirts and magnets](#)

A term that used to deem some respect before it was coined by a sellout and made into a dance.

*Guy 1: Ey' man is you a soulja?*

*Guy 2: Heeeeeel no.*

[soulja boy](#) [crank dat](#) [true](#) [respect](#) [gud](#)

by [A-Whack](#) Feb 25, 2008 [share this](#)