

**THIS OPINION IS NOT A
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THE T.T.A.B.**

Mailed: August 5, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re JolindaMillan

Serial No. 77128897

Edwin D. Schindler for JolindaMillan.

Ellen J.G. Perkins, Trademark Examining Attorney, Law
Office 110, (Chris A.F. Pedersen, Managing Attorney).

Before Grendel, Taylor and Wolfson,
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

JolindaMillan("applicant") filed an application to
register the standard character mark HUMBLE SOLJAH WEAR for

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; non-disposable
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 25.¹

The trademark examining attorney refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, as intended to be used in connection with its goods, so resembles the mark SOLJAH, previously registered on the Principal Register in typed or standard characters for "T-shirts and hats" in International Class 25,² as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed.

¹Application Serial No. 77128897 was filed on March 12, 2007, based upon applicant's assertion of a bona fide intent to use the mark in commerce, and including a disclaimer of "WEAR" apart from the mark as shown.

² Registration No. 1877687 issued on February 7, 1995. Section 8 and 15 affidavits accepted and acknowledged. First renewal.

Likelihood of Confusion

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, 567 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis two key, though not exclusive, considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 27 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997).

The Marks

We first turn our attention to a comparison of the marks. In determining the similarity or dissimilarity of the marks, we must compare the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently

similar in their entireties that confusion as to the source of the goods offered under the respective marks is likely to result.

In this case, the marks are similar to the extent that they share the arbitrary terms SOLJAH. In applicant's mark, the phrase HUMBLE SOLJAH is the most notable portion of the mark because it maintains its arbitrary significance in connection with clothing. Moreover, because the adjective "humble" modifies the word "soljah" (e.g., what type of soljah), the word "soljah" is the dominant element of applicant's mark. On the other hand, the term "wear" is merely descriptive or generic as applied to clothing.³

It is well settled that more weight may be given to the dominant feature of a mark in determining the commercial impression of the mark, as long as the mark is considered as a whole and not in a dissected, piecemeal fashion. Considering applicant's mark as a whole, it is rational to conclude that more weight would be given to the arbitrary phrase HUMBLE SOLJAH (and dominant word SOLJAH) and less weight to the descriptive or generic word WEAR. See *In re National Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); *In re Kysela Pere et Fils*

³See Applicant's Brief, p. 3: "Appellant has disclaimed the word 'WEAR,' which is acknowledged to be descriptive of Appellant's goods."

Ltd., 98 USPQ2d 1261, 1267 (TTAB 2011) ("In comparing the marks we are guided by the principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties.").

Turning to the connotations of the marks, we find that they engender similar meanings. The term "soljah" is close to the word "soldier" in pronunciation, and applicant argues that the understood or slang meaning of "soljah" is that of a "thug soldier of the streets."⁴ Regardless of the fact that applicant's suggested meaning of the term is unsupported by the record,⁵ any slang meaning of the word "soljah" that may exist is inherent in both marks. The term would have the same connotation and significance in applicant's mark as it does in the registered mark. Thus,

⁴ Applicant's Brief, p. 5.

⁵Because we do not consider evidence attached to a party's brief, applicant's introduction of evidence of the meaning of the term "soljah," attached only to its brief, is inadmissible. Trademark Rule 2.142(d). Moreover, the Board does not take judicial notice of definitions residing in online dictionaries that are not shown to have been published in printed format. *Cf. In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1790 (TTAB 2002) (Board took judicial notice of online dictionary definition because "as indicated in the Web page printout," the dictionary was available in book form.).

as indicated above, the phrase "humble soldier" may be seen as describing a type, or kind, of "soljah." Potential buyers of applicant's goods could consider that applicant's mark identifies a line of clothing (the "humble soljah" line) for one market segment while opposer's mark identifies a line of clothing (the "soljah" line) for a different market segment, and that both emanate from the same source of origin.

Applicant further argues that because the term SOLJAH has a slang meaning, "consequently, the term SOLJAH, which is the totality of the mark of the applied registration[,] is quite weak."⁶ This argument fails to recognize that whether a mark is inherently "weak" is considered in relation to the goods or services with which the mark is used. The fact that "soljah" may have a slang meaning in another context is irrelevant to whether it has any meaning when applied to clothing. As noted above, the mark is arbitrary in this context. And, as recognized by applicant, it has been incorporated in its entirety into applicant's mark. In this case, the incorporation of registrant's entire mark in applicant's mark underscores the similarity between the marks. "When one incorporates the entire arbitrary mark of another into a composite mark,

⁶Ibid.

inclusion in the composite mark of a significant, nonsuggestive element will not necessarily preclude a likelihood of confusion." *The Wella Corp., v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977); see also *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (CCPA 1972) (WEST POINT PEPPERELL and griffin design for fabrics is likely to cause confusion with WEST POINT for woolen piece goods); *Hunt Control Systems, Inc. v. Koninklijke Philips Electronics N.V.*, 98 USPQ2d 1558, 1566 (TTAB 2011) (SENSE AND SIMPLICITY for goods in Class 9 likely to cause confusion with SIMPLICITY for goods in Class 9); and *Trek Bicycle Corp. v. Fier*, 56 USPQ2d 1527, 1530 (TTAB 2000) (TREKNOLOGY for travel and all-purpose athletic bags likely to cause confusion with opposer's mark TREK for bicycles).

As a result of the foregoing, we find that the marks are similar in meaning, appearance and pronunciation, and, when viewed in their entireties convey highly similar commercial impressions. Accordingly, this *du Pont* factor favors a finding of likelihood of confusion.

The Goods

We now turn our attention to the identified goods, noting that it is not necessary that the goods at issue be similar or competitive, or even that they move in the same

channels of trade, to support a holding of likelihood of confusion. It is sufficient instead that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. See *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

In this case, applicant's goods include "paper hats for use as clothing items; tops." These goods overlap with "t-shirts and hats," the goods of the cited registration. Paper hats are a type of hat, and t-shirts are a type of "tops." Thus, applicant and registrant sell legally identical types of clothing.

Channels of Trade

In making our determination regarding the relatedness of the parties' goods, we must look to the goods as identified in the involved application and cited registration. See *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be

decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.") See also *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods.")

As previously noted, applicant's and registrant's goods overlap. Neither identification of goods contains any limitations as to trade channels or intended consumers. Accordingly, both applicant's and registrant's goods are presumed to move in all normal channels of trade and be available to all classes of potential consumers, including consumers of each other's goods. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

In addition, applicant's goods include various types of pants ("balloon pants; capri pants; cargo pants; jogging pants; leather pants; pants; ski pants; snow pants; sweat pants") and "bathing suits; bathing suits for men." The examining attorney has made of record the results of a search she conducted on the Google computerized database. The Google search contains print outs showing one company's

offer of men's t-shirts and swimwear;⁷ another company's offer of both women's t-shirts and tops;⁸ and a third company's offer of both "Bermudas, crops & shorts" and "tops-tees & Tanks."⁹ This evidence supports the conclusion that applicant's and registrant's goods may be sold through similar trade channels.

Summary

In summary, weighing all of the evidence of record as it pertains to the relevant *du Pont* factors, we find that a likelihood of confusion exists.

Decision: The refusal of registration is affirmed.

⁷Final Office Action, print out from www.speedousa.com.

⁸ Id., print out from www.championusa.com.

⁹ Id., print out from www.nyandcompany.com.