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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Good Sports Inc.

Serial No. 77738935

Mario G. Ceste, Esq. for Good Sports Inc.

Kim Saito, Trademark Examining Attorney, Law Office 102  
(Karen M. Strzyz, Managing Attorney).

Before Quinn, Bucher and Grendel, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Good Sports Inc. filed, on May 17, 2009, an application to register the mark RIDE OR DIE (in standard characters) for "clothing, namely tee shirts, sweat shirts, hooded sweat shirts, tank-tops, sleeveless shirts, hats, caps, underwear, jackets, bandannas, [and] gloves" (in International Class 25). Applicant claims first use anywhere on January 1, 2009, and first use in commerce on January 15, 2009.

The trademark examining attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C.

§1052(d), on the ground that applicant's mark, when applied to applicant's goods, so resembles the previously registered mark RIDE TILL I DIE (in standard characters) for "dresses; gloves; hats; pants; shirts; shoes; [and] socks" (in International Class 25)<sup>1</sup> as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.

Applicant argues that despite the common presence of the words "RIDE" and "DIE" in the two marks, the marks are not similar in that registrant's mark contains the additional words "TILL I." In view thereof, applicant points to the differences between the meanings of the marks when they are considered in their entirety. According to applicant, its mark RIDE OR DIE is "a motorcyclist's farewell meaning 'goodbye and ride safely'"; it is also "shorthand for 'ride it out' and 'die trying,' that is to stay with it to the end even if it kills you, through good and bad." Registrant's mark, on the other hand, means "that people enjoy riding and will not give it up for anything." (Response, February 21, 2010). In connection with its arguments based on meaning, applicant submitted excerpts retrieved from the Internet version of the slang

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<sup>1</sup> Registration No. 3412168, issued April 15, 2008.

Urban Dictionary. Applicant does not dispute the similarity between the goods.

The examining attorney contends that both marks are "bookended" by the words "RIDE" and "DIE," and both marks invoke riding and dying. As to meaning, while the examining attorney concedes that the marks have "very slightly different meanings," the difference is subtle. Overall, the examining attorney maintains that the marks are confusingly similar. As for the goods, the examining attorney asserts that they are identical in part, and otherwise related.

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). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We first turn to consider the similarity between the goods. In considering this second *du Pont* factor, it

should be noted at the outset that there is no *per se* rule governing likelihood of confusion cases involving all types of wearing apparel. See *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984). However, in numerous cases in the past, many different types of apparel have been found to be related products which are sold in the same trade channels to the same classes of purchasers, including to ordinary consumers, and that confusion is likely to result if the goods were to be sold under similar marks.<sup>2</sup>

As pointed out by the examining attorney, applicant does not dispute that its clothing items and registrant's clothing items are related. Indeed, the examining attorney highlights the fact that the respective identifications of goods are identical as to the following items: hats and gloves. Further, the terminology "shirts" in registrant's identification of goods is broad enough to encompass the

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<sup>2</sup> See, e.g., *Cambridge Rubber Co. v. Cluett, Peabody & Co.*, 286 F.2d 623, 128 USPQ 549 (CCPA 1961) [women's boots related to men's and boys' underwear]; *Jockey Int'l, Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1233 (TTAB 1992) [underwear related to neckties]; *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991) [women's pants, blouses, shorts and jackets related to women's shoes]; *In re Pix of America, Inc.* 225 USPQ 691 (TTAB 1985) [women's shoes related to outer shirts]; *In re Mercedes Slacks, Ltd.*, 213 USPQ 397 (TTAB 1982) [hosiery related to trousers]; *In re Cook United, Inc.*, 185 USPQ 444 (TTAB 1975) [men's suits, coats, and trousers related to women's pantyhose and hosiery]; and *Esquire Sportswear Mfg. Co. v. Genesco Inc.*, 141 USPQ 400 (TTAB 1964) [brassieres and girdles related to slacks for men and young men].

same types of shirts more specifically identified in the application. Likelihood of confusion may be found based on any item that comes within the identification of goods in the involved application or registration. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Given that applicant's and registrant's goods are, in part, identical, or otherwise closely related clothing items, we presume that they travel in the same trade channels (e.g., clothing stores, department stores and the like), and that the clothing is bought by the same classes of purchasers.<sup>3</sup> These classes would include ordinary consumers, who would be expected to exercise nothing more than ordinary care in making their purchasing decision.

The identity or otherwise close relationship between the goods, and the identity in trade channels and purchasers are factors that weigh heavily in favor of a finding of a likelihood of confusion.

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<sup>3</sup> Applicant, in its brief, indicates that its goods are typically sold at motorcycle festivals, and in retail stores and through websites selling motorcycles and accessories therefor. Applicant's identification of goods does not include any such limitations and, thus, this information is immaterial to our analysis. Rather, in the absence of any limitation, we must presume that the goods are marketed in all normal trade channels for such goods. *In re Davey Products Pty. Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009).

We next turn to compare the marks in their entireties as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The test, under the first *du Pont* factor, 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 terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Finally, where, as in the present case, the marks are used on identical goods (at least in part), the degree of similarity between the marks that is necessary to support a finding of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Applicant's mark RIDE OR DIE and registrant's mark RIDE TILL I DIE are similar in sound and appearance. Each mark begins with the identical word "RIDE," and ends with

the identical word "DIE." The absence of "TILL I" in applicant's mark is insufficient to distinguish it from registrant's mark.

As for meaning, the examining attorney is willing to concede that the marks have "very slightly different meanings," with applicant's mark RIDE OR DIE conveying the idea that a person will ride or die from wanting to ride, and registrant's mark RIDE TILL I DIE meaning a person will ride until his/her death. Despite this slight nuance in meaning, the marks still convey images of "riding" and "dying" in pithy phrases; although perhaps not identical in connotation, the marks have similar meanings, that is, "I'm going to ride until I die." While we have considered the slang meanings of the phrases as shown by applicant's evidence, any difference in meaning is so subtle and nuanced that only purchasers engaging in extremely careful scrutiny and parsing would distinguish between the marks on this basis. In any event, we hasten to add that any nuanced difference in meaning is clearly outweighed by the presence of the identical words in each mark, "RIDE" and "DIE," that results in marks that sound and look alike.

We agree with the examining attorney's assessment that the marks "are pithy phrases using monosyllabic words that reference riding and dying...and the rhythm and feel of the

marks are similar." (Brief, unnumbered pp. 3 and 4). Given the similarities between the marks, when used in connection with identical goods, we find that the marks in their entireties engender similar overall commercial impressions.

Applicant asserts that the examining attorney has improperly placed emphasis on the words "RIDE" and "DIE" which, according to applicant, are generic or merely descriptive. Contrary to the gist of this argument, neither of the words "RIDE" or "DIE" in the marks is merely descriptive, let alone generic for clothing items. To the extent that the words are part of marks functioning as discrete source indicators (and not simply as part of a motto of serious bikers), both "RIDE" and "DIE" appear to be arbitrary for these goods.

The similarities between the marks RIDE OR DIE and RIDE TILL I DIE weigh in favor of a finding of likelihood of confusion.

We conclude that consumers familiar with registrant's clothing items sold under the mark RIDE TILL I DIE would be likely to believe, upon encountering applicant's mark RIDE OR DIE for identical and otherwise related clothing items, that the goods originated from or are associated with or sponsored by the same entity.



Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

**Decision:** The refusal to register is affirmed.