

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
September 20, 2012

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**Trademark Trial and Appeal Board**

---

In re Griffin and Grossman

---

Serial No. 77850840

---

Thomas I Rozsa, of Rozsa Law Group LC, for Marian Tomas Griffin and Michael Grossman.

Naakwama Ankrah, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

---

Before Quinn, Ritchie, and Shaw, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Individuals Marian Tomas Griffin and Michael Grossman ("applicants") filed an application to register the mark MAJOR MOJO, in standard character format, for goods identified as "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms,"<sup>1</sup> in International Class 25. The Trademark Examining Attorney refused registration of applicant's mark under Section 2(d) of the Trademark Act of

---

<sup>1</sup> Serial No. 77850840, filed October 16, 2009, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a *bona fide* intent to use the mark in commerce.

1946, 15 U.S.C. § 1052(d), on the ground that applicant's mark so resembles the registered mark MOJO, in typed drawing form, for "clothing, namely hats, shorts, tee-shirts, sweat shirts, jackets, coats, socks and infantwear,"<sup>2</sup> in International Class 25, that when used on or in connection with applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Upon final refusal of registration, applicant filed a timely appeal. Both applicant and the examining attorney filed briefs, and applicant filed a reply brief. For the reasons discussed herein, the Board affirms the refusal to register.

We base our determination under Section 2(d) on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *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 Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry

---

<sup>2</sup> Registration No. 2038193, issued February 18, 1997. Sections 8 and 15 accepted and acknowledged. Renewed. The cited registration contains goods and services in other classes, but they are not at issue in this refusal.

mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." ).

The Goods and Channels of Trade

Both the application and the cited registration identify "hats," "shirts," and "jackets." As such, the goods are overlapping and legally identically. To further show the relatedness of the other goods, the examining attorney included numerous third-party registrations. *See for example* Registration No. 3172064 (shorts and pants); Registration No. 3149836 (shorts and caps); Registration No. 3141390 (shorts and pants); Registration No. 3529071 (shorts and caps; pants); Registration No. 3734296 (shorts and caps; pants); Registration No. 3391798 (shorts and pants). Copies of use-based, third-party registrations may serve to suggest that the goods are of a type which may emanate from a single source. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993). The examining attorney additionally submitted evidence of some third-party websites that show pants, as identified in the cited registration offered for sale alongside or even under the same mark as shorts, as identified in the application, and shirts, as identified by both ([www.sportsauthority.com](http://www.sportsauthority.com); [www.oldnavy.gap.com](http://www.oldnavy.gap.com); and [www.gap.com](http://www.gap.com)). Accordingly, we find the goods to be in-part identical and otherwise related.

Because the goods described in the application and the cited registration are in-part identical, we must presume that the channels of trade and classes of purchasers are the same. *See Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade."); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers."). Additionally, there is nothing in the recital of goods in either the cited registration or the application that limits either registrant's or applicant's channels of trade. *See In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because there are no limitations as to channels of trade or classes of purchasers in either the application or the cited registration, it is presumed that the registration and the application move in all channels of trade normal for those services, and that the services are available to all classes of purchasers for the listed services). In other words, there is nothing that prevents applicant's "hats," "shirts," and "jackets" from being sold in the same stores and to the same classes of consumers that purchase registrant's "hats," "shirts," and "jackets" as well.

Accordingly, we find that these *du Pont* factors weigh heavily in favor of finding a likelihood of confusion.

The Marks

Preliminarily, we note that the more similar the goods at issue, the less similar the marks need to be for the Board to find a likelihood of confusion. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

In comparing the marks, we are mindful that 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 terms of their overall commercial impression so that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The mark in the cited registration consists solely of the word "MOJO," in typed drawing form. The mark in the application is "MAJOR MOJO," in standard character format. As such, the marks share the term "mojo." Applicant argues that the addition of the term "major" adds a different connotation to its mark. We take judicial notice of the following definitions<sup>3</sup>:

Major: 1. Greater in dignity, rank, importance, or interest; 2. Greater in number, quantity, or extent.

Mojo: a magic spell, hex or charm.

The term "mojo" appears to be fairly arbitrary for the clothing items at issue in this proceeding. Applicant has tried to persuade us otherwise, and perhaps show suggestiveness of the mark in the cited registration, by submitting during prosecution a list, and some printouts of marks that contain the term "mojo." Although the printouts were not from the Office database but rather from *Lexis.com*, the examining attorney did not specifically object to their submission. Rather, the examining attorney took issue, during prosecution and on brief, that the registrations are not evidence of "use" of a mark. The examining attorney further took issue that the goods and services set forth in the printouts and the list are

---

<sup>3</sup> The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd* 703 F.2d 1372, 217 USPQ 505

distinct from those in the application and the cited registration. We agree that third-party registrations are not evidence that the marks are in use, and therefore cannot show that consumers are so accustomed to seeing marks with MOJO (let alone MAJOR with MOJO) in them that they will distinguish them by other matter in the marks. The registrations, however, may be used in the same manner as dictionary definitions, to show that a term has a meaning or significance with respect to particular goods or in a particular industry. We note, for our part, that a number of the "registrations" were shown as "abandoned" or "pending." Accordingly, we do not find the list or the printouts to be probative of the weakness of the mark in the cited registration. To the extent applicant attempted to submit a few registrations with its reply brief, they are untimely and will not be considered. See Trademark Rule 2.142(d); 37 CFR § 2.142(d). Furthermore, even weak marks are entitled to protection against registration of a confusingly similar mark for in-part identical goods. See *Giant Food Inc. v. Rosso and Mastracco, Inc.*, 218 USPQ 521 (TTAB 1982).

---

(Fed. Cir. 1983). Both definitions are from *Merriam-Webster Online* (11<sup>th</sup> Ed. 2011).

Accordingly, considering the marks in their entireties, we find that consumers are most likely to view applicant's mark "MAJOR MOJO" as an expressed "new and improved" - "major" improvement in a line of registrant's "MOJO" clothing, particularly as the goods are in-part identical. As such, the commercial impressions are more similar than different.

Thus, this *du Pont* factor too, weighs in favor of finding a likelihood of confusion.

#### Conclusion

In summary, we have carefully considered all of the evidence and arguments of record relevant to the pertinent *du Pont* likelihood of confusion factors. We conclude that with legally identical, and otherwise similar, goods travelling in the same channels of trade, and similar marks with similar connotations and commercial impressions, there is a likelihood of confusion between applicant's applied-for mark MAJOR MOJO, for "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms," and the registered mark MOJO for "clothing, namely hats, shorts, tee-shirts, sweat shirts, jackets, coats, socks and infantwear."

Decision: The refusal to register is affirmed.