Mailed:
Dec. 17, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

Trademark Trial and Appeal Board

_____

In re Taylor Brands, LLC

_____

Serial No. 78565933

_____

Robert O. Fox of Luedeka, Neely & Graham, P.C. for Taylor Brands, LLC.

Rudy R. Singleton, Trademark Examining Attorney, Law Office 102 (Matthew Kline, Managing Attorney).

_____

Before Grendel, Walsh and Bergsman, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Taylor Brands, LLC, applicant herein, seeks registration on the Principal Register of the mark OLD TIMER (in standard character form) for goods identified in the application as "outdoor apparel, namely, caps, hats, vests, sweaters, shirts, jackets, boots, fishing waders.[1]

[1] Serial No. 78565933, filed on February 11, 2005. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that the mark, when applied to the goods identified in the application, so resembles the mark depicted below,

previously registered for "clothing, namely sweaters, sweat shirts, hats, caps, sun visors, jackets, shorts, sweat pants, track suits, wrist bands, head bands, pajamas, jerseys, neck ties, tank tops, child ensembles, shoes, socks, bibs, and aprons," as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

The appeal is fully briefed. After careful consideration of the arguments of counsel, we reverse the refusal to register.

Initially, we sustain the Trademark Examining Attorney's objection to the mere references in applicant's

brief to certain third-party registrations, and to certain registrations owned by applicant. These registrations have not been properly made of record, and we shall give them no consideration.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We begin with the second *du Pont* factor, which requires us to determine the similarity or dissimilarity of the goods as identified in the application and in the cited registration. Applicant's goods, as identified in the application, are identical to the goods in the cited registration to the extent that they include sweaters, caps, hats and jackets. The other clothing items identified in applicant's application, with the possible exception of "fishing waders," are closely related to the

clothing items identified in the cited registration. We find that the second *du Pont* factor weighs in favor of a finding of likelihood of confusion.

Because there are no restrictions as to trade channels or classes of purchasers in either the application or the cited registration, we presume that the goods move in all normal trade channels for such goods and to all normal classes of purchasers for such goods. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). We find that the third *du Pont* factor (similarity or dissimilarity of trade channels) weighs in favor of a finding of likelihood of confusion.

The clothing items identified in the application and in the cited registration include ordinary, inexpensive goods purchased by ordinary consumers who would exercise only a normal degree of care in making their purchasing decisions. We find that the fourth *du Pont* factor (conditions of purchase) weighs in favor of a finding of likelihood of confusion.

We turn finally to the first *du Pont* factor, which requires us to determine the similarity or dissimilarity of the marks when viewed in their entireties in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imports, Inc., supra*.

In terms of appearance and sound, we find that the marks are similar to the extent that applicant's mark consists of the words OLD TIMER and the cited registered mark includes the word OLDTIMERS' (in plural possessive form), which would be viewed and pronounced in essentially identical manners. However, we find that the marks otherwise look different due to the presence of the prominent design element and the additional words HOCKEY CHALLENGE in the cited registered mark, and they sound different due to the presence of the words HOCKEY CHALLENGE in the cited registered mark. On balance, we find that the visual and aural differences which result from the presence of the design element and the additional wording in the cited registered mark outweigh the similarity in appearance and sound which results from the presence of OLD TIMER or OLDTIMERS' in the two marks.

We likewise find that the two marks, when viewed in their entireties, are dissimilar in terms of connotation and overall commercial impression. Any similarity which results from the presence of the words OLD TIMER in applicant's mark and the plural possessive OLDTIMERS' in the cited registered mark is greatly outweighed by the presence in the cited registered mark of the words HOCKEY CHALLENGE and the hockey puck design element. These

features impart to the registered mark an overall meaning and commercial impression which are totally absent from applicant's mark. The cited registered mark specifically calls to mind a hockey game or exhibition featuring a reunion of once-active but now-retired former hockey players. The words OLD TIMER in applicant's mark have no such sports connotation (much less a specific hockey connotation).

For these reasons, we find that applicant's mark and the cited registered mark are dissimilar when viewed in their entireties, and that the first *du Pont* factor accordingly weighs against a finding of likelihood of confusion.

Balancing all of the relevant likelihood of confusion factors, we find that the marks are sufficiently dissimilar that no confusion is likely to result even if the marks are used on identical or closely related clothing items which may be purchased on impulse. The first *du Pont* factor, by itself, outweighs all of the other factors. *See, e.g., Kellogg Co. v. Pack'Em Enterprises Inc.,* 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

Decision: The refusal to register is reversed.