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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Chrome Hearts LLC

Serial No. 78855522

Serial No. 78855556

Afschineh Latifi, of Tucker & Latifi, for Chrome Hearts LLC.

Kelly A Choe, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Quinn, Walters, and Ritchie de Larena, Administrative Trademark Judges.

Opinion by Ritchie de Larena, Administrative Trademark Judge:

Chrome Hearts LLC filed an application to register the mark shown below for "bags, namely, handbags, shoulder bags, tote bags, clutches, wallets, luggage, back packs and umbrellas," in International Class 18.¹

¹ Application Serial No. 78855522, filed April 6, 2006, pursuant to Section 1(a) of the Trademark Act, 15 USC §1051(a), claiming first use and first use in commerce on January 5, 1990. The description states: "The mark consists of the letters 'C' and 'H' in old English font."

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Applicant also filed a separate application to register the same mark for "clothing, namely, tee shirts, shirts, sweatshirts, sweat pants, sweaters and hats," in International Class 25.² The trademark examining attorney refused registration of both marks under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's marks so resemble the mark CH, registered for the following goods that when used in connection with applicant's identified goods in these two applications, they will be likely to cause confusion: "perfumery, cosmetics, essential oils for personal use, soaps, talcum powder, shampoos, hair lotions, bath and shower gels, bath salts, not for medical purposes, deodorants for personal use, dentifrices" in International Class 3; "handbags, wallets, purses, suitcases, umbrellas,

² Application Serial No. 78855556, filed April 6, 2006, pursuant to Section 1(a) of the Trademark Act, 15 USC §1051(a), claiming first use and first use in commerce on January 5, 1990. The description states: "The mark consists of the letters 'C' and 'H' in old English font."

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rucksacks," in International Class 18; "pants, trousers, shirts, sweaters, pullovers, jackets, socks, dresses, skirts, jerseys, blouses, knit shirts, suits, raincoats, gloves, scarves, foulards, ties, T-shirts, cardigans, shorts, vests, jeans, swimsuits, belts, shoes, boots, hats, caps, headbands, and peaks" in International Class 25.³

Upon final refusal of registration in each case, applicant filed a timely appeal. Both applicant and the examining attorney filed briefs. Since these two *ex parte* appeals involve the same applicant, the same marks, and common issues of law and fact, we issue this single opinion that discusses both applications. For the reasons discussed herein, the Board affirms the final refusals to register in both cases.

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

³ Registration No. 3171270, issued November 14, 2006, claiming first use and first use in commerce on December 31, 1986 for the goods in class 3, and October 26, 2002 for the goods in classes 18 and 25, filed pursuant to Section 44 of the Trademark Act. If applicant wishes to dispute the registrant's priority, as indicated in its briefs, the proper remedy is via a cancellation proceeding pursuant to Section 14 of the Trademark Act.

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the similarities between the goods or services. See *Federated Foods, Inc. v. Fort Howard Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks"). We consider each of the factors as to which applicant or the examining attorney presented arguments or evidence.

The Marks

Both applicant's and registrant's marks are comprised solely of the capital letters, "CH." Applicant does not dispute that these are the same letters, presented in the same order. Applicant solely argues that its "old English font" stylized version of "CH" is different from registrant's standard character, plain version of "CH." However, since registrant has obtained a standard character registration, it may present its mark in various stylized forms, including old English font. Accordingly, we find the marks to be essentially identical.

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 offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD*

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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 letters "CH" constitute the initials of both applicant (Chrome Hearts LLC) and the registrant (Carolina Herrera Ltd.). Applicant argues that registrant's CH is a weak mark entitled to scant protection. In support of its argument, applicant submitted evidence of its own registration of the stylized mark it seeks to register now, for "jewelry, namely, bracelets, necklaces, rings, earrings, pendants, cuff links and watch bracelets," in International Class 14.⁴ Applicant further submitted evidence of the third-party mark as shown below for "jackets, slacks, shorts, shirts, tops, suits, bathing suits, belts, blazers, sport coats, scarves, hats, jackets, skirts and overalls," in International Class 25.⁵

⁴ Registration No. 2954539, issued May 24, 1995, based on Section 1(a) of the Trademark Act, 15 USC §1051(a), claiming first use and first use in commerce on January 31, 1992.

⁵ Registration No. 3078664, issued April 11, 2006, for "mark CH and design," based on Section 1(a) of the Trademark Act, 15 USC §1051(a), claiming first use and first use in commerce on September 18, 2001.

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However, as the examining attorney in this case noted, that third-party design mark is inapposite, since the letters "CH" are well-masked, and consumers may not even recognize them in the design. Furthermore, the filing included a statement: "The mark consists of a stylized version of the word CHOR." In sum, we do not find applicant's evidence to be probative of the weakness of the registered mark. Furthermore, even a weak mark is entitled to protection against registration of confusingly similar marks. See *Giant Food Inc. v. Roos and Mastacco, Inc.*, 218 USPQ 521 (TTAB 1982). In view of the foregoing, we find that the first *du Pont* factor weighs heavily in favor of finding a likelihood of consumer confusion.

The Goods and Channels of Trade

Preliminarily, we note that the more similar the marks at issue, the less similar the goods need to be for the Board to find a likelihood of confusion. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001). It is only

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necessary that there be a viable relationship between the goods to support a finding of likelihood of confusion. *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983).

Moreover, goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used or intended to be used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991).

Several items in the present applications overlap with those in the cited registration. Both include "handbags and wallets," (Serial No. 78855522) as well as "tee shirts, shirts, sweaters, and hats" (Serial No. 78855556). The additional items listed in the applications are highly similar to those listed in the cited registration. Accordingly, we find that the goods at issue are in part identical and otherwise highly related. Applicant does not

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dispute the similarity of its products to those of registrant. The use of essentially identical marks, as in this case, on goods that are highly similar or identical, will likely lead consumers to the assumption that there is a common source. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

Turning next to the channels of trade, there is nothing in the recital of goods in the cited registration that limits the channels of trade or classes of consumers for registrant's goods. In the absence of specific limitations in the registration, we must presume that registrant's goods will travel in all normal and usual channels of trade and methods of distribution and be sold to all classes of consumers. *Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937 (Fed. Cir. 1983). In view of the foregoing, the second and third *du Pont* factors weigh heavily in favor of finding that there is a likelihood of consumer confusion.

Balancing the Factors

Considering all of the evidence of record as it pertains to the *du Pont* factors, we conclude that the marks are essentially identical; the goods are identical in part and otherwise highly related; and they are likely to be sold through the same channels of trade. It is well-

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established that any doubts as to likelihood of confusion are to be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988). Accordingly, we find a likelihood of confusion between applicant's marks, and the cited registration.

Decision: The refusals to register are affirmed.