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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	78855556
Applicant	Chrome Hearts LLC
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Submission	Appeal Brief
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Date	06/11/2008

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office - TTAB

Applicant: Chrome Hearts LLC Trademark Trial and Appeal Board
Mark: **CH** (Stylized)
Serial No: 78/855556
Filed: April 6, 2006

Final Action Issued by:
Trademark Attorney: Law Office 113
Kelly A. Choe, Esq.

TTAB
Assistant Commissioner for Trademarks
Arlington, VA 22202

Appeal of Final Action on CH (Stylized)

Dear Sir/Madam:

In response to the Final Action dated October 25, 2007 from the Trademark Attorney, Kelly A. Choe, Esq., acceptance and review of this brief in support of Applicant's Notice of Appeal filed on April 18, 2008 for the Application identified above is requested for the reasons stated in the following paragraphs.

The Examiner has cited Registration No. 3171270 by Carolina Herrera Ltd. ("Herrera") for the block letters CH in International Classes 3, 18 and 25 as a bar to registration of Applicant's Stylized **CH** mark in International Class 25 and has thus denied registration of Applicant's mark. Applicant appeals the Examiner's decision herein and respectfully submits that the refusal to register the subject trademark should be withdrawn.

Applicant, Chrome Hearts LLC, is a renowned designer, manufacturer and distributor of the exclusive line of leather goods and accessories, jewelry and clothing sold under the CHROME HEARTS family of trademarks. In fact, Applicant has numerous registrations in the United States alone for its famous CHROME HEARTS marks for a diverse array of goods, including but not limited to clothing, jewelry, leather goods, furniture, smoking articles, bottled water and eyewear, just to name a few. In addition to using its CHROME HEARTS mark on all of its goods, Applicant also uses the Stylized letters **CH** on many of its products. Clearly, the letters **CH** signify and represent the first initials of Applicant's famous CHROME HEARTS mark and Applicant uses the letters **CH** as another source identifier for its products.

Applicant has been using its **CH** mark in connection with apparel and related goods since as early as 1990 and has already obtained a registration for its **CH** mark used in connection with jewelry in International Class 14, which has been in use since as early as 1992. A copy of the Registration in International Class 14 is annexed hereto and identified as *Exhibit 1*.

It has long been held that an individual letter or a group of letters can function as a trademark. Mishawaka Rubber & Woolen Mfg. Co. v. Bata Narodni Podnik, 222 F.2d 279, 105 U.S.P.Q. 432 (C.C.P.A. 1955); Monsanto Co. v. Milburn Bros., Inc., 167 U.S.P.Q. 296 (T.T.A.B. 1970). The courts have further held that “highly stylized, highly contrasting letter design logos tend to fall on the no likelihood of confusion side of the line whereas rather clear portrayals of a letter tend to result in a finding of a likelihood of confusion”. Textron, Inc. v. Maquinas Agricolas “Jacto” S.A., 215 U.S.P.Q. 162 (T.T.A.B. 1982); In re Buty-Wave Products Co., 198 U.S.P.Q. 104 (T.T.A.B. 1978).

The use by fashion houses of the initials of their main trademark is nothing new and in fact, such use has been made by designers for many years. For instance, the RL use by Ralph Lauren, the intertwined CC by Coco Chanel, DKNY by Donna Karen, YSL by Yves Saint Laurent and CK by Calvin Klein, just to name a few. Interestingly, despite the fame and notoriety associated with these designers and their trademarks, a cursory search through the records of the United States Patent & Trademark Office reveals that initials such as RL and CC, just to name a few, have been allowed for registration by third parties other than Ralph Lauren and Coco Chanel.

In fact, the letters CH in different stylized variations and owned by different entities in connection with exact goods have been allowed by the PTO despite the registrations by Herrera. For instance, there is a registration by K.C. New York LLC for the stylized letters CH in International Class 25, which was granted on April 11, 2006, seven months prior to registration of Herrera’s mark for the block letters CH was issued. A copy of K.C. New York, LLC’s registration obtained from the records of the PTO is annexed hereto and identified as *Exhibit 2*.

Surely, the examiner is not suggesting that the use by Herrera of the alphabet letters CH, in block letters and used without any stylization, has raised consumer consciousness to such level that consumers readily identify the letters CH with Herrera only. Furthermore, the examiner cannot be suggesting that Herrera has exclusive rights to the block letters CH. If in fact the argument is that only one entity can use letters in the alphabet as a source identifier, then Herrera’s application should have been denied based on the prior registration by K.C. New York LLC and the two registrations would not have been able to co-exist. In fact, this use and registration by different entities of letters as trademark designations clearly proves that no one party can claim exclusive rights to any letters in the alphabet.

In conclusion and based on well established legal precedent, it is clear that no one entity can monopolize letters in the alphabet and that highly stylized letters, such as Applicant’s CH mark, can serve as a source identifier and further fall on the no likelihood of confusion side of the line.

Based on the above, it is hereby respectfully submitted that there is in fact no likelihood of confusion between Applicant's **CH** mark as used in connection with apparel and Herrera's registration for the CH block letters; that the current Application is in condition for publication, and such action is respectfully requested.

Dated: June 11, 2008

Respectfully submitted,

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Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28 and 50

United States Patent and Trademark Office

Reg. No. 2,954,539

Registered May 24, 2005

TRADEMARK
PRINCIPAL REGISTER



CHROME HEARTS, INC. (CALIFORNIA CORPORATION)
915 N. MANSFIELD
HOLLYWOOD, CA 90038

FIRST USE 1-0-1992; IN COMMERCE 1-0-1992.

SER. NO. 76-590,713, FILED 5-6-2004.

FOR: JEWELRY, NAMELY, BRACELETS, NECKLACES, RINGS, EARRINGS, PENDANTS, CUFF LINKS AND WATCH BRACELETS, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

TANYA AMOS, EXAMINING ATTORNEY

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Serial Number: [78469586 Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3078664

Mark



(words only): CH

Standard Character claim: No

Current Status: Registered.

Date of Status: 2006-04-11

Filing Date: 2004-08-18

Transformed into a National Application: No

Registration Date: 2006-04-11

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-04-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. K. C. New York LLC

Address:

K. C. New York LLC
Suite 905 485 Seventh Avenue

Exhibit 2

New York, NY 10018

United States

Legal Entity Type: Ltd Liab Jt St Co

State or Country Where Organized: New York

GOODS AND/OR SERVICES

International Class: 025

Class Status: Active

Jackets, slacks, shorts, shirts, tops, suits, bathing suits, belts, blazers, sport coats, scarves, hats, jackets, skirts and overalls

Basis: 1(a)

First Use Date: 2001-09-18

First Use in Commerce Date: 2001-09-18

ADDITIONAL INFORMATION

Design Search Code(s):

26.01.03 - Circles, incomplete (more than semi-circles); Incomplete circles (more than semi-circles)

26.01.12 - Circles with bars, bands and lines

26.17.25 - Other lines, bands or bars

Prior Registration Number(s):

2556852

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-04-11 - Registered - Principal Register

2006-01-17 - Published for opposition

2005-12-28 - Notice of publication

2005-12-05 - Law Office Publication Review Completed

2005-11-11 - Approved for Pub - Principal Register (Initial exam)

2005-10-20 - Examiner's Amendment Entered

2005-10-18 - Correspondence E-Mailed

2005-10-18 - Examiners Amendment -Written
2005-09-30 - Teas/Email Correspondence Entered
2005-09-21 - Communication received from applicant
2005-09-30 - Assigned To LIE
2005-09-21 - TEAS Response to Office Action Received
2005-03-22 - Non-final action e-mailed
2005-03-22 - Non-Final Action Written
2005-03-21 - Assigned To Examiner
2004-08-26 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

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