

THIS OPINION IS NOT A  
PRECEDENT OF THE T.T.A.B.

Mailed: January 22, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Müller, Durrer & Müller, Schuhateliers

---

Serial No. 79028161

---

Ellen A. Rubel of Moore & Van Allen, PLLC for Müller,  
Durrer & Müller, Schuhateliers.

Aretha Somerville, Trademark Examining Attorney, Law Office  
107 (J. Leslie Bishop, Managing Attorney).

---

Before Seeherman, Kuhlke and Wellington, Administrative  
Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Müller, Durrer & Müller, Schuhateliers, a Swiss  
partnership, seeks registration on the Principal Register  
of the mark VABEENE, in standard character form, for goods  
ultimately identified as "leather and imitations of leather  
and goods made of these materials, namely handbags and  
evening bags; trunks and traveling bags, umbrellas,

**Serial No. 79028161**

parasols and walking sticks" in International Class 18 and "clothing namely footwear" in International Class 25.<sup>1</sup>

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used with its identified goods, so resembles the registered standard character mark VABENE for "suits" in International Class 25, as to be likely to cause confusion, mistake or deception.<sup>2</sup>

Applicant has appealed the final refusal and the appeal is fully briefed. We affirm the refusal to register.

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, two key considerations are the similarities between the marks and the similarities between the goods. See

---

<sup>1</sup> Application Serial No. 79028161, filed June 30, 2006, under Trademark Act Section 66(a), 15 U.S.C. §1141.

<sup>2</sup> Registration No. 3185827, issued on December 19, 2006.

**Serial No. 79028161**

Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

In determining the similarity between the marks we analyze "the marks in their entireties as to appearance, sound, connotation and commercial impression." Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) quoting du Pont, 177 USPQ at 567.

In comparing the marks, the examining attorney points to the similarities in sound and appearance and contends that the additional E in applicant's mark is not sufficient to distinguish the marks. In particular, she argues that the marks are phonetically identical or, at a minimum, highly similar because there is no proper pronunciation of a mark and these marks could be pronounced the same.

Centraz Industries Inc. v. Spartan Chemical Co. Inc., 77 USPQ2d 1698, 1701 (TTAB 2006). Applicant disputes this point by arguing that the additional E in its mark impacts the way the mark is pronounced. Because neither applicant's mark nor the cited mark are common English words, we must consider any possible pronunciation of the marks, and one possible pronunciation of VABEENE would be phonetically identical to the mark VABENE in the registration. In any event, the various possible

pronunciations are, at a minimum, very similar. Applicant also relies on its argument that the marks have different connotations, in that registrant's mark VABENE is an Italian word "that translates into English as 'good'." Br. p. 3. We first point out that applicant did not support this statement with any evidence. Further, we take judicial notice<sup>3</sup> that there is no entry for "vabene" in the Italian/English dictionary. Langenscheidt Italian-English English-Italian Dictionary (2006). Rather "va bene" is a two word phrase which translates into English as "OK!." Id.

However, even accepting applicant's translation, there is nothing to indicate that consumers would stop and translate VABENE and comprehend its meaning as "good." More importantly, this line of argument ignores those potential purchasers who are not familiar with Italian or the Italian word "vabene." We must consider those purchasers to whom VABENE would have no meaning, and to whom both marks would simply appear as arbitrary words. Moreover, as to those who are somewhat familiar with the Italian phrase, despite the additional E, VABEENE may still

---

<sup>3</sup> University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983) (The Board may take judicial notice of dictionary definitions).

be perceived as the Italian phrase for "good" because it is such a minor difference. In short, we do not think the element of connotation serves to distinguish the marks. We also find the marks overall to be very similar in appearance and commercial impression.

We turn next to a consideration of the goods, channels of trade and classes of purchasers as identified in the application and the cited registration. It is well settled that goods need not be similar or competitive in nature to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods themselves, but rather whether purchasers are likely to confuse the source of the goods. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider the cited registrant's goods and applicant's goods as they are described in the registration and application and we cannot read limitations into those goods. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the identifications in the application or cited registration describe goods broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers,

**Serial No. 79028161**

it is presumed that the identifications encompass all goods of the type described, that they move in all channels of trade normal for these goods, and that they are available to all classes of purchasers for the described goods. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

As noted above, applicant's goods are "leather and imitations of leather and goods made of these materials, namely handbags and evening bags; trunks and traveling bags, umbrellas, parasols and walking sticks" and "clothing namely footwear." Registrant's goods are identified as "suits," which identification encompasses "men's suits" and "women's suits."

In support of her position that the respective goods are related, the examining attorney submitted third-party use-based registrations that include footwear, handbags and suits in the identification of goods. See, e.g., Reg. No. 3289741 for the mark GILBERGILMORE for *inter alia* handbags, suits and shoes; Reg. No. 3374988 for the mark BLAIR for *inter alia* suits, footwear and handbags; Reg. No. 3319404 for the mark BIZ for *inter alia* handbags, suits and footwear; Reg. No. 2936441 for the mark SOPHIA VESPUCCI for *inter alia* suits, footwear and handbags; and Reg. No. 3138173 for the mark SPACECRAFT for *inter alia* suits, shoes and handbags. We find these registrations persuasive

**Serial No. 79028161**

evidence as to the factor of the relatedness of the goods. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) (third-party registrations may serve to suggest that the listed goods are of a kind that may emanate from a single source). See also *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981) (it is sufficient for a finding of likelihood of confusion if the relatedness is established for any item encompassed by the identification of goods in the application).

As noted by applicant, there is no per se rule that all types of wearing apparel are related. In *re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984). In many of the cases cited by applicant the marks have a different connotation in connection with the different clothing items. See, e.g., *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (BOTTOMS UP for ladies' and children's underwear not likely to be confused with BOTTOMS UP for men's clothing where the term connotes the drinking phrase "Drink Up" when applied to men's clothing but does not have this connotation when applied to ladies' and children's underwear). See also *In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987). In the present case, however, as noted above, for many consumers the marks would not have different meanings; moreover, the meanings are not affected

**Serial No. 79028161**

by the different clothing or accessory items. Further, while not all clothing and accessory items are necessarily complementary in nature or generally perceived by consumers as emanating from the same source, we find the facts here more similar to those in *In re Melville* where the application was for women's shoes and the cited registration included women's pants, blouses, shorts and jackets. *In re Melville*, 18 USPQ2d 1386, 1388 (TTAB 1991) ("[a] woman's ensemble, which may consist of a coordinated set of pants, a blouse and a jacket, is incomplete without a pair of shoes which match or contrast therewith.") Similarly, here the goods, suits, handbags, and footwear, are items that complement each other and as the third-party registrations suggest they are of a kind that emanate from a single source.

Further, given the absence of any limitations in the identification of goods we must presume that the goods travel in all ordinary channels of trade and are available to all classes of customers for these goods. *Linkvest*, supra. Suits, handbags and footwear are all sold in department stores and purchased by the same classes of customers. As applicant notes, this particular factor may not carry as much weight because "the mere fact that respective goods could be sold within the same type of



**Serial No. 79028161**

retail store is not a sufficient basis for finding the goods to be sufficiently related relative to a finding of likelihood of confusion." Br. p. 5. However, given the complementary nature of the goods and the evidence showing such goods as emanating from the same source, the fact that the goods may be sold in different sections of a department store does not detract from the factor of the relatedness of the goods.

In view of the above, we find that because of the similarities of the marks, the relatedness of the goods and the overlap in trade channels and classes of purchasers, confusion is likely.

**Decision:** The refusal to register under Section 2(d) of the Trademark Act is affirmed.