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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Paws4Peace, LLC

Serial No. 85215720

Laura J. Zeman-Mullen of Zeman-Mullen & Ford LLP for
Paws4Peace, LLC.

Zhaleh Delaney, Trademark Examining Attorney, Law Office
116 (Michael B. Baird, Managing Attorney).

Before Cataldo, Wellington, and Gorowitz, Administrative
Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Paws4Peace, LLC has applied to register the mark:



Paws4Peace

for "pet clothing, pet collars, pet leashes, overnight
bags/tote bags for pets, [and] pet carriers" in
International Class 18.¹

¹ Application Serial No. 85215720, filed on January 12, 2011,
based on an allegation of a bona fide intent to use the mark in
commerce.

The examining attorney has refused to register applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of the registered marks PAWS FOR PEACE (in standard characters) and



The two cited registrations are owned by the same party and cover "human apparel, namely, shirts, sweat shirts, socks, pajamas, hats; Footwear, namely, sneakers and shoes" in International Class 25.²

When the refusal was made final, this appeal followed.

Our likelihood of confusion analysis is based on the record and the pertinent factors set out by the Court of Customs and Patent Appeals in *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 Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003); and *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). We must keep in mind that "[t]he fundamental

² Registrations Nos. 3833699 and 3833700 issued on August 17, 2010. The latter registration, for the design mark, describes the mark as "consist[ing] of a peace sign and four shaded circles which shown together represent a stylized paw print."

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inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We begin our analysis by comparing the marks. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). Here, we are particularly 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 that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

First, in comparing applicant's mark to the registered design mark, we note applicant seeks to incorporate the near same design. Both designs are fanciful paw prints wherein the metacarpal pad is replaced with a peace symbol. The only minor difference between the designs is the

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registered mark has blurred or ill-defined borders while applicant's design has more well-defined borders. However, we must assume that consumers will not have the luxury of a side-by-side comparison of the marks. Thus, such an insignificant difference in the designs is likely to go unnoticed.

The commercial impressions and connotations created by the marks are similar because both marks conjure a sentiment of integration involving animals and peace. Although applicant's mark contains the additional wording PAWS4PEACE, this term may be understood as articulating the same or a very similar expression created by the registered design mark. *Compare, e.g., In re Rolf Nilsson AB*, 230 USPQ 141 (TTAB 1986) (design of lion's head and word mark LION regarded as legal equivalents for shoes); and *Puma-Sportschuhfabriken Rudolf Dassler KG v. Garan, Inc.*, 224 USPQ 1064 (TTAB 1984) (designs of mountain lion held similar to word mark PUMA). Thus, the additional wording in applicant's mark does not outweigh the similarity of the marks based on applicant's adoption of a nearly exact representation of the registered design mark.

Furthermore, it has not been established that "paw and peace symbol" combinations are commonplace, let alone used in trademarks in connection with similar goods, such that

we could conclude that consumers are somehow accustomed to these designs and may be more willing to overlooking this basis of similarity. We acknowledge that applicant has identified a third-party registration for a similar design for clothing and argues that the registered marks "already coexist without confusion." Brief, p. 8. There are several problems with such reliance on this single registration. First and foremost, the registration has little, if any, probative value because it is not evidence that the mark has actually been used in commerce or that the public has become familiar with it. *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973) (the purchasing public is not aware of registrations reposing in the U.S. Patent and Trademark Office). Second, as to applicant's contention regarding a lack of actual confusion, while this is the subject of a separate *du Pont* factor, we point out that we have no way of determining whether or not, in fact, there has been any actual confusion between the marks. That is, there must be evidence showing that there has been an opportunity for instances of actual confusion to occur in order for the asserted absence of any instances of actual confusion to be a meaningful factor in the determination of whether confusion is likely to occur. See, e.g., *Cunningham v.*

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Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000). We do not have such evidence in the record.

As to our comparison of applicant's proposed mark with the second registered mark, PAWS FOR PEACE (in standard character form), we too find them very similar. The wording in applicant's mark, PAWS4PEACE, is essentially the equivalent of the registered mark; the two marks would be understood and spoken in the same manner. Applicant's use of the numeral "4" in place of the word "for" is not unique and would be immediately understood as a mere abbreviation. For reasons previously mentioned, the addition of the design portion in applicant's mark, not present in the cited registration, has lessened significance for purposes of distinguishing the two marks. Again, the design involves the combination of a "paw" and a peace symbol and, therefore, reinforces the commercial impression of the wording in the marks.

In sum, we find applicant's proposed mark is very similar to the two registered marks. This factor favors finding a likelihood of confusion.

This brings us to the *du Pont* factor involving the relationship, if any, between the goods at issue in this appeal. In considering this factor, we must compare the goods as they are described in the identifications of goods

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in the application and registrations. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); and *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods").

[It] has often been said that 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 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 thereon, 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 [party's] goods or services.

In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991).

See also *In re Opus One Inc.*, 60 USPQ2d 1812, 1814-15 (TTAB 2001); and *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1898 (TTAB 1989).

Here, again, applicant's goods are "pet clothing, pet collars, pet leashes, overnight bags/tote bags for pets, [and] pet carriers" and the cited registered marks cover "human apparel, namely, shirts, sweat shirts, socks, pajamas, hats; Footwear, namely, sneakers and shoes." The examining attorney argues that the respective goods are related because "[i]n that other human and pet apparel

goods emanate from the same source in trade according to the Internet evidence of record, consumers are likely to associate [goods at issue herein], despite their differences." Brief, (unnumbered) p. 10. In support, she submitted with the Office actions printouts from approximately eleven different websites featuring either both human and pet clothes, in many cases matching, or articles discussing the trend of pet and human clothing with an emphasis again on the owners matching the pet's clothing, including several references to Ralph Lauren apparel for pets. The examining attorney asserts that this evidence "shows that consumers would perceive human and pet apparel and accessories to have the same origin when all offered under a 'Paws for Peace' name in trade, or under highly similar paw print-peace sign designs." *Id.* at 11. She also argues that there is "a market overlap between human and pet apparel and accessories, *i.e.*, that pet owners are interested in both of these goods, rendering confusion likely." *Id.*

Based on the record, we have concluded that applicant's pet clothing and the human clothing identified in the registrations are related. We agree with the examining attorney the internet evidence shows that the goods may emanate from a common source and be marketed in

such a manner, *i.e.*, intended to match the owner's apparel, that when a substantially similar mark is being used on said goods consumers may mistakenly believe the source of the goods is the same. In other words, it is likely that consumers, upon encountering both marks being used on the respective goods, would mistakenly believe that the pet and human clothing are intended to be complementary by matching and, therefore, originate from the same source.

As to the *du Pont* factors involving the channels of trade and classes of purchasers, we note that applicant asserts the "target markets of Applicant's goods and Registrant's goods are distinct and different" because one type of clothing is to be worn by pets and the other by humans. Brief, p. 9. Such an argument is not persuasive because clearly it would be pet owners, and not the pets, purchasing the pet clothing. Pet owners fall within the general public who are the relevant consumers for human clothing. Thus, there is clearly an overlap of consumers in part.

We have considered all evidence of record as well as the arguments put forth by applicant and the examining attorney. Ultimately, we conclude that there is a likelihood of confusion between applicant's mark

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on pet clothing and accessories and the registered marks
PAWS FOR PEACE and



on various articles of human clothing.

Decision: The examining attorney's refusal to register under Section 2(d) of the Trademark Act is affirmed.