

**This Opinion is Not a
Precedent of the TTAB**

Mailed: June 19, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Confluence Holdings Corp.
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Serial No. 85643399
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Peter E. Heuser of Schwabe Williamson & Wyatt,
for Confluence Holdings Corp.

Miah Rosenberg, Trademark Examining Attorney, Law Office 117,
Hellen M. Bryan-Johnson, Managing Attorney.

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Before Seeherman, Bergsman and Adlin,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Confluence Holdings Corp. (“Applicant”) seeks registration on the Principal
Register of the mark BOMBER GEAR (in standard characters) for

Dry tops, dry pants, and dry shorts used for kayaking,
International Class 25.¹

Applicant disclaimed the exclusive right to use the word “Gear.”

¹ “Dry” clothing will keep the person wearing the clothing dry but it does not provide insulation. Topkayker.net attached to the April 11, 2013 Office action. *See also* the REI.com website attached to the August 13, 2013 Office action.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so closely resembles the registered marks shown below, owned by different entities, as to be likely to cause confusion:

1. Registration No. 2000494 for the mark BOMBER, in typed drawing form, for "hats," in Class 25. The mark is registered under the provisions of Section 2(f) of the Trademark Act;² and

2. Registration No. 2133628 for the mark BOMBERS, in typed drawing form, for, *inter alia*, "shirts," in Class 25.³

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of 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 the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper 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

² Registered September 17, 1996; renewed. The mark is registered under Section 2(f) because a "bomber hat" is type of hat: "usually leather cap with large earflaps, a chin strap and, often, a short brim that is commonly turned up at the front to show the lining (often fleece or fur). It is often worn with goggles." *Wikipedia* attached to Applicant's March 26, 2013 response to Office action.

³ Registered February 3, 1998; renewed.

of the goods and differences in the marks”). These factors and any other relevant *du Pont* factors will be considered in this decision.

A. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.

We turn first to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987). In comparing the marks, we are mindful that “[t]he proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). *See also San Fernando Electric Mfg. Co. v. JFD 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).

Applicant is seeking to register the mark BOMBER GEAR for “dry tops, dry pants, and dry shorts used for kayaking” and the marks in the cited registrations are BOMBER for hats and BOMBERS for shirts.

The word BOMBER is the dominant element of Applicant's mark and it is the part of Applicant's mark that most impresses consumers because the disclaimed word "gear" is a generic term when used in connection with clothing for kayaking. The word "gear" is defined, *inter alia*, as follows:

2. Equipment, such as tools or clothing, used for a particular activity: *fishing gear*. See Synonyms at equipment.⁴

Applicant's mark engenders the commercial impression of BOMBER brand gear. It is well-settled that disclaimed, generic matter has less significance in likelihood of confusion determinations. See *In re Dixie Restaurants Inc.*, 105 F.2d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (the dominant part of applicant's mark THE DELTA CAFÉ and design is the word "Delta" because applicant disclaimed the generic word "Café."); *In re Denisi*, 225 UPSQ 624 (TTAB 1985) (PERRY'S PIZZA for restaurant services specializing in pizza is likely to cause confusion with PERRY'S for restaurant and bar services). See also *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), quoting, *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1983) ("Regarding descriptive terms, this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.").

⁴ The *Yahoo! Education Dictionary* (education.yahoo.com) attached to the September 26, 2012 Office action. The definition from **COLLINS DICTIONARY** (collinsdictionary.com/dictionary/english) attached to the September 26, 2012 Office action has little probative value because it is not from the **COLLINS AMERICAN ENGLISH DICTIONARY**. The record shows that the publisher of the Collins Dictionary publishes various English language dictionaries, including American English which the Examining Attorney did not submit.

The significance of the word “Bomber” as the dominant element of Applicant’s mark is further reinforced by its location as the first part of the mark. *See Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”). *See also Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word).

The dominant element - BOMBER - of Applicant’s mark BOMBER GEAR is identical to the BOMBER mark in one of the cited registrations. The addition of the letter “s” in the other cited mark BOMBERS has little, if any, distinguishing significance. Trademarks consisting of the singular and plural forms of the same term are essentially the same mark. *See Wilson v. Delaunay*, 245 F.2d 877, 878, 114 USPQ 339, 341 (C.C.P.A. 1957) (finding no material difference between the singular and plural forms of ZOMBIE such that the marks were considered the same mark); *Weider Publ’ns, LLC v. D&B Beauty Care Co.*, 109 USPQ2d 1347, 1355 (TTAB 2014); *In re Strategic Partners Inc.*, 102 USPQ2d 1397, 1399 (TTAB 2012) (“the difference between the singular form ANYWEAR depicted in the applied-for mark and the plural form ANYWEARS in applicant's existing registration is not

meaningful.”); *In re Pix of Am., Inc.*, 225 USPQ 691, 692 (TTAB 1985) (noting that the pluralization of NEWPORT is “almost totally insignificant” in terms of likelihood of confusion among purchasers); *In re Sarjanian*, 136 USPQ 307, 308 (TTAB 1962) (finding no material difference between the singular and plural forms of RED DEVIL).



In view of the foregoing, we find that Applicant’s mark BOMBER GEAR is similar to the marks BOMBER and BOMBERS in terms of appearance, sound, connotation and commercial impression.

B. The strength of the cited marks and the number and nature of similar marks in use on similar goods.

Applicant argues that “[t]he frequency with which [Bomber] appears in marks registered for use in connection with clothing demonstrates that the term ‘BOMBER’ is so commonly used for such goods that the public will look to other elements of the marks and differences between the products and parties selling those products to distinguish source.”⁵ To support this argument, Applicant submitted copies of 11 third-party registrations, summarized below, and excerpts from the websites of seven of the third-party registrants displaying their clothing and their “Bomber” formative marks.

Mark	Reg. No.	Goods
JOURNEYMAN BOMBER	2369427	Jackets

⁵ Applicant’s Brief, p. 16.

Mark	Reg. No.	Goods
 ⁶	4083130	Shirts, hats, sweaters, socks, bandanas, beanies, shoes, underwear, pants, swimwear, shorts, skirts, dresses, ties, long sleeve shirts, jackets, sports bras, visors, scarves, and dress suits
BROWNBOMBERMMA	4196714	T-shirts, sport shirts, dress shirts, pullovers, boxer shorts, sweatshirts, jerseys, shorts, sweat pants, jackets, gloves, neckties, pajamas, robes, night shirts, underwear, head bands, wrist bands, swimsuits shirts, tank tops, pants, coats, sweaters, socks, belts, rain wear, footwear and headwear
BOMBEROX	3923741	Beanies, bottoms, hats, headwear, pants, shirts, shorts, sweat shirts, tops
AFRICVILLE BROWN BOMBERS	4067457	Sports jerseys
BARRYOBOMBER	3596333	T-shirts
BLAKE STREET BOMBERS	2390143	Shirts, t-shirts (owned by the Colorado Rockies Baseball Club, Ltd.)
 ⁷	2336139	Jerseys, jackets, coats, sweat pants, warm-up suits, hats, caps, sweaters, shirts, t-shirts, sweatshirts (owned by the Dayton Hockey Club, Inc.)
BRONX BOMBERS	2970839	Sports shirts, t-shirts (owned by the New York Yankees Partnership)

⁶ The mark is INK BOMBERS.

⁷ The mark is DAYTON BOMBERS.

Mark	Reg. No.	Goods
LONG HAUL BOMBERS	3254511	T-shirts, sleeveless t-shirts, shirts, pull-overs, sweatshirts, sweatpants, jerseys, jackets, shorts, hats, caps, visors, wristbands; Sporting events in the field of softball
SAYERVILLE BOMBERS	3572196	Athletic apparel, namely, shirts, pants, footwear, hats and caps, athletic uniforms (owned by the Sayerville Board of Education)

With respect to the third-party registrations themselves, such registrations may be used in the manner of a dictionary, to show that a term has significance in a particular field. In the case of these third-party registrations, it appears from the websites that the last five marks listed (BLAKE STREET BOMBERS, DAYTON BOMBERS, BRONX BOMBERS, LONG BOMBERS and SAYERVILLE BOMBERS) are used in connection with baseball, softball and hockey teams, and BOMBERS has the significance of a team with good hitters or, in the case of the hockey team, good shooters.⁸ As for BROWNBOMBERMMA and AFRICVILLE BROWN BOMBERS, we note that Joe Louis had the well-known nickname of “Brown Bomber,” and these marks may have been chosen because of that reference. In short, we cannot ascertain from the third-party registrations that BOMBER *per se* has a particular significance for the goods in the cited registrations, or that the registrations for BOMBER or BOMBERS should be accorded a lesser scope of protection. In saying this, we acknowledge that the cited registration for BOMBER for hats was registered under the provisions of Section 2(f) because a “bomber hat”

⁸ July 30, 2013 Request for Reconsideration.

is a type of hat; however, because this mark has been registered, we must presume that it is not merely descriptive, and that it functions as a trademark to indicate source. We also note that this mark was registered in 1996, and the registration was renewed in 2006; the length of use of the mark would add to its strength.

Applicant submitted website excerpts from 7 of the 11 third-party registrants to show that these marks (INK BOMBERS, BROWN BOMBER MMA, BLAKE STREET BOMBERS, DAYTON BOMBERS, LONG HAUL BOMBERS, SAYERVILLE HIGH SCHOOL BOMBERS) are in use. Third-party use of similar marks may be used to show that a particular term common to those marks has a particular significance, and/or that consumers are so accustomed to marks containing the common term that they look to other elements in the mark to distinguish them.

We have already discussed the meanings that BOMBER may have in the third-party marks; those sports meanings of a strong hitting team or Joe Louis would not apply to applicant's mark or the marks of the cited registrations. Further, while all of the third-party uses consist of marks in which there are words other than the word BOMBERS by which these marks can be distinguished, applicant's mark has no other distinguishing element than BOMBER (as previously discussed, the disclaimed word GEAR would be understood as the generic term for the goods). Thus, even if we could conclude from the third-party uses that consumers can distinguish BOMBER marks based on other elements, in the marks at issue here,

BOMBER GEAR, BOMBER and BOMBERS, there are no other elements by which consumers can do so.

Accordingly, we find that the cited registered marks are entitled to a normal scope of protection, and that the sixth du Pont factor of the number and nature of similar marks in use on similar goods is neutral.

C. The similarity or dissimilarity and nature of the goods, established, likely-to-continue channels of trade and classes of consumers.

The cited marks are registered for hats and shirts. Applicant is seeking to register its mark BOMBER GEAR for “dry tops, dry pants, and dry shorts used for kayaking.” The most comprehensive explanation of “dry” clothing in the record is encompassed in the evidence regarding “dry suits.”

Dry Suit: (Keeps wearer warm and dry.)

A dry suit is a waterproof garment, with tight fitting neck, wrist and ankle gaskets made of stretch rubber. ...

Dry suits offer the highest level of thermal protection. They work by trapping a pocket of air, warmed by your body, inside the suit. A dry suit by itself cannot keep you warm. When an insulation layer such as a polyester fleece is worn under the dry suit, that layer will remain warm and dry, keeping the wearer safe and comfortable, even while fully submerged.

Dry suits do not allow much, if any, perspiration to escape, so it is essential to wear fabrics that wick moisture away from the skin and remain warm even when wet. Wearing long underwear with wicking properties under your insulation layer will facilitate this.

Caution: Make sure you know how to use your dry suit. Neck, wrist and ankle gaskets are fragile. Proper maintenance, inspection and donning of garment is [sic] necessary to insure a tight waterproof seal. Never paddle with a dry suit partially open. If you capsize the suit will

fill with cold water, and make you less buoyant limiting your ability to float and remount your kayak.

Wear a dry suit when you know you will be exposed to the coldest conditions and for extended durations. Dry suits, with an appropriate insulation layer, are very good for cold water, winds, splashing waves, rain and cold air. A dry suit is your vapor barrier to keep the wind and rain off, but it will also protect your warm, dry, insulation layer. A dry suit is also a good choice if you will be unable to land, such as a long crossing in open water, or along coastline with a shore that you cannot land on.⁹

A photograph of a KOKATAT brand dry top is shown below from the CKS website (ColoradKayak.com).¹⁰



A photograph of Applicant's dry pants is shown below.¹¹

⁹ "Cold Weather – Cold Water & Watersports Clothing Protection For The Modern Kayaker" posted on the TopKayaker.net website (sit-on-topkayaking.com) attached to the August 13, 2013 Office action. *See also* "Clothing for Cold-Water Paddling: How to Choose" posted on the REI website (rei.com) attached to the August 13, 2013 Office action ("**Drysuits** are one-piece suits made of nylon with waterproof polyurethane coating or waterproof/breathable Gore-Tex laminate. They feature latex gaskets at the wrists, ankles, and neck plus a special zipper or roll-up closure to prevent any water from entering. Drysuits provide no insulation so they need to be paired with long underwear or specially designed fleece liners for warmth.).

¹⁰ August 13, 2013 Office action.

¹¹ Applicant's specimen.



1. Shirts.

Registration No. 2133628 for the mark BOMBERS is registered for, *inter alia*, “shirts.” Although the “dry tops” identified in applicant’s application are not “shirts” as that term is commonly understood, since a dry top is one that is waterproof, and the identification “shirts” would not encompass rubberized/waterproof clothing, the evidence of record shows that the goods are related.

First, the record shows that shirts and dry tops emanate from the same sources. Kokatat,¹² Immersion Research¹³ and Patagonia¹⁴ sell both dry tops and shirts under the same mark.

Second, both clothing, including shirts, and dry tops are offered for sale on or through the same websites. For example, the Diamond Brand website (diamondbrand.com) advertises the sale of men’s, women’s and children’s clothing,

¹² Outdoorplay website (outdoorplay.com) and Kayak Academy website (kayakacademy) attached to the August 13, 2013 Office action.

¹³ Kayak Academy website (kayakacademy) attached to the August 13, 2013 Office action.

¹⁴ Outdoorplay website (outdoorplay.com) attached to the August 13, 2013 Office action.

as well as equipment for paddle sports including dry tops.¹⁵ The excerpt from the Xstreamline website (xstreamline.com) advertises the sale of clothing for kayaking and other paddle sports, with such clothing including hats, shirts, shorts, wetsuits and dry tops.¹⁶ The excerpt from the Kayak Academy website (kayakacademy.com) displays links to, *inter alia*, dry suits, wet suits and clothing, including shirts and hats.¹⁷ The excerpt from the CKS website (ColoradoKayaking.com) includes advertisements for the sale of dry tops and links to other clothing items including t-shirts.¹⁸

Third, shirts and dry clothing (tops, pants and shorts) can be used together. The evidence shows that kayakers need different apparel ensembles for the conditions they encounter.¹⁹ Hot weather and warm water require hats, paddle shirts, shorts, gloves and shoes.²⁰ Warm weather and cool water require substantially the same clothing that is adaptable and may be layered for changing conditions.²¹ Cool weather and cool water and cold weather and cold water also require a clothing ensemble that can be layered but include wetsuits and dry suits

¹⁵ August 13, 2013 Office action.

¹⁶ April 11, 2013 Office action

¹⁷ August 13, 2013 Office action.

¹⁸ August 13, 2013 Office action.

¹⁹ "Watersports Clothing: A Buyer's Guide for Kayakers," TopKayaker.net website attached to the April 11, 2013 Office action. *See also* the REI.com, the TopKayaker.net, KayakFishingStuff.com and Kayak Academy websites attached to the August 13, 2013 Office action.

²⁰ *Id.*

²¹ *Id.*

as well as garments that can be worn under the suits to wick moisture.²² Accordingly, clothing for kayaking includes dry tops, dry pants and dry shorts, as well as shirts that may be used in coordination with dry tops, pants and shorts.

In view of the complementary nature of applicant's and the cited registrant's goods, the fact that these goods may emanate from a single source and that they are sold in the same channels of trade to kayakers, we find that "shirts" and "dry tops" are related products, and that the factors of the similarity of the goods and channels of trade favor a finding of likelihood of confusion.

2. Hats.

The evidence of record shows that hats and caps are used for kayaking as well as other water sports. For example, the TopKayaker.net website posts an instructional article entitled "Watersports Clothing: A Buyer's Guide For Kayakers," that lists a hat as part of an apparel ensemble for kayakers.²³

Head:
Wide Brim light color Hat,
cotton is OK, or cap w/ neck flap

The website specifically identifies a TopKayaker Guide hat and an REI Sahara Cape hat. The website also provides the following information about hats:

Hats are the roof over your head when in the outdoors. Sun and rain protection is the primary job. Look for a wide brim, quick dry fabric for cold climate, and a chinstrap for the wind. Other hats to look into are fleece hats (for warmth) and ball-cap (with sun flap).

²² *Id.*

²³ April 11, 2013 Office action.

The Paddling.net website features a buyer's guide for "Kayak and Canoe Sunglasses, Hats & Headwear."²⁴ NRS is one of the companies listed and its website features numerous hats, including the Tula Lattis Gardner Hat for "gardening, or hiking, **boating**, sitting on the veranda," stating that its "stay-put features will conquer all – in the wisteria or the **whitewater**" (emphasis added), and the NRS website also features the Kavu Synthetic Sol Shade, a broad brimmed hat touted as a "great river hat."²⁵ The Xstreamline website (xstreamline.com) advertises the sale of floating hats that are designed for water use, have brim flaps and are designed for paddling.²⁶

The REI website (rei.com) features information about "Clothing for Cold-Water Paddling: How to Choose."²⁷ It provides the following information about hats:

Hats

If you're expecting cold weather, pack an insulated hat as well. Popular options include fleece or wool caps and face masks, lightweight balaclavas, and even full neoprene hoods for extremely challenging routes in cold conditions.

The REI information is corroborated by a posting on the TopKayaker.net website (sit-on-topkayaking.com) entitled "Cold Weather – Cold Water & Watersports

²⁴ April 11, 2013 Office action.

²⁵ April 11, 2013 Office action.

²⁶ April 11, 2013 Office action.

²⁷ August 13, 2013 Office action.

Clothing for The Modern Kayaker.”²⁸ The posting provides the following information about hats:

Hats: (Keeps core warm.)

Hats??? Yes hats! Most of heat lost from the body is lost from the head. A good hat will help keep your whole body warm. Even a ball cap will help, but good outdoor or water sports headwear will do the job right. The best protection comes from a polar fleece watch cap. The polyester material dries fast is warm when wet and light weight. If it is too warm to wear one, tuck it into a handy place for quick access. Put it on when you take a break or when you feel the chill. Keep a spare handy for ill prepared paddling partner.

Broad brim hats are good for the sun, but they also shed the cold rain away from your head, face and neck. These wide brim hats are made especially for a variety of conditions such as rain, cold weather and sun protection or some combination there of [sic].

The OUTDOORPLAY website (outdoorplay.com) advertises kayaking hats, including KOKATAT brand hats.²⁹ KOKAKAT sells KOKATAT branded dry tops.

The Kayak Academy website (kayakacademy.com) advertises KOKATAT brand hats and skull caps as well as the sale of dry suits.³⁰

The excerpt from the Xstreamline website (xstreamline.com) advertises the sale of clothing for paddle sports, including kayaking, such as hats, shirts, shorts, wetsuits and dry tops.³¹

²⁸ August 13, 2013 Office action.

²⁹ August 13, 2013 Office action.

³⁰ August 13, 2013 Office action.

³¹ April 11, 2013 Office action

The Eastern Mountain Sports website (ems.com) advertises the sale of paddle sports gear and clothing as well as KOKATAT hats, O'NEILL cold water hoods and NRS sea hoods.³²

The Diamond Brand website (diamondbrand.com) advertises the sale of equipment for paddle sports, including dry tops, and it also advertises the sale of hats.³³

The Level Six website (levelsix.com) advertises the sale of thermal headwear and dry suits.³⁴

The CKS website (ColoradoKayak.com) advertises the sale of dry tops and hats.³⁵

Thus, the record shows that hats are clothing items used in kayaking, and these goods are sold by the same company under the same mark. Because of this, and the complementary nature of the goods (*e.g.*, hats can be used with dry tops, pants or shorts when kayaking), we find that applicant's "dry tops, dry pants, and dry shorts used for kayaking" are related to the registrant's "hats." In addition, the evidence shows that hats and dry clothing items are sold in the same channels of trade to the same classes of consumers. In view of the foregoing, we find that consumers encountering Applicant's BOMBER GEAR dry tops, pants and shorts

³² April 11, 2013 Office action.

³³ August 13, 2013 Office action.

³⁴ August 13, 2013 Office action.

³⁵ August 13, 2013 Office action.

and Registrant's BOMBER hats may mistakenly believe that they emanate from the same source.

D. Degree of consumer care.

Applicant has identified its goods as "dry tops, dry pants and dry shorts used for kayaking." Thus, they are specialized equipment used by a person who is a kayaker. Dry tops, pants and shorts are not inexpensive products. According to the websites noted above, dry tops are advertised for sale at between \$130 and \$500. The person who purchases dry tops, pants or shorts will exercise a high degree of care. On the other hand, hats and shirts are also used by watersport enthusiasts who may not take as much care in purchasing those products as they do when purchasing dry tops, pants or shorts. As a result, there is a likelihood of reverse confusion, where a consumer, familiar with applicant's BOMBER GEAR dry clothing, seeing BOMBER for a hat, or BOMBERS for a shirt, would assume that the hat or shirt emanated from the same source as the BOMBER GEAR dry clothing. Accordingly, we find that the degree of care factor is neutral or, at most, only slightly favors finding that there is no likelihood of confusion.

E. Balancing the factors.

Despite the fact that consumers who purchase dry tops, dry pants and dry shorts will exercise a high degree of care, because the marks are extremely similar, the goods are related and move in the same channels of trade and are sold to the same consumers, we find that use of Applicant's mark BOMBER GEAR for "dry

tops, dry pants, and dry shorts used for kayaking” is likely to cause confusion with the marks BOMBER for “hats” and BOMBERS for “shirts.”

Decision: The refusal to register on the basis of likelihood of confusion with both of the cited registrations is affirmed.