

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

Hearing: September 16, 2015

Mailed: November 17, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board

—  
*In re Fashion Box S.P.A.*

—  
Serial No. 86051465

—  
REQUEST FOR RECONSIDERATION

—  
Keith A. Weltsch of Scully, Scott, Murphy & Presser, P.C.,  
for Fashion Box S.P.A.

Greta Yao, Trademark Examining Attorney, Law Office 118,  
Thomas Howell, Managing Attorney.

—  
Before Seeherman, Mermelstein and Bergsman,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Fashion Box S.P.A. (“Applicant”) seeks registration on the Principal Register of the mark RS RED SEAL and design, shown below, for “men's clothing, namely, denim pants, denim shirts, denim jackets, jeans, trousers, jackets, sweaters, shorts,

polo-shirts, T-shirts, sweatshirts, coats, belts, hats, bucket caps, caps with visor, sports caps, skull caps, knot caps, swim caps,” in International Class 25.<sup>1</sup>



Applicant described its mark as follows:

The mark consists of a circular design in red with the words "RED SEAL" in large black stylized letters on the top edge of the circle, and the words "THE ORIGIN" in smaller black letters on the bottom edge of the circle, all of which surround a smaller black circle drawn in the middle of the design, inside of which contain the letters "RS" in large black stylized characters.

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 resembles the previously registered mark RED SEAL (standard character format) for "carry-all bags, leather pouches, rucksacks, duffle bags, travel bags, tool bags sold empty, backpacks, purses, trunks, suitcases, garment bags for travel, billfolds, wallets, harnesses, leather bags, leather bag laces, valises," in Class 18, as to be likely to cause confusion.<sup>2</sup>

---

<sup>1</sup> Application Serial No. 86051465 was filed on August 29, 2013, based upon Applicant's allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

<sup>2</sup> Registration No. 3978673; issued June 14, 2011.

In a decision dated October 6, 2015, the Board affirmed the refusal to register. On November 6, 2015, Applicant filed a request for reconsideration. As grounds for reconsideration, Applicant argues that the Board erred in finding that the goods were related and that the marks were similar. Specifically, Applicant argues that the evidence of third-party websites and registrations that the Board relied upon to find that the goods were related does not support the finding of relatedness<sup>3</sup> and that the Board erred in finding that the marks create the same commercial impression because “the letters RS do not distinguish Applicant’s mark from the registered mark because the RS lettering would be considered to be an abbreviation of the RED SEAL wording in Applicant’s mark.”<sup>4</sup>

The general premise of a request for reconsideration is that based on the evidence and the prevailing authorities, the Board erred in reaching the decision on the merits. The request for reconsideration may not be used to introduce additional evidence or to merely reargue points that have been previously made. The request for reconsideration should be limited to a demonstration of an error that the Board made in interpreting the law or the facts. TBMP § 543 and 1219.01 (June 2015).

Applicant’s contention that the third-party registrations and websites do not constitute substantial evidence is a reargument of its case. For example, on page 9 of its appeal brief, Applicant argues that “while there might be a slight relationship between the items covered by the registered mark in the abstract and clothing in the abstract, when making a final determination with respect to likelihood of

---

<sup>3</sup> 15 TTABVUE 4-7.

<sup>4</sup> 15 TTABVUE 7-8.

confusion as a whole, Applicant asserts that when considering the actual goods in question, i.e., men's clothing, no such relatedness exists,"<sup>5</sup> and on page 5 of its reply brief, Applicant contends that "the Examining Attorney has failed to provide evidence or submit arguments sufficient to establish that Applicant's clothing products are sufficiently related to the registrant's bags and the like ... to create the perception that the Applicant's proposed goods and the registrant's goods emanate from the same source."<sup>6</sup>

In any event, in our October 6, 2015 decision, the Board found that the 25 use-based, third-party registrations submitted by the Examining Attorney for goods listed in both the application and the cited registration have probative value to the extent that they serve to suggest that the listed goods are of a type which may emanate from the same source. Although Applicant is correct that third-party registrations are not evidence that the goods shown therein are in use, or are evidence of the conditions under which those specific goods are marketed, it is well-established that the registrations can be used, as noted, to show that the goods are of type which may emanate from a single source. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-1786 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). As for the six third-party websites submitted by the Examining Attorney, after carefully analyzing this evidence the Board found that only three of them were relevant and that the three relevant

---

<sup>5</sup> 4 TTABVUE 13.

<sup>6</sup> 7 TTABVUE 9.

websites corroborated the third-party registration evidence. Specifically, the Board made the following finding:

While we acknowledge that the evidence of three websites alone might not be sufficient to show that men's clothing and various types of luggage, wallets, etc. are related, they add support to the evidence of the third-party registrations, and the evidence in its totality is sufficient for us to find that the goods are related.<sup>7</sup>

We consider Applicant's reliance on cases that say that relatedness cannot necessarily be found merely because goods are sold in the same retail store to be inapposite. The third-party websites show that the manufacturer/originator of the goods sells such goods reinforcing the evidence of the third-party registrations that those goods may emanate from a single source. They also show that the goods travel in the same channels of trade.

With respect to the similarity or dissimilarity of the marks, Applicant argues that the Board erred in the finding that "the lettering RS would have little impact on consumer's impression with respect to distinguishing the marks."<sup>8</sup> What the Board found was that "the letters RS do not distinguish Applicant's mark from the cited mark, since because they appear in a red seal they reinforce the commercial impression of a red seal."<sup>9</sup> Thus, the commercial impression engendered by the two marks is the same: a red seal.

Applicant also contends that the Board's finding that the commercial impression engendered by Applicant's mark is a red seal was erroneous. In essence, Applicant

---

<sup>7</sup> 14 TTABVUE 7.

<sup>8</sup> 15 TTABVUE 8.

<sup>9</sup> 14 TTABVUE 9.

dissects the mark into its component parts, analyzes how a consumer would analyze the parts of the mark, and argues that “the Board is imbuing a complicated thought process upon the typical consumer which is unlikely to occur in the real world making confusion unlikely.”<sup>10</sup> We disagree. Applicant’s mark is shown below.



It does not take a complicated thought process to find that the commercial impression engendered by a mark comprising the term “Red Seal” within concentric circles is a red seal; the presence of the letters “RS” do not change this impression.

In view of the foregoing, Applicant’s request for reconsideration is denied.

---

<sup>10</sup> 14 TTABVUE