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# UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**U.S. APPLICATION SERIAL NO.** 86167048

**MARK:** OSKALILY

**CORRESPONDENT ADDRESS:**
ARTHUR J DEBAUGH

BELL DAVIS & PITT PA

100 N CHERRY ST STE 600

WINSTON SALEM, NC 27101-4016

**GENERAL TRADEMARK INFORMATION:**

http://www.uspto.gov/trademarks/index.jsp

**TTAB INFORMATION:**

http://www.uspto.gov/trademarks/process/appeal/index.jsp

**APPLICANT:** Montfort Services Sdn. Bhd.

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

012452-00017

**CORRESPONDENT E-MAIL ADDRESS:**

trademarks@belldavispitt.com

## EXAMINING ATTORNEY'S APPEAL BRIEF

### I. INTRODUCTION

Applicant Montfort Services Sdn. Bhd., a corporation of Malaysia, has appealed the Examining Attorney's final refusal to register the standard character mark "OSKALILY" under Section 2(d) of the Trademark Act for being likely to cause confusion with the registered mark in U.S. Registration No. 2868680, OSKA. 15 U.S.C. §1052(d).

## II. STATEMENT OF THE CASE

The Applicant applied to register the standard character wordmark "OSKALILY" in connection with "Clothing, namely, lingerie, sleepwear, hosiery, stockings, pantyhose, socks, dresses, skirts, shirts, jackets, coats; knitwear, namely, jumpers, cardigans, and sweaters; pants, trousers; shapewear, namely, foundation garments, girdles, and corsets; formal wear, namely, jackets, coats, and tuxedoes; footwear; headwear; swimsuits; bathing suits; bathing trunks; beach clothes, namely, sarongs, kaftans, beach cover-ups, swim trunks, and bikinis; beach shoes; sun visors; T-shirts; bath robes; scarves; shoes; linen garments, namely, shirts, pants, skirts, dresses, blouses, suits, jackets, vests, coats, and body linen; sandals; underwear."

Registration of the proposed mark was initially refused on February 13, 2014 based on Section 2(d) as to a likelihood of confusion with the registered mark OSKA, Reg. No. 2868680. Applicant was also required to amend the identification of goods for definiteness, submit their foreign registration certificate to perfect Section 44(e), and a translation inquiry was made which required a response.

The Applicant's response of August 11, 2014 created a new issue, as the amended identification of goods now exceeded the scope of the foreign registration. The applicant did, however, clarify that the mark possessed no meaning in a foreign language. The Applicant likewise submitted a certified and acceptable copy of their foreign registration certificate. Finally, the Applicant submitted arguments

against the refusal under Section 2(d), claiming the registered mark entitled to only a narrow scope of protection due to its coexistence with similar marks on related goods. However, *all* registered marks cited by the Applicant consisted of the term OSCAR/OSKAR, rather than "OSKA," and thus the commercial impression of these registered marks in connection with clothing goods was that of a designer's name, giving a different connotation to consumers than the cited mark OSKA and the proposed mark OSKALILY.

The examining attorney therefore issued a new nonfinal action to address the issue with the identification of goods exceeding the scope of the foreign registration, and maintained the 2(d) refusal and the requirement that applicant amend the identification of goods for definiteness.

On February 20, 2015, Applicant's response acceptably amended the identification of goods, and continued to argue against the 2(d) refusal, upon which the examining attorney issued a final action March 24, 2015.

No request for reconsideration was filed; therefore this appeal follows the examining attorney's final refusal of registration based upon Section 2(d) of the Trademark Act. 15 U.S.C. §1052(d). The question at issue on appeal is whether confusion is likely between confusingly similar marks on identical and highly related goods.

## III. ARGUMENT

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination.

*Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)).

Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks and the similarity and nature of the services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

**SIMILARITY OF THE MARKS**

The Applicant has applied to register the mark "OSKALILY" in standard characters, with no claim to any particular design or orientation. The examining attorney has argued that this mark is confusingly similar to the mark in Reg. No. 2868680, "OSKA" in typed characters.

Generally, where the goods of an applicant and registrant are identical or virtually identical, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (citing *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992)); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); TMEP §1207.01(b).

Bearing this longstanding precedence in mind, the marks are then compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

When comparing marks, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the goods and/or services offered under applicant's and registrant's marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012); TMEP §1207.01(b). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

Applicant cites to a few cases that they claim indicate that confusion is not likely in this case. However, Applicant's examples are often where the *second* term in the compound mark is the portion in common. Therefore, these are not analogous to the current situation. Consumers are generally more inclined to focus on the **first** word, prefix, or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions).

Therefore, a commonality between **OSKA** and **OSKA**LILY makes confusion far more likely than in the cases of SOLENA and CASA SOLANA (where even the portion in *common* is not identical, which is the case we have here) and JET and AEROB-A-JET.

In the instant case comparing the mark OSKA with the proposed mark OSKALILY, it is the *first* and *dominant* portion of the marks in common and identical to one another. Applicant is, of course, correct that the respective marks must be compared in their entireties, but it is nevertheless the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp*., 753 F.3d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

The common portion of the marks, being both first and dominant, is therefore most likely to be impressed into the minds of consumers. Applicant's suggestion that LILY would be considered dominant ignores consumers' tendency to recall this *first* portion of a joint mark. As it is joined to form OSKALILY, "lily" is highly unlikely to be looked upon by consumers as a separable element, particularly given it also possesses softer vocalization than the far more dramatic and harsh OSKA. The Applicant also fails to cite any precedence suggesting that consumers encountering trademarks rather than common words would place any *more* source-identifying significance on LILY (particularly given this term's commonality on the register.) Rather, OSKA would be what consumers look to in order to identify the source of the goods.

Nor is the Applicant's citation to the VARGAS and VARGA GIRL mark case particularly informative as, once more, the portion in common between the marks is *not* identical – VARGAS being a common surname and VARGA here being a modifier for the main noun of the mark, GIRL. And in the case of BANK IN A BILLFOLD being found dissimilar to BANK IN A WALLET, the term BANK is both so descriptive and diluted for credit card services that consumers are more likely to look to the *difference* between BILLFOLD and WALLET, rather than to the commonality of BANK, when the latter term is so utterly weak

and diluted in that field of services. This same issue – a finding of no likelihood of confusion, in part because the common element is *highly weak or diluted* – arises for all the following additional cases cited by the applicant: CHAIRWORKS vs. CHAIRMAN, for chairs; CLORAPREP and CHLORASCRUB for *chloride*-based antimicrobial solutions; LEAN CUISINE vs. LEAN 'N TASTY for "lean" or low-calorie prepared meals. Thus, Applicant is citing almost exclusively to *factually dissimilar* case law that does not mirror the facts of this case.

The instant circumstance is such that the applicant is incorporating the entirety of a registered mark, OSKA, within their proposed mark OSKALILY. This does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). Applicant is invited, for example, to review the long line of cases from the TTAB in which the addition of a term to a registered mark was not found sufficient to avoid likelihood of confusion. *See, e.g., Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557, 188 USPQ 105, 106 (C.C.P.A. 1975), finding BENGAL and BENGAL LANCER and design confusingly similar; *Hunter Indus., Inc. v. Toro Co.*, 110 USPQ2D 1651, 1660-61 (TTAB 2014), finding PRECISION and PRECISION DISTRIBUTION CONTROL confusingly similar. TMEP §1207.01(b)(iii); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1269 (TTAB 2009) (finding TITAN and VANTAGE TITAN confusingly similar); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (finding MACHO and MACHO COMBOS confusingly similar); TMEP §1207.01(b)(iii); *Johnson Publ'g Co. v. Int'l Dev. Ltd*., 221 USPQ 155, 156 (TTAB 1982) (EBONY DRUM for hairdressing products likely to cause confusion with EBONY for cosmetics); *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor*

*Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

In the present case, as in all these instances, the marks are identical in part. When one incorporates the entire arbitrary registered mark of another into a composite mark, inclusion in the composite mark of a nonsuggestive element, in this case LILY, does not preclude the marks from being so similar as to cause a likelihood of confusion. *In re West Point-Pepperell, Inc.,* 468 F.2d 200 (Cust. & Pat.App. 1972).

In addition, consumers are likewise often known to use shortened forms of names, and it is entirely possible that applicant and its mark would be referred to as **OSKA** for short. Cf. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 219 (CCPA 1978) (Rich, J., concurring: "the users of language have a universal habit of shortening full names – from haste or laziness or just economy of words").

Further, even if potential purchasers realize the apparent differences between the marks, they could still reasonably assume, due to the overall similarities in sound, appearance, connotation, and commercial impression in the respective marks, that applicant's goods sold under the "OSKALILY" mark merely constitute a new or additional product line from the same source as the goods and services sold under the "OSKA" mark with which they are acquainted or familiar, and that applicant's mark is merely a variation of the registrant's mark. See, e.g., SMS, Inc. v. Byn-Mar Inc. 228 USPQ 219, 220 (TTAB 1985) (applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line of clothing.").

Finally, Applicant's arguments as to the presence of third party marks on the register falls short of the mark. The weakness or dilution of a particular mark is generally determined in the context of the number and nature of **similar marks** in use in the marketplace in connection with similar goods and/or services. *See Nat'l Cable Television Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177

USPQ 563, 567 (C.C.P.A. 1973). Every third party registration cited as evidence, even were they entitled to evidentiary weight, consists of the *common name* OSCAR/OSKAR, not the arbitrary designation OSKA. In all such cases, the mark would therefore, without exception, be viewed by consumers as designating an individual's name, and in the case of clothing goods would likely be perceived as the name of the designer. The "only difference" between these marks is not, therefore, as applicant suggests, merely the presence or absence of an "R." That "R" utterly changes the commercial impression of an arbitrary term OSKA, to a recognizable name, OSCAR/OSKAR. The connotation and meaning of the marks immediately and dramatically shifts from a term which has no meaning in their minds, to one with a common and established significance, that of someone's first name. Thus, the presence of OSCAR/OSKAR marks on the register should have no bearing here, where the cited registrant is the *sole* user of OSKA on the register in this and related classes. The sole citation to case law made by the Applicant is to a case wherein the third party registrations at issue comprised the *same* portion of the mark being contested, "Lloyd's," in both the Application and numerous third party registrations. *Lloyd's Food Products, Inc. v. Eli's, Inc.* 987 F.2d 766, 25 USPQ2d 2027 (Fed. Circ. 1993).

Finally, third-party registrations are already entitled to **very little weight** on the question of likelihood of confusion because they are "not evidence that the registered marks are actually in use or that the public is familiar with them." *In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1167 n.5 (TTAB 2013) (citing *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)); *see* TMEP §1207.01(d)(iii). Moreover, the existence on the register of other seemingly similar marks does not provide a basis for registrability for the applied-for mark. *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1477 (TTAB 1999

Therefore, the marks are confusingly similar for purposes of a likelihood of confusion analysis.

**RELATEDNESS OF THE GOODS**

When analyzing an applicant's and registrant's goods for similarity and relatedness, that determination is based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use. *See Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002).

Absent restrictions in an application and/or registration, the identified goods are presumed to travel in the same channels of trade to the same class of purchasers. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1356, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d at 1268, 62 USPQ2d at 1005. Additionally, unrestricted and broad identifications are presumed to encompass all goods of the type described. *See In re Jump Designs*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

Applicant's goods are "Clothing, namely, lingerie, sleepwear, hosiery, stockings, pantyhose, socks, dresses, skirts, shirts, jackets, coats; knitwear, namely, jumpers, cardigans, and sweaters; pants, trousers; shapewear, namely, foundation garments, girdles, and corsets; formal wear, namely, jackets, coats, and tuxedoes; footwear; headwear; swimsuits; bathing suits; bathing trunks; beach clothes, namely, sarongs, kaftans, beach cover-ups, swim trunks, and bikinis; beach shoes; sun visors; T-shirts; bath robes; scarves; shoes; linen garments, namely, shirts, pants, skirts, dresses, blouses, suits, jackets, vests, coats, and body linen; sandals; underwear."

Registrant's goods are "Women's and Men's outer clothing, including of leather, namely, jackets, shirts, suits, pants, dresses, blouses, skirts, belts, Bermuda shorts, sweaters, tops, and sashes; footwear; headwear."

In this case, the identifications set forth in the application and registration(s) are in great part identical. Both the applicant and the registrant are offering dresses, skirts, shirts, jackets, sweaters,

pants, blouses and suits, and indeed Applicant lists some of these goods more than once by claiming both these items broadly, as well as these items made of linen. Neither the applicant nor the registrant and have no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these goods and/or services travel in all normal channels of trade, and are available to the same class of purchasers. *See Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012). Accordingly, the goods and/or services of applicant and the registrant(s) are considered related for purposes of the likelihood of confusion analysis.

As to the goods which are not identical, decisions regarding likelihood of confusion in the clothing field have found many different types of apparel to be related goods. *Cambridge Rubber Co. v. Cluett, Peabody & Co.*, 286 F.2d 623, 624, 128 USPQ 549, 550 (C.C.P.A. 1961) (women's boots related to men's and boys' underwear); *Jockey Int'l, Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1233, 1236 (TTAB 1992) (underwear related to neckties); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) (women's pants, blouses, shorts and jackets related to women's shoes); *In re Pix of Am., Inc.*, 225 USPQ 691, 691-92 (TTAB 1985) (women's shoes related to outer shirts); *In re Mercedes Slacks, Ltd.*, 213 USPQ 397, 398-99 (TTAB 1982) (hosiery related to trousers); *In re Cook United, Inc.*, 185 USPQ 444, 445 (TTAB 1975) (men's suits, coats, and trousers related to ladies' pantyhose and hosiery); *Esquire Sportswear Mfg. Co. v. Genesco Inc.*, 141 USPQ 400, 404 (TTAB 1964) (brassieres and girdles related to slacks for men and young men).

Therefore, with the majority of the goods overlapping and the remainder highly related, the goods are confusingly similar for purposes of a likelihood of confusion analysis.

**TRADE CHANNELS, CLASSES OF PURCHASERS, CONDITIONS OF PURCHASE**

Because there are no limitations as to channels of trade or classes of purchasers in the description of goods in the cited registration or application, we presume that the applicant's and registrant's goods move in all usual channels of trade for such goods and are available to all potential classes of purchasers, including ordinary purchasers. *See Citigroup Inc. v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006). Moreover, because the goods described in the application and the cited registration are in-part identical, it is presumed that the channels of trade and classes of purchasers are the same, considerations under the third and fourth du Pont factors, respectively. *See American Lebanese Syrian Assoc. Charities Inc. v. Child Health Research Inst*., Serial No. 85618114 - 4 - 101 USPQ2d 1022, 1028 (TTAB 2011); *see also In re Viterra Inc*., 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion). *See In re Yawata Iron & Steel Co*., 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011).

As far as the fourth DuPont factor, namely, the conditions under which and buyers to whom sales are made (i.e., "impulse" vs. careful, sophisticated purchasing), this factor remains neutral or may slightly favor a likelihood of confusion, given that "shirts," "dresses," and other among the listed clothing items are broadly identified and could include relatively inexpensive items which would be purchased without much consideration given to the source of the shirts, etc. *See, e.g., Under Armour, Inc. v. Evade, LLC.,* Consolidated Opposition. No. 91195620 and Cancellation No. 92052716 (TTAB 2015).

**DOUBT RESOLVED IN FAVOR OF REGISTRANT**

Finally, even if there exists doubt about the issue of likelihood of confusion, this case should nevertheless be resolved against applicant.

> If there be doubt on the issue of likelihood of confusion, the familiar rule in trademark cases, which this court has consistently applied since its creation in 1929, is that it must be resolved against the newcomer or in favor of the prior user or registrant. The rule is usually applied in inter partes cases but it applies equally to ex parte rejections.

*In re Pneumatiques, Caoutchouc Manufacture et Platitudes Kleber-Colombes, 487 F.2d 918, 179 USPQ 729, 729 (CCPA 1973).*

## IV. CONCLUSION

Applicant has applied to register the mark OSKALILY in standard characters for use on "[c]lothing, namely, lingerie, sleepwear, hosiery, stockings, pantyhose, socks, dresses, skirts, shirts, jackets, coats; knitwear, namely, jumpers, cardigans, and sweaters; pants, trousers; shapewear, namely, foundation garments, girdles, and corsets; formal wear, namely, jackets, coats, and tuxedoes; footwear; headwear; swimsuits; bathing suits; bathing trunks; beach clothes, namely, sarongs, kaftans, beach cover-ups, swim trunks, and bikinis; beach shoes; sun visors; T-shirts; bath robes; scarves; shoes; linen garments, namely, shirts, pants, skirts, dresses, blouses, suits, jackets, vests, coats, and body linen; sandals; underwear." Registration of this mark would be likely to cause confusion with the registered mark "OSKA," in typed character. The dominant literal elements of the marks are identical, the goods are partially identical, and there is nothing of record to indicate there exist any distinctions in trade channels, the class of purchasers, or the conditions of sale. Registration of Applicant's mark should therefore be refused as being likely to cause confusion with a registered mark.

Respectfully submitted,

/Caitlin Watts-FitzGerald/

Trademark Examining Attorney

Law Office 111

571-272-9015

caitlin.watts-fitzgerald@uspto.gov

Robert L. Lorenzo

Managing Attorney

Law Office 111