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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re BambuLife, LLC

Serial No. 86933850

Andy W. Morgan of Morgan Law Group, PC,
for BambuLife, LLC.

John Schmidt, Trademark Examining Attorney, Law Office 113,
Odette Bonnet, Managing Attorney.

Before Quinn, Kuczma and Larkin,
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

BambuLife, LLC ("Applicant") seeks registration on the Principal Register of the mark  for:

> Clothing, namely, pants, slacks, t-shirts, dress shirts, ties, polo shirts, dresses, socks, hats, caps, shorts, swim trunks, swim suits, bikinis, sweaters, jackets, underwear, blouses, gloves, scarves, head bands, coats, pull overs, sweat suits, sweat shirts, sweat pants, sneakers, shoes, boots, slippers, tank tops, halter tops and skirts, all of the foregoing made using bamboo either wholly or in combination with other

> materials of which bamboo will comprise a substantial part in International Class 25.[1]

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), citing Registration No. 1930040 for "BAMBU" (a typeset[2] mark) for "T-shirts, sweatshirts and hats" in International Class 25, owned by Bambu Sales, Inc. ("Registrant"), as a bar to registration.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

I. Preliminary Issues

Before proceeding to the merits of the refusal, we address the materials attached to the Brief of Appellant as Exhibits A-D. For the reasons set forth below, these

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[1] Application Serial No. 86933850 was filed on March 9, 2016, based upon Applicant's allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act. "The mark consists of the literal element of the mark which is comprised of the word bambulife, written in lower case letters, with bambu appearing in block letters and life appearing in cursive. Each instance in which the letter b appears in the mark, the vertical line comprising the letter is drawn to look like a stalk of bamboo with one bamboo styled joint appearing in the middle of the line. The first appearance of the letter b has three bamboo shaped leaves that appear to be attached to the left side of the uppermost half of the vertical line that comprises the letter. The letter u has a bamboo leaf shaped accent extending from the top left side of the letter pointing upward and angled toward the right." Color is not claimed as a feature of the mark.

[2] The mark depicted in Registration No. 1930040 is a typed drawing. Prior to November 2, 2003, "standard character" drawings were known as "typed" drawings. A mark depicted as a typed drawing is the legal equivalent of a standard character mark. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1236 n.5 (TTAB 2015); Trademark Manual of Examining Procedure (TMEP) § 807.03(i) (April 2017).

materials have not been considered. Exhibit A contains a copy of a webpage dated 4/26/2016 featuring a photo of a t-shirt bearing the mark BAMBU previously submitted as an attachment to the May 3, 2016 Response to Office Action, and an image of Applicant's mark. Exhibit B is a copy of a page from Registrant's website dated 4/3/2017 entitled Company History, which appears to be a later-dated version of an attachment to the May 3, 2016 Response to Office Action at 8. Exhibit C shows images of two webpages from Registrant's website dated 4/3/2017; an earlier dated copy of the top image was filed as an attachment to the May 3, 2016 Response to Office Action at 9. Exhibit D is duplicative as it was previously submitted with the May 3, 2016 Response to Office Action at 10.

Re-submitting materials which were previously submitted is unnecessary. *In re Allegiance Staffing*, 115 USPQ2d 1319, 1323 (TTAB 2015) (practice of attaching to appeal brief copies of the same exhibits submitted with responses is discouraged); *In re Thor Tech Inc.*, 85 USPQ2d 1474, 1475 n.3 (TTAB 2007) ("[t]o the extent the material may simply be duplicative of matter submitted during examination, it is already of record as part of the application file, and its submission with the briefs was unnecessary"). Accordingly, the duplicate materials attached to Applicant's brief have not been considered.[3]

In addition, as set forth in Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), the record in the application should be complete prior to the filing of an appeal. *See In re*

[3] However, to the extent that any of the unconsidered duplicate materials were the same as what was submitted during the prosecution of Application Serial No. 86933850, they have been considered.

Fiat Grp. Mktg. & Corp. Commc'ns S.p.A., 109 USPQ2d 1593, 1596 (TTAB 2014); Trademark Board Manual of Procedure (TBMP) §§ 1203.02(e) and 1207.01 (June 2017). The images contained in the Exhibits that were not previously made of record are untimely and therefore not part of the record for this case. Thus, the Board will not consider this additional evidence submitted after the appeal was filed.

II. Likelihood of Confusion

Our determination of likelihood of confusion under § 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the 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 Co.,* 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. *Federated Foods, Inc. v. Fort Howard Paper Co.,* 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). In addition, we address the similarity of the likely to continue trade channels, conditions under which and buyers to whom sales are made, *i.e.*, "impulse" vs. careful, sophisticated purchasing, and the extent of potential confusion. We have considered all of the arguments and evidence of record, including any matters not explicitly discussed.

A. The similarity or dissimilarity and nature of the goods, channels of trade and classes of consumers

We first consider the *du Pont* factor involving the similarity or dissimilarity of Applicant's goods to the goods in the cited registration. The goods need not be

identical or directly competitive to find a likelihood of confusion. Rather, they need only to be related in some manner or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances giving rise to the mistaken belief that the goods come from a common source. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler,* 83 USPQ2d 1715, 1724 (TTAB 2007)); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991).

Inasmuch as Registrant's T-shirts, sweatshirts, and hats encompass Applicant's T-shirts, sweatshirts and hats "made using bamboo either wholly or in combination with other materials of which bamboo will comprise a substantial part" the goods are legally identical-in-part. Applicant's attempt to limit the scope of its goods by adding the language, "made using bamboo either wholly or in combination with other materials of which bamboo will comprise a substantial part" does not obviate a finding that the goods are identical. Because the cited registration is silent as to the material composition of the goods, it is presumed to encompass T-shirts, sweatshirts and hats made of all materials, including bamboo. *See Octocom Sys. Inc. v. Houston Computers Serv. Inc.,* 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods. . . ."); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir.

1983) ("[W]here the likelihood of confusion is asserted with a registered mark, the issue must be resolved on the basis of the goods named in the registration and, in the absence of specific limitations in the registration, on the basis of all normal and usual channels of trade and methods of distribution."). Thus, Registrant's actual use of its mark and whether its clothing items actually contain environmentally conscious materials is not relevant.

Applicant's remaining clothing goods are closely related to Registrant's T-shirts, sweatshirts, and hats. Decisions regarding likelihood of confusion in the clothing field have found many different types of apparel to be related goods. *See, e.g., Cambridge Rubber Co. v. Cluett, Peabody & Co.*, 286 F.2d 623, 624, 128 USPQ 549, 550 (CCPA 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 at 1388 (women's pants, blouses, shorts and jackets related to women's shoes); *In re Mercedes Slacks, Ltd.*, 213 USPQ 397, 398-99 (TTAB 1982) (hosiery related to trousers).

Third-party website evidence offering a wide range of clothing goods for sale confirms the relatedness of the goods. For example, Nike's website offers swimming trunks, socks, and jackets along with a range of other clothing goods including tops and t-shirts, hoodies, pants and shorts bearing the Nike swoosh design trademark[4]; the Ann Taylor website offers t-shirts, hats, pants, blouses, tops, and many other

[4] *See* May 17, 2016 Office Action at 15-17 http://store.nike.co/us/en_us/pw/mens-surf-swim wear/7puZnmv; http://store.nike.com/us/en_us/pw/mens-socks/7puZpco; http://store.nike.co m/us/en_us/pw/mens-jackets-vests/7puZobr?ipp=106.

articles of similar clothing[5]; the Levi website offers Levi's brand shirts, pants, shorts, jackets, sweatshirts and t-shirts[6]; and Macy's department store offers Calvin Klein brand t-shirts, shoes, shirts, underwear, pants and a range of other clothing items.[7] This website evidence offering goods for sale from third-party clothing manufacturers confirms that the types of clothing goods identified in both the application and the cited registration are sold under the same mark in the same trade channels to the same purchasers. Therefore, Applicant's and Registrant's non-identical goods are considered related for likelihood of confusion purposes. *See, e.g.*, *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.,* 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Additionally, the Examining Attorney submitted a representative sample of third-party registrations of marks for the same types of goods as those of both Applicant and Registrant showing that the articles of clothing of both Applicant and Registrant are the kinds of goods that emanate from a single source under a single mark.[8] *See*

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[5] *See* May 17, 2016 Office Action at 18-20 *http://www.anntaylor.com/sale-knits-tees/cat490002*; *http://www.anntaylor.com/hats/cat2600066*; *http://www.anntaylor.com/pants/cata000014*.

[6] *See* May 17, 2016 Office Action at 14, *http://www.levi.com/US/en_US/category /men /clothing*.

[7] *See* April 5, 2016 Office Action at 24-32 *http://www1.macys.com/shop/mens-clothing/mens-calvin-klein/Pageindex.Productsperpage/12.All?id=28169*.

[8] See evidence from the USPTO's X-Search Database submitted with the May 17, 2016 Final Office Action at 26-54. For example, Registration No. 4290887 for the mark KING LIFE QUEEN LOVE includes shirts, pants, hats, beachwear and other clothing goods; Registration No. 4544740 for the mark SUN'S OUT, BUNS OUT includes baseball caps and hats, caps with visors, hooded sweatshirts, dresses, t-shirts, pants, bathing suits and other clothing goods; Registration No. 4570997 for the mark THRASHER includes t-shirts, sweatshirts, beachwear, coats, and other clothing goods; Registration No. 4494566 for the mark WITH YOU EVERYWHERE includes hats, sweatshirts, dresses, sweaters, sweatpants, and other clothing goods; Registration No. 4898986 for the mark Flying Finn Fash and Design including

In re Aquamar, Inc., 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (citing *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988)); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993).

Based on the products shown on Registrant's website, Applicant argues that Registrant uses its mark on clothing in an ornamental manner and only to raise brand awareness of Registrant's other products, namely its tobacco rolling paper.[9] According to Applicant, "this would be paradoxical to the target consumer for Applicant's products, who would be one who is environmentally conscious and looking to lead a healthy lifestyle and embodies the same through the purchase of sustainable products."[10] Since Registrant is in the cigarette rolling industry, Applicant contends, Registrant's clothing likely does not contain environmentally conscious material. Thus, Applicant concludes that the marks, when applied to the goods and when viewed by the target consumers, would have distinctly different commercial impressions.[11] Even if Registrant uses its mark only to raise brand awareness of its other products, this does not reduce the similarities of the goods because the

shirts, t-shirts, underwear, sweatshirts, coats, sweaters, socks and other clothing goods; Registration No. 4880355 for the mark B and Design including men's and unisex t-shirts, pants, tank tops, beach hats, caps, dresses, shorts and other clothing goods; Registration No. 4894848 for the mark HISU HISU and Design including sweatshirts, shirts, jeans, sweatpants, hats, caps, sneakers and other clothing goods; Registration No. 4913534 for Bad Monkey and Design including t-shirts, sweaters, sweatshirts, jackets, pants, dresses and other clothing goods; Registration No. 4955453 for URTH including shirts, sweatshirts, t-shirts, dresses, skirts and other clothing goods. Since Registration No. 4788467 was issued based on a foreign trademark registration and was not issued based on use of the mark, it was not considered.

[9] Brief of Appellant p. 7 (7 TTABVUE 8).

[10] Brief of Appellant p. 8 (7 TTABVUE 9).

[11] Brief of Appellant pp. 7-8 (7 TTABVUE 8-9).

limitations that Applicant notes are not reflected in Registrant's registration. The Board is constrained to consider the question of likelihood of confusion on the basis of the goods identified in Applicant's application and Registrant's registration. *See e.g.*, *Stone Lion Capital Partners,* 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722; *Paula Payne Products Co. v. Johnson Publishing Co., Inc.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973); In re *Elbaum,* 211 USPQ 639, 640 (TTAB 1981). Moreover, the goods are considered to be the identified goods of every type, available to any purchaser in all of the normal trade channels for such goods. *In re Melville Corp.*, 18 USPQ2d at 1388; *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1898 (TTAB 1989); *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964-65 (TTAB 1980).

Applicant contends, however that because its clothing is made from bamboo, this is a difference in material composition that renders the trade channels and the classes of consumers for Applicant's and Registrant's goods dissimilar.[12] Here, Registrant's goods have no restrictions as to channels of trade or classes of purchasers. Absent any restrictions in an application and/or registration, the identical and highly related goods are presumed to travel in the same channels of trade to the same class of customers. *See In re Viterra, Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re Yawata Iron*

[12] Brief of Appellant pp. 8-9 (7 TTABVUE 9-10).

& 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).

In view of the foregoing, the *du Pont* factors regarding the similarity of the goods, trade channels and purchasers, all favor a finding of likelihood of confusion.

B. The similarity or dissimilarity of the marks as to appearance, sound, meaning and commercial impression

We now turn to the *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, meaning and commercial impression.[13] *Viterra*, 101 USPQ2d at 1908 (quoting *du Pont*, 177 USPQ at 567). Where the goods of Applicant and Registrant are identical and closely related as they are in this case, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods. *Viterra*, 101 USPQ2d at 1908; *Shen Mfg. Co.* v. *Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987).

[13] Applicant's argument on p. 3 of its Brief (7 TTABVUE 4) that "[s]imilarity in one respect – sight, sound, or meaning – does not support a finding of likelihood of confusion, even where the goods or services are identical or closely related" is an incorrect statement of the law. Similarity as to one factor alone may be sufficient to support a holding that the marks are confusingly similar, taking into account all of the relevant facts of a particular case. *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see also In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014); TMEP § 1207.01(b)(i).

To the extent that Applicant's mark  and the cited mark BAMBU begin with the identical term "bambu," when comparing the marks in their entireties, they are similar in sound and appearance. Further, "bambu" is the prominent feature and dominant portion of Applicant's mark given its location as the first part of the mark, where it is the first word to be viewed and to be articulated when pronouncing the mark. *See Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee 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 must first notice the identical lead word); *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").

Turning to the meaning and commercial impression of the marks, both marks begin with the misspelled term "bambu," which is similar in appearance and identical in sound to "bamboo." Bamboo is defined as "any of various usually woody, temperate or tropical plants chiefly of the genera *Arundinaria*, *Bambusa*, *Dendrocalamus*, *Phyllostachys*, or *Sasa* in the grass family…" and includes "fabric or yarn manufactured from these plants."[14] The first term in each of the marks, the identical

[14] May 17, 2016 Final Office Action at 21, American Heritage® Dictionary of the English Language, Fifth Edition copyright © 2015 by Houghton Mifflin Harcourt Publishing

misspelled word "bambu," immediately evokes bamboo, and gives both marks the same strong connotations in relation to fabric for clothing because clothing made from bamboo is desirable as an environmentally friendly choice.[15]

Applicant argues that the Examining Attorney improperly dissected its mark by focusing on the shared term "bambu" and that doing so minimizes the importance of the additional term "life" in Applicant's mark, which obviates the similarities between the marks.[16] Marks must be compared in their entireties and should not be dissected; however, the individual components of a mark may be weighed to determine its overall commercial impression. *Stone Lion Capital Partners*, 110 USPQ2d at 1161 ("[Regarding the issue of confusion,] there is nothing improper in stating that ... more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.") (quoting *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985)). Greater weight is often given to the dominant feature when determining whether marks are confusingly similar. *See Nat'l Data*, 224 USPQ at 751.

Applicant's mark  is presented as a single word, using two different stylized fonts to differentiate the term "bambu" from the word "life." Thus, Applicant

Company *https://ahdictionary.com/word/search.html?q=bamboo&&submit.x=46&&submit.y=18*.

[15] May 17, 2016 Final Office Action at 22, *http://eartheasy.com/wear_bamboo_clothing.htm* eartheasy Bamboo Clothing: "Bamboo fiber is a revolutionary new fabric that has unparalleled advantages, including strength, versatility and luxurious softness … Bamboo fibre is made by pulping the grass until it separates into thin threads of fibre, which can be spun for weaving into cloth…."

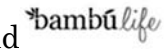
[16] Brief for Appellant pp. 4-5 (7 TTABVUE 5-6).

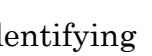
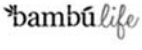
argues that its mark and the cited mark are visually different due to the addition of the word "life" and the bamboo design elements, which give Applicant's mark the distinct impression that bamboo is a key component of Applicant's goods.[17] The fonts in Applicant's mark create a visual difference and separation between the two words such that consumers will readily perceive them as two distinct terms despite the mark being presented as a single word. Not only is the first word of Applicant's and Registrant's marks identical, but the marks both utilize the novel misspelling of "bambu," suggesting the tropical plant bamboo. Thus, when confronted with the marks of Applicant and Registrant in the context of clothing, consumers will likely see Applicant's mark as another product offering of Registrant based on the marks' shared use of the novel misspelling of bamboo as "bambu."

While Applicant's mark contains the additional word "life," that does not diminish the overall similarities between the marks. Applicable definitions define "life" as "a manner of living" and "the activities and interests of a particular area or realm."[18] Thus, "life" merely accentuates "bambu," the first term in Applicant's mark, resulting in Applicant's mark bambū*life* being suggestive of an environmentally friendly life. Further, "life" is used by some third-party clothing providers to suggest that their clothing is appropriate for a certain type of existence that also may lead consumers

[17] Brief of Appellant p. 6 (7 TTABVUE 7).

[18] May 17, 2016 Final Office Action at 10, The Free Dictionary *http://www.thefreedictionary.com/life*, definition number 10.

to conclude that BAMBU and  identify a single source of clothing items, especially those emphasizing an environmentally friendly life.[19]

Applicant contends that the use of "life" in its mark accentuates and conjures a specific image and expectation in the mind of the consumer.[20] While that may be, the "life" portion of its mark will not likely be perceived by consumers as identifying a different source of the clothing. The Examining Attorney submits third-party registrations for marks containing the word "LIFE" registered for clothing, contending that consumers are accustomed to encountering marks that end in "LIFE," which are used to suggest a particular lifestyle. *See* for example, U.S. Registration Nos. 4538208 for BARN LIFE, 4074542 for BAY LIFE, 4865279 for BEACH LIFE, and 4641462 for CHROME LIFE, registered for various types of clothing.[21] As a result, the Examining Attorney argues, consumers will perceive "BAMBU" and  as identifying a single source of clothing goods because  emphasizes an environmentally friendly life and tells consumers to live the "BAMBU" way.

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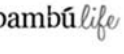
[19] May 17, 2016 Final Office Action at 11, 12, 13 saltlife.com: *http://www.saltlife.com/mens/mens-tops/mens-tops-tees.html/*: clothing featuring fishing and surfing and other activities related to the ocean and ocean enjoying life; farmlife.com: *http://yourfarmlife.com/mens-apparel/*: clothing featuring tractors and other subject related to farming and the farming life; Thuglife-store.com: *http://www.thuglife-store.com/en/Clothing/Men/?force_sid=dbdan49835ib471hvj9pt404d4*: clothing featuring "Thug Life" and other "streetwear" related to urban and hip hop culture.

[20] Brief for Appellant p. 5 (7 TTABVUE 6).

[21] December 6, 2016 Denial of Request for Reconsideration, at 5-15. Registration No. 3887023 (at 3-4) has been cancelled for failure to file the declaration of use under § 8 of the Trademark Act, 15 U.S.C. § 1058, and so it has not been considered.

While there is no explicit rule that marks are similar where an applicant's mark contains the whole of the mark in the cited registration, the fact that the cited registered mark is incorporated in full in Applicant's mark increases the similarity between the two marks, especially when the addition of "life" in Applicant's mark does not change the overall meaning of the marks caused by the shared term "bambu" in a way that would distinguish between the sources of Applicant's and Registrant's goods. Adding a term to a registered mark, as in this case, generally does not obviate the similarity between the compared marks nor does it overcome a likelihood of confusion under § 2(d). *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (GASPAR'S ALE and JOSE GASPAR GOLD confusingly similar); *Wella Corp, v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT similar to registered mark CONCEPT); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (BENGAL and BENGAL LANCER and design confusingly similar); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967) (THE LILLY and LILLI ANN confusingly similar); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d at 1269 (TITAN and VANTAGE TITAN confusingly similar); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (MACHO and MACHO COMBOS confusingly similar).

Applicant's mark also contains subtle design elements of stylized bamboo stalks making up part of the letters "b" in 

, and small bamboo leaves to the right

of the first "b" and another leaf-shaped design over the letter "u."[22] These design elements reinforce the meaning of the term "BAMBU" in the mark by bringing to mind actual bamboo stalks and leaves, and calling attention to that term in the mark. Therefore, these elements do not obviate the similarities between the marks. For a composite mark containing both words and a design, the word portion is usually more likely to indicate the origin of the goods because it is more likely to be impressed upon a purchaser's memory and to be used when requesting the goods. *Bond v. Taylor*, 119 USPQ2d 1049, 1055 (TTAB 2016) (citing *Viterra*, 101 USPQ2d at 1908, 1911); *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999)). Therefore, these additional design elements do not obviate the similarities between the marks.

Registrant's mark is in typed form. A mark in typed form, *i.e.*, standard characters, may be displayed in any lettering style including a style identical to Applicant's using bamboo stalks to form letters as well as using a stylized cursive font; the rights reside in the wording or other literal element and not in any particular display or rendition. Thus, a mark presented in stylized characters with a design element generally will not avoid likelihood of confusion with a mark in standard characters because the marks could be presented in the same manner of display. *See, e.g.*, *Viterra*, 101 USPQ2d at 1909; *Squirtco v. Tomy*, 216 USPQ at 939 ("the argument

[22] Applicant describes the leaf shape design as: "The letter u has a bamboo leaf shaped accent extending from the top left side of the letter pointing upward and angled toward the right." *See* n.1 above.

concerning a difference in type style is not viable where one party asserts rights in no particular display"). *See also Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1823 (TTAB 2015) (a standard character mark "could be used in any typeface, color, or size, including the same stylization actually used . . . [in Applicant's mark], or one that minimizes the differences or emphasizes the similarities between the marks.").

While some differences exist between the marks in their entireties[23], Applicant's mark and the cited registered mark are substantially similar in sound, appearance and commercial impression, inasmuch as they begin with, or are solely comprised of, the identical dominant term BAMBU. Neither the word "life" nor the minor design elements in Applicant's mark create a strong enough impression to distinguish the source of the goods. Thus, the marks of Applicant and Registrant are similar.

III. Conditions under which purchasers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing

Applicant also argues that purchasers looking for clothing do not make impulsive decisions. Therefore, it contends, the purchasers of its goods, as sophisticated

[23] Based on the differences in the marks' names, appearance and consumer focus, Applicant argues that purchasers coming in contact with the two brands will know the goods are from different sources or have a strong reason to question that the two are from the same source in light of their differences.[23] Inasmuch as the goods of both parties are legally identical-in-part based on the broad identification of goods in Registrant's registration, and as such, travel in the trade channels to the same class of purchasers, the extent of potential confusion is not highly unlikely or *de minimis* as Applicant asserts. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000).

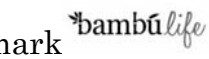
consumers of clothing, will be discerning and thus, it is highly unlikely that there will be confusion between Applicant's and Registrant's goods.[24]

There is nothing in the record establishing that purchasers of clothing containing bamboo exercise greater care in their purchase of such goods other than the usual care taken in purchasing clothing. Moreover, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. *See, e.g.*, *Stone Lion Capital Partners*, 110 USPQ2d at 1163-64; *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011). Thus, even discerning and sophisticated clothing consumers are likely to be confused between the sources of the goods when offered under marks with an identical spelling of the dominant element of both marks, BAMBU.

IV. Conclusion

The first term and dominant feature in both Applicant's mark bambú*life* and the mark BAMBU in the cited Registration is "BAMBU," and the marks are similar in sound, appearance, meaning and overall commercial impression when considered in their entireties. The high degree of similarity between Applicant's mark bambú*life* and the cited mark BAMBU taken together with the legally identical and closely related nature of the goods creates a likelihood that consumers will be confused as to the source of the respective goods.

[24] Brief of Appellant p. 9 (7 TTABVUE 10).

Decision: The refusal to register Applicant's mark  under § 2(d) of the Trademark Act is affirmed.