

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Brown

Mailed: June 5, 2008

Opposition No. 91168097
Opposition No. 91172654
Cancellation No. 92046246

Chanel, Inc.

v.

Frank Mauriello

**Before Walters, Drost and Wellington,
Administrative Trademark Judges.**

By the Board:

As consolidated, this proceeding now comes before the Board for consideration of 1) plaintiff's motion for summary judgment in Opposition No. 91168097 and partial summary judgment in Opposition No. 91172654; and 2) defendant's cross-motion for summary judgment in Opposition No. 91168097 and partial summary judgment in Opposition No. 91172654. The motions are fully briefed.

By rule, a party is entitled to summary judgment when it has demonstrated that there are no genuine issues as to any material facts and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The evidence must be viewed in a light favorable to the nonmoving party, and all justifiable inferences are to be drawn in the

nonmovant's favor. See *Opryland USA Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992). The mere fact that cross-motions for summary judgment on an issue have been filed does not necessarily mean that there are no genuine issues of material fact, and that trial is unnecessary. See Vol. 10A, Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d*, Section 2720 (2d ed. 1983).

Upon careful consideration of the arguments and evidence presented by the parties, and drawing all reasonable inferences in favor of the nonmoving party in each instance, we find that neither party has demonstrated the absence of a genuine issue of material fact for trial nor shown that as a matter of law, it is entitled to judgment on the question of likelihood of confusion. At a minimum, we find that genuine issues of material fact exist with respect to the similarity or dissimilarity of the marks at issue and their commercial impressions.¹

¹ The fact that we have identified only a few genuine issues of material fact as sufficient bases for denying the motions for summary judgment should not be construed as a finding that these are necessarily the only issues which remain for trial.

In view thereof, the parties' motions for summary judgment are denied.²

With the motions denied, proceedings herein are resumed and trial dates reset as follows:

DISCOVERY PERIOD TO CLOSE:	Closed
30-day testimony period for party in position of plaintiff to close:	July 12, 2008
30-day testimony period for party in position of defendant to close:	September 10, 2008
15-day rebuttal testimony period for plaintiff to close:	October 25, 2008

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

² The parties should note that the evidence submitted in connection with the motions for summary judgment is of record only for consideration of those motions. To be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. See *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993); *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB (1993); *American Meat Institute v. Horace W. Longacre, Inc.*, 211 USPQ 712 (TTAB 1981).

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>