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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Garment Group, Inc.

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Serial No. 85512862

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Thomas I. Rozsa of Rozsa Law Group LC for Garment Group, Inc.

Curtis French, Trademark Examining Attorney, Law Office 115 (John Lincoski, Managing Attorney).

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Before Quinn, Masiello, and Hightower, Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

On January 10, 2012, applicant Garment Group, Inc. applied to register the mark TECHWOOL, in standard characters, for goods ultimately identified as “socks made substantially or in part of wool” in International Class 25.¹ Registration has been refused on the ground of likelihood of confusion with the mark TECHNOWOOL, in standard character form, registered for “clothing, namely,

¹ Application Serial No. 85512862, filed pursuant to Trademark Act Section 1(b), 15 U.S.C. § 1051(b) (intent to use).

outerwear, namely, jackets and [sic] made in part or in whole of wool” in International Class 25.² Applicant timely appealed, and the appeal is fully briefed.

Record

Applicant made of record printouts from the TESS database showing three lists of live third-party applications and registrations returned in searches for “jackets” and the following terms: TECHNO (5 records), TECH (75 records), and WOOL (15 records).³ The examining attorney did not object to the lists in the October 30, 2012 final Office action. The examining attorney’s failure to advise applicant during examination that such lists are insufficient to make the listed registrations of record constituted a waiver of any objection to consideration of the lists. *In re City of Houston*, 101 USPQ2d 1534, 1536 (TTAB 2012), *aff’d*, 731 F.3d 1326, 108 USPQ2d 1226 (Fed. Cir. 2013); Trademark Trial and Appeal Board Manual of Procedure (TBMP) §§ 1207.03, 1208.02 (3d ed. rev. 2 June 2013). Therefore, we will consider all three lists of third-party registrations “for whatever limited probative value such evidence may have.” *In re Broyhill Furniture Indus. Inc.*, 60 USPQ2d 1511, 1513 n.3 (TTAB 2001).⁴

Applicant also attached five exhibits to its appeal brief. This evidence was not timely submitted. In his appeal brief, the examining attorney affirmatively

² Registration No. 2624998, issued September 24, 2002; renewed.

³ Exhibit 1 to response to Office action, October 1, 2012, at 16-21. Each search was conducted on October 1, 2012.

⁴ We note, however, that the mere submission of a list of registrations does not make the listed registrations of record and the Board does not consider any information regarding those registrations other than that provided in the lists. *In re Jump Designs LLC*, 80 USPQ2d 1370, 1372 (TTAB 2006); *In re Promo Ink*, 78 USPQ2d 1301, 1304 (TTAB 2006); TBMP § 1208.02.

waived his objections to two printouts of dictionary definitions and two specimens of use for the cited registrations, which were included among the exhibits.⁵ We therefore have considered that evidence, but have given no consideration to the remaining exhibits attached to applicant's appeal brief. Trademark Rule § 2.142(d), 37 C.F.R. § 2.142(d); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1059 n.2 (TTAB 2002); *In re Trans Cont'l Records Inc.*, 62 USPQ2d 1541, 1541 n.2 (TTAB 2002); TBMP §§ 1203.02(e), 1207.01. *See also In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1244 n.4 (TTAB 2010) (noting that an applicant may request remand if it wishes to make additional evidence of record).

The definitions made of record by applicant, from Dictionary.com and the World English Dictionary, include:

1. **techno**

- a. **techno** *noun* a style of disco music characterized by very fast synthesizer rhythms, heavy use of samples, and a lack of melody.
- b. **techno-** a combining form borrowed from Greek where it meant "art," "skill," "technique," "technology," etc.: *technography*.
- c. **techno – n** a type of very fast dance music, using electronic sounds and fast heavy beats.⁶

2. **tech**

- a. *adjective* technical: *The engineers sat together exchanging tech talk.*
- b. *noun*
 - i. a technician: *He's a tech for a film crew.*
 - ii. Technology: *She has a good grasp of computer tech.*⁷

⁵ Examining attorney's brief, 6 TTABVUE 3.

⁶ Exhibit 4 to Applicant's Brief, 4 TTABVUE 33. Another definition similar to 1(b) appears at the bottom of the page, but it is unclear whether or not that definition is complete.

The examining attorney made the following evidence of record:

1. Dictionary definitions of tech, techno, and wool, including the following:
 - a. **techno-** pref. Technology: *technophobia*.⁸
 - b. **techno-** *prefix* relating to or involving technology.⁹
 - c. **tech.** abbreviation for
 1. technical
 2. technology.¹⁰
 - d. **tech** noun:
 1. A technician.
 2. Technology.
 3. Technical work.¹¹
 - e. **wool** yarn spun from the coat of sheep, etc., used in weaving, knitting, etc.¹²
2. nineteen use-based registrations covering both socks and jackets,¹³ and
3. screenshots of webpages offering both socks and jackets under the same mark.¹⁴

Analysis

Our determination under Section 2(d) is based on an analysis of all 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

⁷ *Id.*, 4 TTABVue 36.

⁸ October 30, 2012 final Office action at 2 (from Education.Yahoo.com).

⁹ *Id.* at 3-4 (from Cambridge Dictionaries Online).

¹⁰ *Id.* at 5-7 (from CollinsDictionary.com).

¹¹ *Id.* at 8 (from Education.Yahoo.com).

¹² *Id.* at 9-11 (from CollinsDictionary.com).

¹³ *Id.* at 12-23, 26-67. A twentieth, Registration No. 4228642, has been canceled as inadvertently issued.

¹⁴ *Id.* at 80-85 and 88-94 (from LandsEnd.com, Dakine.com, and DakotaOuterwear.com).

(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 of the goods and differences in the marks.”); *In re SL&E Training Stable, Inc.*, 88 USPQ2d 1216, 1217 (TTAB 2008) (“In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods.”). We consider each of the *du Pont* factors as to which applicant or the examining attorney submitted evidence.

A. Similarity of the Marks

We first consider the *du Pont* likelihood of confusion factor focusing on “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression.” *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). In comparing the marks, we are mindful that the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods offered under the respective marks is likely to result. *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA

1977); *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd*, No. 92-1086 (Fed. Cir. June 5, 1992).


Because the similarity or dissimilarity of the marks is determined based on the marks in their entirety, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). On the other hand, different features may be analyzed to determine whether the marks are similar. *Price Candy Co. v. Gold Medal Candy Corp.*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955). In fact, 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 the ultimate conclusion rests on a consideration of the marks in their entirety. *In re Nat'l Data Corp.*, 224 USPQ at 751.

Applicant’s mark TECHWOOL differs from the cited mark TECHNWOOL by the addition of the middle syllable “NO.” We find the marks to be highly similar in appearance and similar in sound.

Applicant argues that the term TECHNO is most often associated with a type of music, while TECH is most often defined as “technical.”¹⁵ The dictionary

¹⁵ Applicant’s Brief at 3-4, 4 TTABVUE 4-5.

definitions of record, however, show that both terms commonly signify “technology.” Moreover, applicant offers no evidence or explanation why consumers would associate the “techno” musical style with applicant’s wool jackets. We find that consumers would be more likely to view both marks as suggestive of garments made of wool with “technical” or “technological” performance features. The marks are therefore similar in meaning.

We also note that slight differences in marks do not normally create dissimilar marks. *See, e.g., In re Great Lakes Canning, Inc.*, 227 USPQ 483, 485 (TTAB 1985) (finding  similar to CANA); *In re Bear Brand Hosiery Co.*, 194 USPQ 444, 445-46 (TTAB 1977) (finding KIKS similar to KIKI).

For the reasons discussed above, we find applicant’s mark TECHWOOL to be similar to the cited mark TECHNOWOOL in appearance, sound, connotation, and commercial impression. Therefore, the first *du Pont* factor supports a conclusion that confusion is likely.

B. Similarity of the Goods and Channels of Trade

We turn next to the similarity of the goods and their channels of trade, the second and third *du Pont* factors, respectively. The goods need not be identical or even competitive in order to support a finding of a likelihood of confusion. Rather, it is enough that the goods are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way

associated with the same producer or that there is an association between the producers of the respective goods. *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *Schering Corp. v. Alza Corp.*, 207 USPQ 504, 507 (TTAB 1980); *Oxford Pendaflex Corp. v. Anixter Bros. Inc.*, 201 USPQ 851, 854 (TTAB 1978).

Registrant's goods are jackets made in part or in whole of wool. Applicant's goods are socks made substantially or in part of wool. The goods are similar to the extent that both are made of wool. In addition, the Board has previously found various types of clothing items to be related, including jackets and shoes. *See Craddock-Terry Shoe Corp. v. Billy Boy Co.*, 133 USPQ 218, 219 (TTAB 1962).

The examining attorney submitted 19 use-based, third-party registrations covering both jackets and socks. These registrations show that applicant's and the prior registrant's goods are of a kind that may emanate from a single source under a single mark. *In re Davey Prods. Pty. Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009). Although these registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the identified goods are products which are produced and/or marketed by a single source under a single mark. *See Venture Out Props. LLC v. Wynn Resorts Holdings LLC*, 81 USPQ2d 1887, 1893 (TTAB 2007). We also note that both the application and the registration are unrestricted. The screenshots of record from websites offering both wool socks and wool jackets demonstrate that these types of goods travel through the same trade channels.

Applicant argues that jackets and socks are not related because they are sold in different areas of stores, are worn on different parts of the body, and would not accidentally be purchased in place of one another.¹⁶ We have no evidence that applicant's and registrant's products typically would be displayed in different sections of a store. Even if wool jackets and wool socks are sold in different parts of stores, however, that fact alone "does not gainsay a likelihood of confusion. . . . The crucial question here is whether source confusion is likely. As to that, whether or not the goods are displayed close together or far apart in the same store is immaterial." *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 n.30 (TTAB 1989) (citing *In re Cosmetically Yours, Inc.*, 171 USPQ 563, 565 (TTAB 1971)). For the same reason, that jackets and socks are worn on different parts of the body and would not be mistaken for each other does not mean that consumers would not believe them to emanate from the same source if sold under confusingly similar marks.

Finally, we point out that our analysis of the second and third *du Pont* factors must be based on the goods as they are recited in the application and the cited registration, respectively. See *Octocom Sys., Inc. v. Houston Computer Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Even though the cited registration was narrowed in 2008 to delete socks, among other goods, and now

¹⁶ Reply Brief at 2 ¶ 2, 7 TTABVUE 3.

covers only jackets, we need not assume that the registrant “might expand its goods into socks” to find confusion likely on this record.¹⁷

We find that applicant’s goods move in the same channels of trade and are sufficiently related to those in the prior registration that source confusion is likely. In our likelihood of confusion analysis, these findings under the second and third *du Pont* factors support a conclusion that confusion is likely.

C. Third-Party Use

We last address applicant’s argument that the cited registration is weak due to a crowded field of coexisting marks in the garment industry incorporating TECHNOWOOL, as one word or two (*du Pont* factor six).¹⁸ Applicant made of record no evidence of third-party use, nor any third-party registrations. The lists of applications and registrations for marks that include the designations TECH, TECHNO, or WOOL do not demonstrate that those marks are in use, or that customers in any segment of the marketplace are aware of them; nor do they show any of the information that might have been established by submission of the actual registrations. Applicant has not established that the cited mark is weak.

Balancing the Factors

We have considered all of the evidence of record as it pertains to the relevant *du Pont* factors. We have carefully considered applicant’s arguments and evidence, even if not specifically discussed herein, but have not found them persuasive. In view of our findings that the marks are similar and that the goods are related and

¹⁷ See *id.* at 3 ¶ 4, 7 TTABVUE 4.

¹⁸ Applicant’s Brief at 3, 4 TTABVUE 5.

move in the same or similar channels of trade, we find that applicant's mark TECHWOOL for "socks made substantially or in part of wool" is likely to cause confusion with the registered mark TECHNOWOOL for jackets made in part or in whole of wool. To the extent there are any doubts, we resolve them, as we must, against applicant as the newcomer and in favor of the registrant. *Nike Inc. v. WNBA Enters. LLC*, 85 USPQ2d 1187, 1202 (TTAB 2007); *Hard Rock Café Int'l (USA) Inc. v. Elsea*, 56 USPQ2d 1504, 1514 (TTAB 2000).

Conclusion

Decision: The examining attorney's refusal to register applicant's mark under Section 2(d) of the Trademark Act is affirmed.