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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	88004556
Applicant	Monfrere
Applied for Mark	MONFRÃ#RE FASHION
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Trademark Law Office 119
Examining Attorney: Michael Tanner

Applicant: Monfrere
Serial No.: 88004556
Filed: June 18, 2018
For the mark: MONFRÈRE FASHION (word mark)

APPLICANT'S APPEAL BRIEF

Dated: September 30, 2019

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In re " <i>Monfrere</i>)	Mark: MONFRÈRE FASHION
)	Serial No.: 88004556
)	Examining Atty: Michael Tanner
)	Law Office: 119
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APPLICANT'S APPEAL BRIEF

Issue on Appeal

Applicant seeks to register the mark MONFRÈRE FASHION for "Denim jackets; Denim jeans; Denim pants; Jeans; Men's and women's jackets, coats, trousers, vests; Pants; Shirts; Coats of denim; Denims; Jackets" in International Class 025.

The Examining Attorney has refused registration under Section 2(d) of the Lanham Act, on the ground that there is purportedly a likelihood of confusion with the mark MY BROTHER in US Registration No. 1618855 for "T-SHIRTS" in International Class 025.

This is the sole issue on appeal. Applicant has complied with all other requirements for registration.

Relevant Prosecution History

On June 18, 2018, Applicant filed the instant application to register its mark MONFRÈRE FASHION for:

Class 025

Denim jackets; Denim jeans; Denim pants; Jeans; Men's and women's jackets, coats, trousers, vests; Pants; Shirts; Coats of denim; Denims; Jackets

On October 9, 2018, the Examining Attorney issued an Office Action refusing registration of Applicant's mark under Section 2(d)- Likelihood of Confusion with the mark in U.S. Registration No. 1618855 for the mark "MY BROTHER" ("the cited registration" or "Registrant's mark"). In addition, in the Office Action, the Examining Attorney indicated that a disclaimer to the term "fashion" was required, and that clarification to the translation statement was required.

On November 19, 2018, Applicant submitted a response with arguments against the Section 2(d) refusal, the requirement for a disclaimer to the term "fashion", and the requirement for clarification to the translation statement.

On December 15, 2018, the Examining Attorney issued another Office Action maintaining the 2(d) refusal to register Applicant's mark in view of the cited registration, maintaining that a disclaimer to the term "fashion" was required, and maintaining that clarification to the translation statement was required.

On June 17, 2019, a Request for Reconsideration was filed, amending the Application to include a disclaimer for the term "fashion" and including a clarified translation statement, along with the filing of a Notice of Appeal with the Trademark

Trial and Appeal Board (“the Board”), appealing the likelihood of confusion refusal, and the present appeal ensued.

Arguments

I. THE DOCTRINE OF FOREIGN EQUIVALENTS DOES NOT APPLY TO APPLICANT’S MARK

It is well settled that:

Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine genericness, descriptiveness, as well as similarity of connotation in order to ascertain confusing similarity with English word marks. [Citations omitted.] When it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be applied. . . .

Although words from modern languages are generally translated into English, the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline. [Citations omitted.] The doctrine should be applied only when it is likely that the ordinary American purchaser would “stop and translate [the word] into its English equivalent.”

Palm Bay Imps. v. Veuve Clicquot Ponsardin, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)) (Emphasis added). The Court and the Board have recognized that, in some contexts, even a person familiar with the foreign language at issue will not “stop and translate,” but rather “take it as it is.” In *In re Spirits International N.V.*, 563 F.3d 1347, 90 USPQ2d 1489 (Fed. Cir. 2009), the Court stated that in some cases, “the literal translation is irrelevant” to customers (providing the examples of VEUVE CLICQUOT and CORDON BLEU); or the context in which the marks appear may render translation unlikely (providing the example of TIA MARIA Mexican restaurant versus AUNT MARY canned vegetables). *Id.*, 73 USPQ2d at 1492. See *In re Tia Maria, Inc.*, 188 USPQ 524, 525-26 (TTAB 1975).

For the reasons stated below, Applicant submits that even a person familiar with the French language would not “stop and translate” Applicant’s mark, and would instead “take it as it is,” at least because Applicant’s mark includes a combination of foreign language words and an English language word, thereby changing the commercial impression of Applicant’s mark.

1. The case law is clear that the Doctrine of Foreign Equivalents does not apply when the mark includes a combination of foreign and English language words, as is the case with Applicant’s mark

“[T]he doctrine [of foreign equivalents] does not apply when a mark is a combination of foreign and English words.” *French Transit v. Modern Coupon Systems*, 818 F. Supp. 635, 636 (S.D.N.Y. 1993) (combination of the English word CRYSTAL and two French words LE and NATUREL changed the commercial impression of the mark and therefore the Doctrine of Foreign Equivalents did not apply). In other words, according to *French Transit*, when a mark is a combination of foreign and English words, the Doctrine of Foreign Equivalents does not apply due to the change in the commercial impression imposed by the combination of the foreign and English words, because as a result of the changed commercial impression a consumer is less likely to stop and translate the mark and more likely to take the mark as it is.

The Examining Attorney correctly points out in the Office Action that the facts of *French Transit* are relevant to determining if a mark is generic or descriptive when a generic English word for a good or service is combined with a foreign article. However, nowhere is it even remotely suggested in *French Transit*, or any of the other cases where the application of the Doctrine of Foreign Equivalence is of issue, that “the inapplicability of the doctrine of foreign equivalents is limited to a particular situation-

determining if a mark is generic or descriptive when a generic English word for a good or service is combined with a foreign article,” as indicated in the Office Action. To the contrary, as noted above, the case law is clear that “[w]hen it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be applied,” and that “[t]he doctrine should be applied only when it is likely that the ordinary American purchaser would ‘stop and translate [the word] into its English equivalent.’ ” *Palm Bay Imps. v. Veuve Clicquot Ponsardin*, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)).

Accordingly, Applicant respectfully submits that, contrary to the indication set forth in the Office Action, the inapplicability of the Doctrine of Foreign Equivalents is not “limited to a particular situation-determining if a mark is generic or descriptive when a generic English word for a good or service is combined with a foreign article.” Rather, the inapplicability of the Doctrine of Foreign Equivalents rests on whether “it is unlikely that an American buyer will translate the foreign mark and will take it as it is,” which has been consistently held to be based on the commercial impression of the mark. *Palm Bay Imps. v. Veuve Clicquot Ponsardin*, 73 USPQ2d at 1696.

a. The ordinary American purchaser is less likely to “stop and translate,” and instead will take the mark “as it is,” when the mark includes a combination of foreign and English language words, as is the case with Applicant’s mark

In the Office Action, it is stated that:

Given the number of consumers throughout this country who are proficient in French or French Creole, and considering that the foreign wording in the application, MON FRÈRE, is a literal and direct translation for the English wording MY BROTHER, it is likely that the foreign language in the proposed mark would be translated into its English equivalent by an appreciable number of U.S. consumers. Thus, despite their differences in sound and

appearance, the examining attorney must conclude that the commercial impression given by the wording MONFRÈRE in the proposed mark is highly similar to, if not the equivalent of, the commercial impression created by the cited registration MY BROTHER... The applicant's addition of the term FASHION does not alter this determination. It is well settled that adding a term to a registered mark generally 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). [citations omitted]. In this case, the similarity between the respective marks due to the foreign equivalence between the terms MY BROTHER and MONFRÈRE, outweighs the difference between these marks that results from the applicant's addition of the descriptive term FASHION.

Thus, by affording little-to-no weight to the addition of the English language word FASHION to the foreign language word MONFRÈRE in Applicant's mark, the Office Action treats the addition of the word FASHION in Applicant's French-English mark the same way that one would treat the addition of the word FASHION to an English-English language mark. As described below, and as evidenced in the registrations submitted by the Examining Attorney attached to the Final Office Action, such an equal treatment of the addition of the word FASHION to both a multi-language (e.g., French-English) mark and a single-language (e.g., English-English) mark is contrary to well-established law. In particular, it has been consistently held that consumers are more likely to "stop and translate," and thus, less likely to "take [the mark] as it is," when all of the words of the mark are in a single language. In other words, consumers are less likely to "stop and translate," and thus, more likely to "take [the mark] as it is," when the mark includes a combination of a foreign language word and an English language word, as is the case with Applicant's mark MONFRÈRE FASHION.

In *In re Universal Package Corporation*, 222 USPQ 344 (TTAB 1984), it was

held that the mere inclusion of the French article LE in LE CASE changed the commercial impression of the mark, specifically, where the combination of the French language word LE with the English language word CASE created a different commercial impression than that which would be created by THE CASE, and further, that such a change in the commercial impression made it less likely that translation would take place by a consumer. There, it was held that:

This situation is different from that where we are presented with a mark consisting entirely of foreign word components. Here only one of the two components is foreign. Translation of an entire compound word mark is more likely to take place in the marketplace than is the translation of only part of the mark. *Id.* at 347 (emphasis added).

The Board in *In re Universal Package Corporation*, specifically *rejected* the connotation that the addition of an otherwise non-registerable English language word (THE) to another non-registerable English language word (JAR) *should be treated the same* as the addition of an otherwise non-registerable foreign language word (LE) to a non-registerable English language word (JAR), analogous to the position set forth in the Office Action which treats Applicant's mark MONFRÈRE FASHION the same way it would treat a mark of MONFRÈRE and a mark of FASHION. In particular, it was held that:

Each of the cases discussed above is distinguishable from the case now before us, either because the entire term was in the same language or because the English equivalent of the foreign term was not descriptive of the goods or services in question. In the case at hand, however, we are faced with a mark which consists of a French article and an English term which is generic for the goods. The only prior decision involving this situation is *In re Owens-Illinois, Inc.*, 217 U.S.P.Q. 1038 (TTAB 1983). In that case registration of a slightly stylized version of "LE JAR" for "glass canisters," which the Board held are commonly described as jars, was refused under Section 2(e)(1) of the Act. The Examining

Attorney argued that the French article, "LE", which translates as "THE," and the stylized display of the mark did not create a distinct commercial impression separate and apart from the descriptive significance of the mark as applied to jars. Applicant contended that "JAR" was not the generic name for its goods and that the distinctive display of the mark created a commercial impression which was different from the words lone. This Board, through another panel, held that "LE" would be recognized by the average purchaser as "THE," and that the commercial impression created by the mark would thus be "THE JAR." The minor design aspects of the way the words were presented were not found to be enough to alter the descriptive significance of the term sought to be registered. The refusal based on mere descriptiveness was affirmed on this basis.

We disagree with the decision in that case and with the reasoning used there. To the extent that it is inconsistent with our holding in the case now before us, the Owens-Illinois case is overruled. It seems to us that the Board there found the term "LE JAR" to be the equivalent of the generic name of the goods. As such, the term would be incapable of becoming distinctive, rather than simply being merely descriptive. Our more fundamental difficulty with the "LE JAR" decision, however, is the assertion that the commercial impression made by "LE JAR" is "THE JAR." Although the distinction is subtle, we see a difference between the two.

The Board was faced with a similar multi-language situation in *In re Johanna Farms Inc.*, 8 USPQ2d 1408 (TTAB 1988), where it similarly held that the combination of the French word LA with the English word YOGURT changed the commercial impression of the mark as a whole.

In view of the above, it is clear that when the commercial impression of a mark is changed by virtue of a combination of a foreign language word (even minor words which would otherwise add little weight or significance, such as LE or LA) with an English language word (even descriptive words such as CASE and YOGURT), a consumer is unlikely to "stop and translate" the mark, and instead is more likely to take the mark as it

is. Despite this, the Office Action concludes that “it is likely that the foreign language in the proposed mark would be translated into its English equivalent by an appreciable number of U.S. consumers.” However, as noted above, due to the changed commercial impression of Applicant’s mark resulting from the combination of the French language word MONFRÈRE and the English language word FASHION, it is unlikely that the foreign language term in Applicant’s mark would be translated into English. Accordingly, because “it is unlikely that an American buyer will translate the foreign mark and [instead] will take it as it is,” Applicant respectfully submits that the Doctrine of Foreign Equivalents does not apply to Applicant’s mark. *Palm Bay Imps. v. Veuve Clicquot Ponsardin*, 73 USPQ2d at 1696.

b. The entire mark “as a whole,” not just the foreign language portion of the mark, must be considered when evaluating the commercial impression of a mark and determining whether a consumer would “stop and translate” or take the “mark as it is”

In the Office Action, it is stated that:

Given the number of consumers throughout this country who are proficient in French or French Creole, and considering that the foreign wording in the application, MON FRÈRE, is a literal and direct translation for the English wording MY BROTHER, it is likely that the foreign language in the proposed mark would be translated into its English equivalent by an appreciable number of U.S. consumers. Thus, despite their differences in sound and appearance, the examining attorney must conclude that the commercial impression given by the wording MONFRÈRE in the proposed mark is highly similar to, if not the equivalent of, the commercial impression created by the cited registration MY BROTHER... The applicant’s addition of the term FASHION does not alter this determination.

Applicant respectfully submits that such a parsing of Applicant’s mark is improper and ignores the commercial impression imparted by the mark as a whole onto

the consumer. The Office Action first determines that “it is likely that the foreign language in the proposed mark would be translated into its English equivalent by an appreciable number of U.S. consumers,” and only after making this determination, considers whether the remaining portions of Applicant’s mark “alter this [already made] determination.” Additionally, the only factors considered in the Office Action to form the basis by which the Office Action determines that a consumer will translate is 1) the number of consumers who are proficient in French; and 2) the fact that there is an alleged direct literal translation to the foreign word.

“It is well settled that in determining the likelihood of confusion, the marks must be considered in their entirety, and that it is the mark as a whole that creates the commercial impression upon the purchasers.” *Western Union Tel. Co. v. Graphnet Sys., Inc.*, 204 U.S.P.Q. 971, 976 (T.T.A.B. 1979) (Emphasis added). The mark MONFRÈRE FASHION as a whole clearly imparts a different commercial impression upon a consumer than that of the word MONFRÈRE alone. *See In re Johanna Farms Inc.*, 8 USPQ2d 1408 (TTAB 1988) (the combination of the French word LA with the English word YOGURT changed the commercial impression of the mark as a whole); *French Transit v. Modern Coupon Systems*, 818 F. Supp. 635, 636 (S.D.N.Y. 1993) (combination of the English word CRYSTAL and two French words LE and NATUREL changed the commercial impression of the mark); *In re Universal Package Corporation*, 222 USPQ 344 (TTAB 1984), (inclusion of the French article LE in LE CASE changed the commercial impression of the mark, specifically, where the combination of the French language word LE with the English language word CASE created a different commercial impression than that which would be created by THE CASE) *In re Sweet Victory, Inc.*

228 USPQ 959 (TTAB 1986), (“juxtaposition of the French word GLACÈ with the English word LITE changes the commercial impression of the mark”).

If such parsing were permitted without taking into consideration the commercial impression of the mark as a whole, then any mark including a word in a common foreign language (where the word has a direct and literal English translation) forming part of the mark would always have the foreign language word translated to its literal and direct English translation, and then only after the foreign language word is translated to English would the commercial impression of the mark be considered. Applicant respectfully submits that such an application is contrary to the intent of the Doctrine of Foreign Equivalents and serves no purpose in protecting any consumer. In view of the above, in determining whether a consumer will “stop and translate” a mark (that is, in determining whether the Doctrine of Foreign Equivalents applies), it is irrelevant that “the commercial impression given by the wording MONFRÈRE in the proposed mark is highly similar to, if not the equivalent of, the commercial impression created by the cited registration MY BROTHER,” as indicated in the Office Action, because such an analysis considers only part of Applicant’s mark and not the mark as a whole.

2. Applicant’s mark is not a “foreign mark” subject to the Doctrine of Foreign Equivalents

Under the Doctrine of Foreign Equivalents, foreign marks in common languages are translated into English before being compared with English word marks. However, “[w]hen it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be applied.” *Palm Bay*, 73 USPQ2d at 1696. Applicant respectfully submits that a mark that comprises a foreign word, or words, combined with an English word or words, is not a “foreign mark,” and

the concept of “stop and translate” embodied in the doctrine does not apply.

The presence of English words and words with English-language meanings in Applicant’s mark removes it from the set of marks that should be translated into English before being compared with another English mark. The inclusion of the English word FASHION removes the overall mark from the realm of “foreign marks,” and, therefore, from application of the Doctrine of Foreign Equivalents. *See French Transit Ltd. v. Modern Coupon Sys. Inc.*, 818 F. Supp. 635, 29 USPQ2d 1626, 1626-27 (SDNY 1993) (holding that the doctrine of foreign equivalents does not apply when a mark is a combination of foreign and English words; finding the doctrine inapplicable to the mark LE CRYSTAL NATUREL); *In re Johanna Farms*, 8 USPQ2d 1408, 1413 (TTAB 1988) (finding LA YOGURT not to be a foreign word but rather a combination of an English word and a French article and declining to apply the doctrine of foreign equivalents) (citing *In re Universal Package Corp.*, 222 USPQ 344, 347 (TTAB 1984) (doctrine does not apply to transform LE CASE into THE CASE)).

The decision in *Palm Bay* does not teach otherwise. In that case, the court was confronted with a mark entirely in French: VEUVE ROYALE. The court recognized that it translated into “royal widow,” but decided that customers were unlikely to “stop and translate” the French word “veuve” into the English word “widow.” Thus, the court reversed the Board’s decision that VEUVE ROYALE was likely to cause confusion with THE WIDOW. Unlike in *Palm Bay*, however, Applicant’s mark is not entirely in a foreign language. Applicant respectfully submits that in a situation such as this, the mixed nature of the mark will not prompt consumers in the same manner as encountering a mark composed entirely of foreign terms. In particular, Applicant submits that

consumers are not likely to “stop and translate” Applicant’s mark because, taken in its entirety, there is no suitable “translation” for Applicant’s non-foreign mark. *See Universal Package Corp.*, 222 USPQ at 347.

II. EVEN IF THE DOCTRINE OF FOREIGN EQUIVALENTS APPLIES, THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT’S MARK AND REGISTRANT’S MARK AT LEAST BECAUSE THE INCLUSION OF THE ENGLISH LANGUAGE WORD FASHION TO THE FOREIGN LANGUAGE WORD MONFRÈRE CHANGES THE COMMERCIAL IMPRESSION OF APPLICANT’S MARK

“It is well settled that in determining the likelihood of confusion, the marks must be considered in their entireties, and that it is the mark as a whole that creates the commercial impression upon the purchasers.” *Western Union Tel. Co. v. Graphnet Sys., Inc.*, 204 U.S.P.Q. 971, 976 (T.T.A.B. 1979) (Emphasis added). A common word or element cannot be dissected out of the marks as a whole and cited individually as a ground for finding confusion. *See Cont’l Distilling Corp. v. Norman Williams Co.*, 170 U.S.P.Q. 132, 133 (C.C.P.A. 1971) (regarding CUMBERLAND BELLE, RIVER BELLE, and CANADIAN BELLE for whiskey as compared to DIXIE BELLE for gin, “[w]hen the marks are taken in their entireties, we fail to see any likelihood of confusion, mistake or deception”).

The Court of Appeals for the Federal Circuit has provided the following guidance with regard to determining and articulating likelihood of confusion:

The basic principle in determining confusion between marks is that **marks must be compared in their entireties** and must be considered in connection with the particular goods or services for which they are used (citations omitted). It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark (footnote omitted). On the other hand, in articulating reasons for reaching a conclusion on the issue 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 the ultimate conclusion rests on consideration of the marks in their entireties (footnote omitted). Indeed, this type of analysis appears to be unavoidable.

In re National Data Corp., 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985) (Emphasis added).

1. Appearance

Even a less than reasonably prudent consumer would clearly recognize the Applicant's unique mark MONFRÈRE FASHION is distinctly different from the Registrant's mark.

The appearance of Applicant's mark MONFRÈRE FASHION is distinctly different from the Registrant's mark MY BROTHER. Considering the obvious distinction between appearance of the parties' marks, this factor weighs against a finding of likelihood of confusion.

2. Sound and Connotation

Secondly, while a portion of Applicant's mark after being translated to English and the Registrant's mark may include an equivalent translated term, this alone is not a proper basis for rejecting registration of Applicant's mark. The fact that marks share a common term or terms, or are even identical, is not determinative of finding that a likelihood of confusion exists. *See Lever Bros. Co. v. Aman Bakeries Co.*, 216 U.S.P.Q. (BNA) 177, 182 (2d Cir. 1982) (“[e]ven close similarity between two marks is not dispositive of the issue of likelihood of confusion”). As one court has recognized, “[w]hile the terms might be identical, that does not end the inquiry.” *Packerware Corp. v. Corning Consumer Prods. Co.*, 895 F. Supp. 1438, 1448 49 (D. Kan. 1995) (holding that the plaintiff's “Casual Elegance” mark was not likely to be confused with defendant's

identical mark because of differences in the size of the letters in the parties' mark).

Even where the Doctrine of Foreign Equivalents applies, it establishes only the similarity of the terms in meaning or connotation, and "such similarity as there is in connotation must be weighed against the dissimilarity in appearance, sound, and all other factors, before reaching a conclusion on likelihood of confusion as to source." *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983). While it is true that a likelihood of confusion may be found where the marks are similar in meaning alone, such similarity is not necessarily sufficient. *Sure-Fit Prods. Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 117 USPQ 295, 297 (CCPA 1958) ("Assuming arguendo that the marks RITE-FIT and SURE-FIT are similar in meaning, we are of the opinion that they are so distinct in sound and appearance as to overcome such similarity in meaning." (internal quotation marks omitted)). Any conclusion on the likelihood of confusion must be predicated on consideration of the marks in their entireties, and in light of the evidence bearing on the other *du Pont* factors.

Here, there are distinct differences in sound and appearance between the Applicant's mark, as a whole, and Registrant's mark, indeed, the Applicant's mark sounds distinctly different than the Registrant's mark. As noted above, Applicant's mark includes the French words MON and FRÈRE compounded as one word, MONFRÈRE, which is followed by the English word FASHION, while the Registrant's mark is in English only and does not include the term FASHION or the terms MON or FRÈRE or MONFRÈRE. Considering the obvious distinction between the sound and connotation of the parties' marks, this factor weighs against a finding of likelihood of confusion.

3. Commercial Impression

In the Office Action, it is stated that “despite their differences in sound and appearance, the examining attorney must conclude that the commercial impression given by the wording MONFRÈRE in the proposed mark is highly similar to, if not the equivalent of, the commercial impression created by the cited registration MY BROTHER” and that “applicant’s addition of the term FASHION does not alter this determination.” Applicant respectfully disagrees.

As noted above, Applicant’s mark MONFRÈRE FASHION clearly imparts a different commercial impression upon a consumer than that of the word MONFRÈRE alone, and in turn that of Registrant’s mark, namely MY BROTHER. *See In re Johanna Farms Inc.*, 8 USPQ2d 1408 (TTAB 1988) (the combination of the French word LA with the English word YOGURT changed the commercial impression of the mark as a whole); *French Transit v. Modern Coupon Systems*, 818 F. Supp. 635, 636 (S.D.N.Y. 1993) (combination of the English word CRYSTAL and two French words LE and NATUREL changed the commercial impression of the mark); *In re Universal Package Corporation*, 222 USPQ 344 (TTAB 1984), (inclusion of the French article LE in LE CASE changed the commercial impression of the mark, specifically, where the combination of the French language word LE with the English language word CASE created a different commercial impression than that which would be created by THE CASE); *In re Sweet Victory, Inc.* 228 USPQ 959 (TTAB 1986), (“juxtaposition of the French word GLACÈ with the English word LITE changes the commercial impression of the mark”). Thus, although the English translation of the foreign wording partially making up Applicant’s mark (MON FRÈRE) may impart the same commercial impression as Registrant’s mark,

Applicant's mark (MONFRÈRE FASHION) clearly imparts a different commercial impression.

For these arguments alone, there is simply no likelihood of confusion between the Applicant's mark and the Registrant's mark.

4. The possibility of confusion is not sufficient to preclude applicant's mark from registration

In a Section 2(d) determination, the concern is not "with mere theoretical possibilities of confusion, deception or mistake or with de minimis situations, but with the practicalities of the commercial world, with which the trademark laws deal." *Witco Chem. Co. v. Whitfield Chem. Co.*, 164 U.S.P.Q. 43, 44-45 (C.C.P.A. 1969). The Lanham Act precludes registration of a mark only where confusion as to source or origin is likely, not where there is merely a possibility of such confusion. *In re Hughes Aircraft*, 222 U.S.P.Q. 263, 264 (T.T.A.B. 1984).

As the above discussion makes clear, any confusion between the sources of Registrant's and Applicant's goods is purely speculative and highly unlikely.

CONCLUSION

All of the above factors clearly indicate that there is no reasonable likelihood of confusion between Applicant's mark and Registrant's mark. In view of all of the foregoing, it is respectfully submitted that the mark of the present application is in order for acceptance on the Principal Register and approval for publication. Accordingly, such action at an early date is earnestly solicited.

For the foregoing reasons, Applicant respectfully requests that the refusal of

registration under Section 2(d) of the Lanham Act be reversed and the application proceed to publication.