

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB 5/30/00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Ontario, Inc.**

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Serial No. 75/**339,551**

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**David L. Principe** of **Hodgson, Russ, Andrews, Woods & Goodyear, LLP** for **Ontario, Inc.**

**Daniel F. Capshaw**, Trademark Examining Attorney, Law Office 109 (**Ronald R. Sussman**, Managing Attorney).

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Before **Simms, Seeherman** and **Hairston**, Administrative Trademark Judges.

Opinion by **Hairston**, Administrative Trademark Judge:

An application has been filed by **Ontario, Inc.** to register the mark shown below

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for "clothing, namely shirts, sport shirts, woven shirts, knit t-shirts, knit tops, turtlenecks, polo style knit tops, sweaters, vests, jackets, light outerwear jackets, pants, shorts, swimsuits, jeans, hats, caps, and socks."<sup>1</sup>

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when used in connection with applicant's goods, so resembles the previously registered mark shown below

for "men's, women's and children's clothing, namely, jeans, underwear, shirts, jackets, dresses and hats,"<sup>2</sup> as to be likely to cause confusion.

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<sup>1</sup> Serial No. 75/339,551, filed August 12, 1997, based on a bona fide intention to use the mark in commerce.

<sup>2</sup> Registration No. 2,048,018 issued March 25, 1997 to Chan's Apparel Inc.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.<sup>3</sup> No oral hearing was requested.

At the outset, we note that applicant does not dispute that the respective goods are identical in part (jeans, shirts, jackets and hats) and otherwise closely related. The respective goods would be sold through the same channels of trade, e.g., clothing stores, department stores, and mass merchandisers, to the same class of purchasers, namely, the general public. Clearly, if such identical and closely related goods were to be sold under the same or similar marks, confusion as to source or sponsorship would be likely to occur.

Turning then to a consideration of the marks, the Examining Attorney maintains that they are highly similar in sound, appearance and commercial impression because each mark consists of the letter "C" within an oval.

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<sup>3</sup> Applicant, for the first time with its brief, submitted a trademark search report of registered marks which include the letter "C" or an oval design for clothing. The Examining Attorney has objected to the search report as untimely.

The evidence is untimely as provided by Trademark Rule 2.142(d), and thus, has not been considered. We should also point out that third-party registrations may not be made of record by introducing a trademark search report taken from a private company's database. *Riceland Foods Inc. v. Pacific Eastern Trading Corp.*, 26 USPQ2d 1883, 1885 (TTAB 1993).

Applicant, however, contends that the marks are significantly different in visual appearance, and in its brief (p. 3), lists a number of specific differences. For example, applicant maintains that its mark has an "alternating thin and thick, wavy-smooth overall appearance" whereas the registered mark has a "thick, jagged overall appearance." Further, according to applicant, in its mark "due to the elongation of the outer band and the orientation of the letter [C], the distance between the letter and the band varies greatly between the ends and the middle," whereas in the registered mark "the letter [C] is approximately equidistant from the band on all sides." It is essentially applicant's position that the registered mark has highly distinctive elements which distinguish it from applicant's mark.

In determining whether letter marks are so similar that their use on identical and closely related goods is likely to cause confusion, the most important factor is the overall commercial impressions created by the marks. See *In re Johnson Products Co., Inc.*, 220 USPQ 539 (TTAB 1983); *Textron Inc. v. Maquinas Agricolas "Jacto" S.A.*, 215 USPQ 162 (TTAB 1982); and 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, Section 23:33 (4<sup>th</sup> ed. 1999).

Further, as noted by the Board in *Textron, supra*, at page 164:

. . . highly stylized, highly contrasting letter/design combinations tend to fall on the "no likelihood of confusion" side of the adjudicative balance and rather clear portrayals of the letters involved in the compared marks tend to result in "likelihood of confusion" findings.

It is our view that the marks herein create the same commercial impression, that is, the letter "C" within an oval. Applicant's mark is a clear portrayal of the letter "C" within an oval, and although the registered mark is slightly more stylized, it would nonetheless be perceived by the relevant purchasers as the letter "C" within an oval. It is unlikely that purchasers of registrant's clothing will engage in a studied analysis of the mark as applicant has done in its brief.

We have kept in mind that, under actual marketing conditions, consumers do not have the luxury to make side-by-side comparisons between marks, and instead they must rely on hazy past recollections. *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255 (TTAB 1980).

Finally, we should add that this record is devoid of any evidence of third-party use or registrations of marks incorporating the letter "C" for clothing.

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We conclude, based on the record before us, that confusion among consumers is likely to result from contemporaneous use of the involved marks on identical and closely related clothing items.

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.

R. L. Simms

E. J. Seeherman

P. T. Hairston  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

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