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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 11  
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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 Trustees of the Maxx Trust  
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Serial No. 75/386,785  
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Michael S. Sherman & Steven Plotkin of Jeffer, Mangels,  
Butler & Marmaro, LLP for Trustees of the Maxx Trust.

Tami Cohen Belouin, Trademark Examining Attorney, Law  
Office 108 (David Shallant, Managing Attorney).

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Before Cissel, Quinn and Hairston, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Trustees of the Maxx  
Trust to register the mark UNTOUCHABLES for:

Clothing for men, women, and children, bearing  
a drag racing theme or otherwise relating to  
motor car racing, that is sold or distributed  
in channels of commerce in which souvenirs,  
collectibles, accessories and promotional  
materials for drag racing are offered, sold  
or distributed; namely, warm-up suits;  
jogging suits; sweat suits; sweat pants and  
sweatshirts; body suits; leotards; leg warmers;  
wet suits; ski suits; ski pants; ski bibs; ski  
jackets; swim wear; bathing suits; beach and  
bathing coverups; slacks; trousers; pants;

jeans; shorts; sweat shorts; gym shorts; tops;  
jackets; coats; sport coats; shirts; sport  
shirts; t-shirts; knit shirts; polo shirts;  
pullovers; sweaters; vests; tank tops; blazers;  
jump suits; playsuits; overcoats; parkas;  
wind resistant jackets; leather jackets;  
footwear; shoes; boots; slippers; athletic  
footwear; basketball shoes; casual footwear;  
sandals; headwear; hats; caps; visors; hoods;  
berets; headbands; sweat bands; wristbands;  
ear muffs; neckwear; neckties; neckerchiefs;  
scarves, bandannas; sleep wear; robes;  
pajamas; nightshirts; rain wear; gloves;  
mittens; galoshes; lounge wear; underwear;  
briefs; underpants; boxer shorts; undershirts;  
suspenders; hosiery; socks; belts; masquerade  
and halloween costumes; and aprons; provided  
that the registration shall give no rights  
to the mark for clothing relating to academic  
organizations or to youth service organizations.<sup>1</sup>

The Trademark Examining Attorney has refused  
registration under Section 2(d) of the Trademark Act, 15  
U.S.C. §1052(d), on the ground that applicant's mark, if  
used in connection with the above clothing, would be likely  
to cause confusion with the mark below,

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<sup>1</sup> Serial No. 75/386,785, filed November 7, 1997, alleging a bona fide intention to use the mark in commerce.

which is registered for "clothing; namely, tee shirts, sweat shirts, socks, pants, [and] caps."<sup>2</sup>

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Food, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to a consideration of the respective goods, we note that both applicant's identification of goods and that of the registrant include t-shirts, sweat shirts, socks, pants and caps. Applicant stresses that its wearing apparel is of a type which bears a drag racing theme or otherwise relates to motor car racing and that the channels of trade for its wearing apparel are specifically limited in its application to "commerce in which souvenirs,

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<sup>2</sup> Registration No. 1,791,168, issued July 13, 1992; Section 8 & 15 affidavit accepted and acknowledged, respectively.

collectibles, accessories and promotional materials for drag racing are offered, sold or distributed." Further, applicant argues that registrant's wearing apparel is used solely in connection with a youth service organization. However, as the Examining Attorney correctly observes, the cited registration has no limitations of any sort and it must therefore be presumed that the t-shirts, sweat shirts, socks, pants and caps listed therein include all types, including those which bear a motor car racing theme, that the registrant's goods travels in the usual channels of trade for such goods, and that the goods are available to all potential purchasers, including motor car racing enthusiasts. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1991) and *In re Apparel Ventures, Inc.*, 229 USPQ 225, 226 (TTAB 1986). Thus, we agree with the Examining Attorney that in analyzing the issue of likelihood of confusion herein, the goods of applicant and registrant are in part legally identical.

We turn next to compare the marks UNTOUCHABLES and UNTOUCHABLES and design. It is well established that marks must be compared in their entireties although, in appropriate circumstances, more or less weight may be given to a particular feature of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). For

example, if we find that purchasers are more likely to note or remember the word, rather than the design portion of a mark, because that is the way the goods or services will be called for and referred to, then the word would be the dominant portion. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987).

In this case, because purchasers of registrant's t-shirts, sweat shirts, socks, pants and caps would refer to and call for them by the word UNTOUCHABLES, which is the only part of registrant's mark which can be articulated, it is the word which is likely to make a greater impression on them. Thus, when applicant's and registrant's marks are compared in their entireties, with appropriate weight given to the element UNTOUCHABLES in registrant's mark, we find that the marks are extremely similar, and that their use on identical goods is likely to cause confusion. Although the shield design is certainly a noticeable part of the registrant's mark, it does not serve to sufficiently distinguish the marks, as applicant argues.

In view thereof, we conclude that purchasers and prospective customers familiar with registrant's UNTOUCHABLES and design mark for t-shirts, sweat shirts, socks, pants and caps could reasonably assume, upon encountering applicant's substantially similar UNTOUCHABLES

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mark for the identical items of wearing apparel, that the goods emanate from, or are sponsored by the same source.

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

R. F. Cissel

T. J. Quinn

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