

**THIS OPINION  
IS NOT A PRECEDENT  
OF THE TTAB**

Mailed: January 31, 2007

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re SOS Sportswear AB,  
assignee of Sportswear of Sweden AB<sup>1</sup>

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Serial No. 75448387

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Before Seeherman, Drost and Taylor, Administrative  
Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

SOS Sportswear AB has appealed from the final refusal  
of the trademark examining attorney to register SOS SPORT  
and design, in the form shown below, with the word SPORT  
disclaimed,

◀S O S▶

*SPORT*

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<sup>1</sup> The application was filed by Sportswear of Sweden AB. During  
prosecution of the application, Sportswear of Sweden AB assigned

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for goods which were ultimately identified as "headwear, pants, dresses, jackets, gloves, and footwear."<sup>2</sup>

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that applicant's mark, when applied to the identified goods, so resembles the mark S.O.S., in standard character form, previously registered for "men's, women's and children's apparel; namely, shirts"<sup>3</sup> as to be likely to cause confusion, mistake, or deception.

Applicant and the examining attorney filed briefs. We affirm the refusal to register.

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence that are relevant to the factors set forth in *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201

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the application to SOS Sportswear AB. The assignment is recorded in the Assignment Branch of the Office at Reel/Frame 3229/0005.

<sup>2</sup> Application Serial No. 75448387, filed March 11, 1998, based on an asserted bona fide intention to use the mark in commerce and ownership of a foreign registration as provided for in Trademark Act § 44(e), with a claim of priority pursuant to Trademark Act § 44(d). In response to a request from the examining attorney, applicant claimed ownership of a prior registration, i.e., Registration No. 1277076 for the mark SOS SPORTSWEAR OF SWEDEN and design, as shown infra, for "Sportswear for Skiers-Namely, Jackets, Anoraks, and Ski-Suits."

<sup>3</sup> Registration No. 1899969 issued June 13, 1995, renewed.

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(Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Considering first the similarity of the marks, we must determine whether applicant's mark and registrant's mark, when compared in their entireties, are similar or dissimilar in terms of sound, appearance, connotation and commercial impression. Although the marks must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). For instance, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark..." 224 USPQ at 751. Furthermore, 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 that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

The examining attorney argues that when the marks are compared in their entireties, applicant's mark is confusingly similar to the registered mark in that a significant portion of the applicant's mark is nearly identical in appearance, connotation and meaning to the registered mark.

Applicant contends that the examining attorney improperly dissected applicant's mark into separate components and essentially argues that its mark includes a plurality of components, namely the word SPORT, a design feature and stylized lettering, all of which serve to distinguish applicant's mark from registrant's mark. We disagree. The dominant and distinguishing portion of applicant's mark SOS SPORT and design is the letters "SOS." The word SPORT, as evidenced by the disclaimer, is merely descriptive, and would not be looked to as a source-identifying element. Nor are consumers likely to notice

the presence or absence of periods between the letters SOS, or treat this as a distinguishing factor.

Although applicant stresses the stylization of "SOS" and "SPORT" as a distinguishing feature, because registrant's mark is registered in typed format, registrant's rights therein encompass the letters "SOS" and are not limited to the depiction thereof in any special form. See *Phillips Petroleum Co. v. C. J. Webb, Inc.* 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). As the Phillips Petroleum case makes clear, when a word mark is registered in typed form, the Board must consider all reasonable modes of display that could be represented. Accordingly, registrant's mark must be considered to include the same stylized lettering as that in which the SOS component of applicant's mark appears. The stylized lettering of "SOS" and "SPORT" consequently does not serve to distinguish applicant's mark from registrant's mark.

Nor do we find the design sufficient to distinguish applicant's mark from the registrant's mark. The shaded triangles abutting each letter "S" of the letters "SOS" have minimal visual impact, merely serving to frame the SOS component of applicant's mark. Accordingly, we find that when the marks are compared in their entireties, they are substantially similar in appearance, sound and connotation

and convey a substantially similar commercial impression. Thus, the factor of the similarity of the marks favors a finding of likelihood of confusion.

We now turn to a consideration of the goods identified in the application and the cited registration. It is well settled that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the goods or services 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 would 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 each parties' goods or services. In *re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and the cases cited therein.

Applicant, in urging that the refusal to register be reversed, argues that its mark is for a range of goods including items which are sufficiently different from the shirts identified in the cited registration. Applicant further argues that:

The headwear, pants, dresses, jackets, gloves, and footwear [sic] in applicant's definition of good [sic] usually are featured separately from the goods of registration 1,899,969 such as in different physical locations in retail establishments or at different locations in mail order catalogs, websites and other media-based channels of trade. (Brief, pp. 2-3)

The examining attorney, on the other hand, argues that applicant's headwear, pants, dresses, jackets, gloves, and footwear and the shirts identified in the cited registration are all complementary goods. In support of his position, the examining attorney cites to a long line of precedents from the Board and our primary reviewing Court finding many different types of apparel to be related, including: In re Pix of America, Inc., 225 USPQ 691 (TTAB 1985) ("NEWPORTS" for women's shoes v. "NEWPORT" for outer shirts); and In re Melville Corp. 18 USPQ2d 1386 (TTAB 1991) ("ESSENTIALS" for women's pants, blouses, shorts and jackets v. women's shoes).

The examining attorney also cites to Kangol Ltd. v. Kangaroo U.S.A. Inc., 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992) and In re Smith and Mehaffey, 31 USPQ2d 1531 (TTAB 1994) and further argues that:

[N]either the application nor the registration(s) contain any limitations regarding trade channels for the goods and therefore it is assumed that registrant's and applicant's goods are sold everywhere that is normal for such items, i.e., clothing and department stores. Thus, it can also be assumed that the same class of purchasers shop for these items and that consumers are accustomed to seeing them sold under the same or similar marks.

We find that the headwear, pants, dresses, jackets, gloves, and footwear identified in applicant's application are related to the shirts identified in the cited registration, and that confusion is likely to result from the use thereon of the substantially similar marks in this case. While we recognize that the respective goods are not identical and would not be confused for each other, as noted above, that is not the test. The "pants" and "jackets" identified in applicant's application are complementary to the "shirts" identified in the cited registration, in that they can worn together as an outfit, and may well be encountered and/or purchased in the course

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of a single shopping trip. Thus, these goods, in particular, are closely related.

Finally, applicant argues that consideration should be given to the fact that the Patent and Trademark Office allowed the cited Registration No. 1899969 "in the face of" applicant's earlier Registration No. 1277076 for the mark SOS SPORTSWEAR OF SWEDEN and design, which also contains the letters SOS. We presume by this that applicant is arguing that inasmuch as it owns an earlier existing registration containing the letters SOS, and that registration coexists with the cited registration, applicant should be allowed to register the SOS SPORT and design mark. We find this argument unpersuasive. Registration No. 1277076 is for the mark SOS SPORTSWEAR OF SWEDEN and design, as shown, below,



for "Sportswear for Skiers-Namely, Jackets, Anoraks, and Ski-Suits." That registration, though, is for significantly different goods from those in the present application, in that applicant has expanded the identification of goods in the present application to

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include all types of jackets, not just those for skiers, as well as dresses, pants, headwear and footwear. In light of the broad identification in the present application, the fact that applicant owns a registration for a non-identical mark for significantly narrower goods does not persuade us that there is no likelihood of confusion in this case.

In view of the foregoing, we conclude that consumers familiar with the registered mark S.O.S. for men's, women's and children's apparel; namely, shirts would be likely to believe, upon encountering applicant's substantially similar mark SOS SPORT and design for headwear, pants, dresses, jackets, gloves, and footwear, that such goods emanate from, or are sponsored by or affiliated with the same source.

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