

3/19/02

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

Paper No. 12  
BAC

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re William A. Lois

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Serial No. 75/742,020

Michael I. Kroll, Esq. for William A. Lois.

Curtis W. French, Trademark Examining Attorney, Law Office  
115 (Tomas Vlcek, Managing Attorney).

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Before Simms, Chapman and Wendel, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

William A. Lois (an individual United States citizen  
residing in Brooklyn, New York) has filed an application to  
register the mark CF for "clothing, namely, shirts, pants,  
jackets, underwear, hats, bathing suits[;] and sportswear  
namely, tennis shoes, headbands, wristbands and sweat  
socks."<sup>1</sup>

The Examining Attorney has refused registration under  
Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on

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<sup>1</sup> Application Serial No. 75/742,020, filed July 1, 1999, based on  
applicant's assertion of a bona fide intention to use the mark in  
commerce.

the basis of Registration No. 2,036,391<sup>2</sup> for the mark shown below



for "western-style clothing, namely bandanas."

When the refusal to register was made final, applicant appealed. Both applicant and the Examining Attorney have filed briefs.<sup>3</sup> Applicant did not request an oral hearing.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *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/dissimilarities of the goods (or services) and

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<sup>2</sup> Registration No. 2,036,391, issued February 11, 1997. This registration also includes "western-style jewelry" in International Class 14, but that class of goods was not cited by the Examining Attorney.

<sup>3</sup> The Examining Attorney had originally cited a second registration, No. 1,761,263 for the mark shown below



for "clothing, namely, shirts, blouses, slacks, shoes, hats and head bands." (This registration included several other classes of goods and services.) In the Examining Attorney's brief, he noted that Registration No. 1,761,263 had been cancelled under Section 8, and therefore, the refusal to register based on Registration No. 1,761,263 was moot.

the similarities/dissimilarities of the marks. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

The Examining Attorney argues that both marks consist of the letters CF, and the registrant's mark is not "overly stylized" (brief, p. 4); that the letters "CF" are arbitrary in the clothing industry; that the existence of two registrations for the mark CF in differing styles does not warrant registration of yet another mark which is likely to cause confusion (noting that one of the two registrations is now cancelled); that the goods are related clothing items, particularly registrant's "bandanas" and applicant's "headbands" and "wristbands"; that although registrant's goods are limited to "western-style clothing, . . .," applicant's are not limited in any manner and could include all types and styles of the enumerated items of clothing, including western-style.

Applicant, on the other hand, argues that the cited registered mark is "highly stylized" while applicant's mark is in "typed/block letter format" (brief, p. 4) which reduces any likelihood of confusion; that the existence of two registrations owned by different entities for the letters CF shows that "letter marks, such as 'CF,' are in common use by many sellers in the clothing field..."

(brief, pp. 3-4); that the registered mark is thus entitled to only a narrow scope of protection; and that the "western-style clothing" identified in the registration is "outside the scope of Applicant's goods" (brief, p. 3).

Turning first to a consideration of the marks, we find there is a strong similarity between the involved marks. Both marks consist of the letters "CF" and thus sound alike. As to appearance, it is true that registrant's mark is in stylized lettering whereas applicant's mark is in typed form. However, our primary reviewing Court, the Court of Appeals for the Federal Circuit, has stated that "the argument concerning a difference in type style is not viable where one party asserts rights in no particular display. By presenting its mark merely in a typed drawing, a *difference* cannot legally be asserted by that party." *Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). (Emphasis in original.)

Moreover, there is no evidence that the combination of the letters "CF" have any special meaning, aside from trademark significance, to purchasers of the involved goods. "CF" is unpronounceable except as the separate letters, and would be more difficult to remember, and thus, more susceptible of confusion, or mistake.

We find that the marks are similar in sound, appearance, connotation and overall commercial impression. See *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (confusion found likely in contemporaneous use of TMM and TMS on computer software).

Applicant's argument that the existence of two registrations owned by separate entities for stylized "CF" marks establishes that these letter marks "are in common use by many sellers" is unpersuasive. Registrations do not establish use at all, or that the public is familiar with the marks. The existence of two registrations for the letters "CF" in different stylizations for, inter alia, clothing items, and no evidence of third-party use, does not establish that the cited registrant's mark is weak, and entitled to a narrow scope of protection. The Board can only speculate as to why Registration No. 2,036,391 issued over Registration No. 1,761,263--whether it was Examiner error, or consent agreement with the earlier registrant, etc. But, in any event, each case must be decided on its own merits, on the basis of the record therein. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). See also, *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001).

Insofar as the goods are concerned, it is not necessary that the goods be identical or even competitive in order to support a finding of likelihood of confusion. It is sufficient that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used in connection therewith, to the mistaken belief that the goods originate from or are in some way associated with the same source. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). Further, the identifications of goods in the application and the cited registration control the comparison of the goods. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and *Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

When the goods are compared in light of the legal principles cited above, we find that applicant's various clothing items are related to registrant's western-style bandanas. For purposes of the legal analysis of likelihood of confusion herein, it is presumed that applicant's goods encompass all goods of the type identified; that the

identified goods move in all channels of trade that would be normal for such goods; and that the goods would be purchased by all potential customers. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). In this case, while registrant's goods are identified specifically as "western-style clothing...", there is no limitation in applicant's identification of goods; and therefore, applicant's identification encompasses western style clothing.

Purchasers who are aware of registrant's goods sold under its mark, and then encounter applicant's similar goods (especially headbands and wristbands) sold under a similar mark, are likely to believe that applicant's goods come from or are in some way associated with or sponsored by registrant. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

We find these goods, as identified, are related. See *In re Melville Corp.*, supra; *In re Apparel Ventures, Inc.*, 229 USPQ 225 (TTAB 1986); and *In re Pix of America, Inc.*, 225 USPQ 691 (TTAB 1985).

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