06/26/01

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

Paper No. 10
TJQ

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Chris Townsend

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Serial No. 75/761,476

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David A. Harlow of Moore & Van Allen for applicant.

Catherine K. Krebs, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

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Before Simms, Cissel and Quinn, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Chris Townsend, a citizen of the United Kingdom, to register the mark shown below

for "clothing, namely t-shirts."[1]

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[1] Application Serial No. 75/761,476, filed July 27, 1999, alleging a bona fide intention to use the mark in commerce. The term "London" is disclaimed apart from the mark.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, if applied to applicant's goods, would so resemble the previously registered mark MAP for "t-shirts"[2] as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant[3] and the Examining Attorney filed briefs.[4] An oral hearing was not requested.

The Examining Attorney points out that the goods are identical and maintains that the marks are similar so that consumers would be likely to be confused.

Applicant contends that the Examining Attorney "improperly dissected his mark and failed to give sufficient credence to the additional disclaimed LONDON

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[2] Registration No. 1,901,254, issued June 20, 1995.

[3] In the event that applicant's counsel is involved in future Board proceedings, his attention is directed to the Trademark Rules of Practice (in this case, specifically Trademark Rule 2.142(b)(2)) which provide that briefs be typed double spaced.

[4] Applicant's appeal brief includes a list of third-party registrations to which the Examining Attorney has objected. Trademark Rule 2.142(d) provides, in relevant part, that the record should be complete prior to the filing of the appeal, and that the Board will ordinarily not consider additional evidence filed with the Board after the appeal is filed. Not only is applicant's submission untimely, but a mere listing is insufficient to make third-party registrations of record. In re Duofold Inc., 184 USPQ 638 (TTAB 1974). Accordingly, the Examining Attorney's objection is sustained, and the list has not been considered. Even if considered, however, the registrations are entitled to little probative weight for the reasons set forth by the Examining Attorney in her alternative response to this evidence. If we were to consider this evidence, we would reach the same result on the merits of this case.

term and to the design feature in creating a different commercial impression than the MAP word mark alone." (brief, p. 3) Applicant asserts that his mark differs in appearance from the cited mark, and that the stylized globe and the word "LONDON" in his mark create an international connotation that is distinctly different from registrant's mark.

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. 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 Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

The goods in the application and the cited registration are identical, namely "t-shirts." It is presumed that the goods move in the same channels of trade and are purchased by the same classes of purchasers. In re Elbaum, 211 USPQ 639 (TTAB 1981).

Accordingly, the only remaining issue to be decided is whether the respective marks are sufficiently similar such that their use in connection with the identical clothing

item, t-shirts, would be likely to cause confusion. In this connection, we note that if the goods are identical, as they are here, "the degree of similarity [between the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

With respect to the marks, we start with the premise that they must be considered in their entireties. In comparing the marks here, we have considered the disclaimed word "LONDON" and the design feature appearing in applicant's mark. In comparing the marks, however, "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 [that] the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For example, "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..." Id. at 751.

In the present case, applicant's mark is dominated by the literal portion "MAP LONDON." In re Decombe, 9 USPQ2d 1813, 1814 (TTAB 1988)[the literal portion of a mark is

used to call for the goods]. Further, the literal portion of the mark is dominated by the term "MAP." The "MAP" portion appears in large, bold capital letters above the "LONDON" portion depicted in smaller, thin letters. Also, the term "LONDON" in the mark is primarily geographically descriptive and has been disclaimed. The globe design is integrated into the letter "M" of the term "MAP" and, thus, to a degree, reinforces the "MAP" portion of the mark and its geographical meaning, a meaning identical to the term "MAP" standing alone.[5] The global design is fairly simple and would not likely be remembered by consumers when confronted by the substantially similar marks involved herein. The record is devoid of any third-party uses or registrations of the same or similar "MAP" marks in the clothing field, and it would appear that the term "MAP" is arbitrary as applied to clothing. See: B. Altman & Co. v. Bernhard Altmann Gesellschaft MBH, 160 USPQ 493, 494 (TTAB 1968)["The designations 'ALTMAN' and 'ALTMANN' are, in legal contemplation, identical. The mere addition of the phrase 'OF VIENNA' to 'ALTMANN' cannot serve to distinguish

[5] We take judicial notice of the dictionary definition of the term "map": "a drawing or other representation that is usually made on a flat surface and that shows the whole or a part of an area (as of the surface of the earth) and indicates the nature and relative position and size according to a chosen scale or projection of selected features or details." *Webster's Third New International Dictionary* (unabridged ed. 1993).

between ‘ALTMAN’ and ‘ALTMANN OF VIENNA’ for the geographical appellation would leave prospective purchasers to assume that applicant is the Viennese branch, affiliate or agent of opposer or that the product bearing that designation is one imported by opposer.”].

In sum, the marks, when considered in their entireties, engender substantially similar overall commercial impressions. In finding that the marks are likely to cause confusion, we have kept in mind the normal fallibility of human memory over time and the fact that consumers retain a general, rather than a specific, impression of trademarks encountered in the marketplace.

Another du Pont factor weighing in favor of the Examining Attorney’s position is that t-shirts are relatively inexpensive, and the subject of impulse purchases. In such cases, consumers are likely to use less care in their purchases. See, e.g., Specialty Brands, Inc. v. Coffee Bean Distributors, Inc., 748 F.2d 669, 223 USPQ 1281, 1282 (Fed. Cir. 1984).

Lastly, we have no doubt about the likelihood of confusion between applicant’s and registrant’s marks. But even if there were a doubt, that doubt is required to be resolved in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed.

Cir. 1988); and In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

We conclude that consumers familiar with registrant's t-shirts sold under the mark MAP would be likely to believe, upon encountering applicant's mark MAP LONDON and design for t-shirts, that the t-shirts originated with or were somehow associated with or sponsored by the same entity.

Decision: The refusal to register is affirmed.