

Mailed: June 29, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In Red Lion Manufacturing, Inc.

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Serial No. 76329041  
**NOTICE OF CORRECTION**

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Martin P. Hoffman for Red Lion Manufacturing, Inc.

Jason Turner, Trademark Examining Attorney, Law Office 108  
(David Shallant, Managing Attorney).

**By the Board:**

The final decision in this appeal mailed June 25, 2004,  
incorrectly identified the panel that decided the appeal.  
A corrected copy of the decision is attached.

The period for filing a request for reconsideration or  
notice of appeal will commence from the date of the re-  
issued decision and this Notice of Correction.

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Before Hanak, Hohein and Walters, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Red Lion Manufacturing, Inc. (applicant) seeks to register ZR in the form shown below for "men's and women's golfwear, namely, jackets, pullovers, vests, slacks, pants, shirts, shorts, hats, caps, visors, ear bands, gloves and fleece-lined hand warmers, not related to, or for use with snowmobiles." The application was filed on August 20, 2001 with a claimed first use date of January 13, 1995.



Citing Section 2(d) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark ZR, previously registered in typed drawing form for "clothing; namely, snowmobile suits and jackets." Registration No. 1,803,563.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Considering first the marks, they are almost identical. Obviously, when pronounced the two marks are absolutely identical. Moreover, both marks lack any connotation. Finally, in terms of visual appearance, we recognize that applicant has depicted the letters ZR in a stylized form. However, registrant owns a registration of

the letters ZR in typed drawing form. This means that the registration is "not limited to the mark depicted in any special form," hence we are mandated "to visualize what other form the mark might appear in." Phillips Petroleum Co. v. C.J. Webb, Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). See also INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992).

Registrant would be entirely free to depict its mark ZR such that the two letters are joined, just as they are in applicant's stylized ZR mark. If registrant were to depict its mark in such a manner, then visually the two marks would be extremely similar.

Thus, the first Dupont "factor weights heavily against applicant" because applicant's mark is nearly identical to the registered mark if the registered mark were to be depicted with the letters ZR intertwined. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Turning to a consideration of applicant's goods and registrant's goods, we note that because the marks are nearly identical, their contemporaneous use can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically

related." In re Shell Oil Co., 922 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

Applicant's goods include golfwear jackets not for use with snowmobiles. Registrant's goods include snowmobile jackets. In other words, both applicant's goods and registrant's goods include jackets for use in connection with specific sports, namely, golf and snowmobiling.

It is obvious that the same consumers could enjoy both golf and snowmobiling and would have the need to purchase both golf jackets and snowmobiling jackets. If said consumers were to see the virtually identical mark ZR on golf jackets and snowmobiling jackets, we find that said consumers would assume that both types of jackets emanated from a common source.

Given the fact that the marks are essentially identical, and the additional fact that the goods are clearly related, we find that there exists a likelihood of confusion.

Decision: The refusal to register is affirmed.