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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Warrior Lacrosse, Inc.

Serial No. 76467756

Vincent C. Hagan of Artz & Artz, P.C. for Warrior Lacrosse, Inc.

Shari Sheffield, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney).

Before Chapman, Holtzman and Rogers, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, Warrior Lacrosse, Inc., has filed an application to register the mark SUPERSTAR for goods identified (as amended) as "protective lacrosse equipment, namely gloves."¹

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles

¹ Serial No. 76467756, filed November 18, 2002, based on an allegation of first use and first use in commerce in April 2002.

the mark JUNIOR SUPERSTAR ("JUNIOR" disclaimed) for the following goods as to be likely to cause confusion:²

sporting goods, namely soccer balls, footballs, baseball bats and balls, baseball gloves, basketballs, golf sets comprised of golf clubs, golf balls, golf tees and a golf bag, tennis sets comprised of a tennis racket and tennis ball, street hockey sets comprised of hockey sticks, a hockey ball and goal, and boxing sets comprised of a punching bag and boxing gloves, in International Class 28.

When the refusal was made final, applicant appealed.³ Briefs have been filed. An oral hearing was not requested.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarities of the marks and the similarities of the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We turn first to the marks. When the marks are compared in their entireties, giving appropriate weight to the features thereof, we find that applicant's mark SUPERSTAR is similar in sound, appearance and meaning to the cited mark JUNIOR SUPERSTAR. The word SUPERSTAR is applicant's entire mark and is visually and

² Registration No. 2616193; issued September 10, 2002.

³ The examining attorney also finally refused registration under Section 2(d) based on Registration No. 2144066. However, we note that the registration was cancelled by the Office under Section 8 of the Trademark Act on December 18, 2004. Thus, the refusal with respect to that registration is moot.

aurally a significant part of the registered mark. Applicant argues that the marks in their entirety are substantially different in appearance, sound and meaning because applicant's mark "lacks the JUNIOR term." Based on the dictionary definition made of record by the examining attorney,⁴ and an additional definition of which we take judicial notice,⁵ it is clear that the disclaimed word "JUNIOR" in this context would simply be perceived as a descriptive term referring to the smaller size of the sports equipment or the youthful age of the user. While disclaimed and descriptive elements in a mark cannot be ignored, the fact is that the purchasing public is more likely to rely on the nondescriptive portion of a mark, in this case the word "SUPERSTAR," as an indication of source. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

Applicant also argues that the marks convey different meanings, contending that JUNIOR SUPERSTAR "connotes items intended for use by younger and/or smaller-sized individuals," while applicant's mark SUPERSTAR "conveys a meaning of an extremely

⁴ The listing from *The American Heritage Dictionary of the English Language, Third Edition* (1992), defines "junior" as "intended for or including youthful persons: ...; a junior sports league."

⁵ *Microsoft Encarta College Dictionary* (2001) defines "junior" as "smaller than the standard or expected size" and "a young person, especially somebody younger than a teenager."

prominent and skilled athlete, regardless of his age or size."⁶
(Resp. to Office Action, October 29, 2003). We do not disagree with the meanings ascribed to the marks by applicant but we disagree that the difference is significant or that it is sufficient to distinguish the marks as a whole. We find instead that the additional word "JUNIOR" in registrant's mark does not significantly change the meaning or commercial impression created by SUPERSTAR alone.

We also point out that JUNIOR SUPERSTAR, as a suggestive mark, while perhaps not entitled to the broadest scope of protection, would at least be entitled to protection against the registration of a very similar mark for closely related goods. See, e.g., *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974) (likelihood of confusion is to be avoided as much between weak marks as between strong marks).

Thus, we turn to a consideration of the goods. Applicant argues that although the goods can be broadly characterized as sporting goods, they are not so related that purchasers would mistakenly believe they come from the same source. Applicant further argues that lacrosse equipment is sold in lacrosse specialty stores and, moreover, to the extent such equipment is

⁶ The examining attorney has submitted a dictionary definition of "superstar" as "[a] widely acclaimed star, as in movies or sports, who has great popular appeal." *The American Heritage Dictionary of the English Language, Third Edition* (1992).

sold in general retail stores, it would appear in separate sections dedicated to the game of lacrosse. Applicant also contends that marketing for lacrosse equipment is directed to lacrosse players whereas marketing for other "non-lacrosse" sports equipment is directed to athletes involved in those other sports. Further, according to applicant, lacrosse players and purchasers of lacrosse equipment are relatively sophisticated and "a reasonable person can understand the significant differences between the rules, the equipment, and all other aspects of lacrosse and other sports."

It is true that there are specific differences in the respective goods. However, the question is not whether purchasers can differentiate the goods themselves but rather whether purchasers are likely to confuse the source of the goods. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Thus, it is not necessary that the goods of the applicant and registrant be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Registrant's goods include a line of baseball equipment comprised of bats, balls and gloves, and equipment for other conventional field sports such as football and soccer. Applicant's goods are protective gloves to be worn when engaging in another conventional field sport, lacrosse. The respective goods are related in the sense that applicant's lacrosse gloves would be perceived as part of yet another line of registrant's field sports equipment. We also note that the evidence made of record by the examining attorney shows that at least one company has registered the same mark for both lacrosse equipment, including lacrosse gloves, on the one hand, and equipment for baseball, football and soccer on the other, suggesting that, despite the differences in the identified goods, they are of a type which may emanate from a single source. See, e.g., *In re Albert Trostel & Sons Co.*, *supra* at 1785-1786; and *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988).

Moreover, the respective goods are marketed through the same channels of trade to the same consumers. In cases where an application and registration do not contain limitations describing a particular channel of trade or class of customer, the goods are assumed to travel in all normal channels of trade to all usual purchasers. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1492, 1 USPQ2d 1813, 1814-15 (Fed. Cir. 1987). It can be presumed that normal channels of trade for

lacrosse equipment, like other consumer sporting goods equipment, would include sporting goods stores and sporting goods departments of other stores or other similar retail outlets. In this regard, the Internet printouts submitted by the examining attorney show that equipment for a variety of sports activities, including lacrosse, is sold on the same sporting goods websites. See, for example, www.thesportsauthority.com; www.dickssportinggoods.com; and www.anacondasports.com. We also note that these websites offer certain sports equipment, such as baseball catcher's masks and lacrosse gloves, in both adult and "junior" lines and sizes.

Furthermore, the purchasers for applicant's and registrant's sporting goods would be the same. They both may be purchased not only by "athletes," as applicant contends, but by ordinary consumers, with the youth or "junior" lines or sizes purchased by the adult consumers for their children. The fact that equipment for a particular sports activity may be found in different parts of a sporting goods store, or on different pages of a sporting goods website, is not an important consideration inasmuch as the equipment for different sports might not even be purchased at the same time.⁷ The typical purchaser for these goods, for example, a parent who had previously purchased registrant's JUNIOR SUPERSTAR

⁷ In any event, it is reasonable to assume that equipment for more than one type of sport may indeed be sold in the same or adjacent aisles of a sporting goods store especially in a smaller retail setting such as a sporting goods section of a department store.

baseball glove for his child, upon encountering applicant's lacrosse gloves under the very similar SUPERSTAR mark for himself or his child, regardless of where or even when he found it in the store or on the website, is likely to assume that registrant is now offering a line of lacrosse equipment, or that the goods are otherwise associated with or sponsored by registrant.

Finally, we have no evidence that purchasers of lacrosse gloves would be sophisticated or discriminating or that they would exercise anything other than ordinary care in selecting such products.

In view of the foregoing, we find that a likelihood of confusion exists between the marks SUPERSTAR and JUNIOR SUPERSTAR for related goods.

To the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must be resolved in favor of the prior registrant. In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

Decision: The refusal to register is affirmed.