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December 14, 2006
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ubiquitous Industries, Inc.

Serial No. 76567513

Mary L. Grieco and Safia A. Anand of Dreier LLP for Ubiquitous Industries, Inc.

Susan Billheimer, Trademark Examining Attorney, Law Office 101 (Ronald R. Sussman, Managing Attorney).

Before Hohein, Grendel and Kuhlke, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Ubiquitous Industries, Inc. has filed an application to register on the Principal Register the mark "UCS DUNGAREE CO." and design, as reproduced below,



UCS DUNGAREE CO.

for "clothing, namely, jeans, pants, shorts, tops, skirts, jackets, coats, headwear, and footwear" in International Class 25.¹

Registration has been finally 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 its goods, so resembles each of the following marks, which are registered on the Principal Register for various goods in International Class 25 by different registrants, as to be likely to cause confusion, or to cause mistake, or to deceive:

(i) the mark "UCS" and design, which is registered, as shown below,



for, *inter alia*, clothing, namely, coats, dresses, footwear, gloves, hats, jackets, pants, sunglasses, visors, bags, scarves, shirts, skirts, socks, sweatshirts and adult and student uniforms";² and

(ii) the mark "UCS," which is registered, in standard character form, for "shoes, namely, leather shoes, boots, lounge shoes, sports shoes, insoles for shoes, sock linings for shoes, soles for shoes, [and] middle soles."³

¹ Ser. No. 76567513, filed on December 15, 2003, which is based on an allegation of a date of first use anywhere and in commerce of November 2003. The terms "DUNGAREE CO." are disclaimed.

² Reg. No. 2,531,386, issued to Utica Community School District on January 22, 2002, which sets forth a date of first use of the mark anywhere and in commerce of August 1995.

³ Reg. No. 2,882,200, issued to Success Ocean Industrial Ltd. on September 7, 2004, which sets forth a date of first use of the mark anywhere and in commerce of January 7, 2001.

Applicant has appealed and briefs have been filed.⁴ We affirm the refusal to register as to both cited registrations.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity or dissimilarity in the goods at issue and the similarity or dissimilarity of the respective marks in their entireties.⁵ Here, inasmuch as applicant's goods include items (namely, coats, footwear, jackets, pants, skirts and headwear) which are identical in part to or otherwise encompass goods which are set forth in the cited registrations (specifically, coats, footwear,

⁴ With respect to the evidence attached as Exhibit A to applicant's brief, which applicant states consists of "copies of records from the Canadian Intellectual Property Office's Trademark Database," the Examining Attorney in her brief has objected to consideration thereof, accurately observing that "applicant improperly submits evidence that was not previously provided to the trademark examining attorney." Inasmuch as such evidence is clearly untimely under Trademark Rule 2.142(d), the objection is sustained. It is pointed out, however, that even if such evidence, which applicant maintains shows the coexistence of Canadian registrations for the mark "JAKE & CO" for "shorts, being underwear for men and boys," and the mark "JAKE'S" for various items of "clothing," were to be given consideration, it would make no difference in the disposition of this appeal. See, e.g., Person's Co. Ltd. v. Christman, 900 F.2d 1565, 14 USPQ2d 1477, 1479 (Fed. Cir. 1990) ["[t]he concept of territoriality is basic to trademark law; trademark rights exist in each country solely according to that country's statutory scheme"].

⁵ The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." 192 USPQ at 29.

jackets, pants, skirts, hats and visors in the case of the stylized "UCS" mark and leather shoes, boots, lounge shoes and sports shoes as to the standard character form "UCS" mark), the focus of our inquiry is accordingly on the similarities and dissimilarities in the marks at issue.⁶

In this regard, we note as a preliminary matter that as stated by our principal reviewing court in *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 1034 (1994), "[w]hen marks would appear on virtually identical goods ..., the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Applicant argues in its brief, however, that confusion is not likely for, in essence, the following two reasons:

First, there is no likelihood of confusion between Applicant's Mark and the Cited Marks because there is no similarity between the Cited Marks and Applicant's Mark. Second, the Cited Marks resemble one another more than Applicant's Mark resembles either of them; the Cited Marks are for the same or highly related goods and both have been allowed to pass to registration; therefore, Applicant's Mark should be able to pass to registration as well.

As to the first reason, applicant argues that when its mark and the cited marks are considered in their entirety, the mere fact that the term "UCS" is common to each mark does not mean that confusion is likely. According to applicant, "the

⁶ Applicant, we note, does not contend otherwise in its brief, stating that "an analysis of all the *DuPont* factors is not necessary because an analysis of the similarity of the marks is dispositive."

Cited Marks are simply stylized or typewritten versions of the letters 'UCS,' [while] Applicant's Mark contains a highly stylized design logo wherein the letters 'UCS' do not predominate." The "most dominant aspect of Applicant's Mark," applicant insists, is "the stylized design logo that sets this mark apart from the Cited Marks." Although acknowledging that the term "UCS" appears in its mark as part of the phrase "UCS DUNGAREE CO.," applicant maintains that its mark "is much more than a simple block letter display of the letters 'UCS,' whereas the Cited Marks contain nothing more than a display of the three letters" of which each is comprised. Moreover, while also noting that it has disclaimed the words "DUNGAREE CO." in its mark, applicant contends that "[c]onsumers are more likely to remember the term UCS Dungaree Co. in its entirety, and [are] even more likely to recognize the design of Applicant's Mark[,] than they are to remember the letters 'UCS' alone."

Applicant contends, in view of the above, that in finding that there is a likelihood of confusion, "the Examining Attorney seems to ... ignore the term 'DUNGAREE CO.' when analyzing the word portion of the [applicant's] mark." In particular, applicant asserts that (emphasis in original):

Indeed, the Examining Attorney gives no support for her claim that the term "UCS" will create more of a commercial impression in the mind of consumers than the terms "Dungaree Co." or the design, and instead states in a conclusive manner "[t]he disclaimed portion of applicant's proposed mark is less significant because disclaimed matter is typically less significant or less dominant when comparing marks ... The terms

'Dungaree Co.' will create less of a commercial impression in the minds of consumers than the terms 'UCS'". See Final Office Action. On the contrary, "[t]here is no ironclad rule that disclaimed matter will be disregarded as the dominant or most significant feature of a mark." See *In re TSI Brands, Inc.*, 67 USPQ2d 1657 (TTAB 2002).

In this case, it seems that the Examining Attorney has simply recited various mechanical rules of construction for comparing the marks [at issue] and concluded that the dominant part of Applicant's Mark consists of the exact three letters as the Cited Marks. This situation is similar to the situation in *TSI Brands*, where the TTAB found that "such generalizations are inappropriate in that they fail to take into proper account the fact that visually the respective marks contain significant distinguishing elements and the fact that a disclaimer does not remove the disclaimed matter from a mark." *Id.* Here it is clear that when the letters "UCS" are not deemed as [being] dispositive of the issue and when Applicant's Mark is considered as a whole, as it should be, there is no likelihood of confusion between Applicant's Mark and the Cited Marks.

....

Here, the Examining Attorney seems to ignore that Applicant's Mark is more than just a block letter display of the letters "UCS," and the Cited Marks contain nothing more than the [same] three letters. The Examining Attorney incorrectly argues that "UCS" is the dominant term in Applicant's Mark and [wrongly] states that the terms "Dungaree Co." will create less of a commercial impression in the minds of consumers than the term "UCS." Moreover, the Examining Attorney completely ignores the stylized design logo that is used together with the terms UCS Dungaree Co. Thus, Applicant's Mark and the Cited Marks create **entirely different commercial impressions** and there can be no confusion.

Referring, furthermore, to the cited registrations as "third-party registrations," applicant asserts as its second basic argument concerning why confusion is not likely that (emphasis and underlining in original):

The existence of third[-]party registrations demonstrates that the "UCS" mark is entitled to a narrow scope of protection. The marks cited against Applicant['s Mark] herein are owned by different entities and consist of simply stylized or typewritten versions of the letters "UCS". The fact that the trademark office allowed registration of these marks, for the same class of goods by different owners, further supports Applicant's argument that there is no likelihood of confusion.

Third-party registrations are of use in evaluating whether there is a likelihood of confusion if they tend to demonstrate that a mark is entitled to a narrow scope of protection. See, e.g., *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984); *Tektronic, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917, 189 USPQ 693, 694-95 (C.C.P.A. 1975); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Dayco Products-Eaglemotive Inc.*, 9 USPQ2d 1910, 1911 (TTAB 1988); *In re J.M. Originals, Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *United Foods Inc. v. J.R. Simplot Co.*, 4 USPQ2d 1172, 1174 (TTAB 1987).

Thus, the fact that there are two very similar marks already existing side by side bolsters the fact that neither entity has an exclusive right to use the letters "UCS" in Class 25. The Cited Marks are much more similar to each other in terms of appearance than they are to Applicant's Mark. Indeed, while the Cited Marks consist solely of different stylizations of the letters "UCS", Applicant's Mark contains a highly stylized design logo and the words DUNGAREE CO. Thus, if there is no likelihood of confusion between the Cited Marks, there can be no confusion with Applicant's Mark.

The Examining Attorney, on the other hand, maintains in her brief that because the marks at issue "are found on identical or highly related clothing items, and thus that "the degree of similarity between marks [which is] required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services," confusion is likely inasmuch as applicant's mark "merely adds descriptive matter and a logo to the cited UCS registrations," with the term "UCS" forming "the dominant portion of applicant's mark." Citing *In re Code Consultants Inc.*, 60 USPQ2d 1699 (TTAB 2001), in which the Board found that a mark "consisting of 'CCI' plus design with the descriptive, disclaimed words 'Code Consultants, Inc.' is confusingly similar to [a] typed drawing mark 'CCI' for similar services," for the proposition that "the mere addition of descriptive matter and a design element to a typed, three-letter acronym for related services gives rise to confusion," the Examining Attorney argues that, likewise, "[t]he cited UCS registrations do not contain additional material or a high degree of stylization" and, therefore, "there is a likelihood that consumers who encounter the UCS marks in the cited registrations will confuse the source of registrants' clothing items with applicant's UCS mark."⁷

⁷ While the Examining Attorney also postulates that because "neither of the registered marks contains additional material that restricts it from being presented near circular design elements of additional descriptive wording," the "cited registrations therefore may be displayed on or near circular logos and language describing clothing items," it is pointed out that in assessing whether there is a likelihood of confusion, it is settled that such an issue must be decided on the basis of the mark which an applicant seeks to register and the mark(s) shown in the cited registration(s). See, e.g., *Sealy,*

In particular, the Examining Attorney asserts that "[t]he absence of such additional material and stylization in the cited registrations is critical to understanding why applicant's reasoning based on *TSI Brands* fails," arguing that in such case, at 67 USPQ2d 1661, "the Board found that using generalized rules of construction to analyze trademarks is 'inappropriate' where it 'fail[s]' to take into proper account the fact that *visually the respective marks contain significant distinguishing design elements* and the fact that a disclaimer does not remove the disclaimed matter from the mark'" (emphasis added). Noting, moreover, that in such case "[m]ark[s] consisting of 'AK' in

Inc. v. Simmons Co., 265 F.2d 934, 121 USPQ 456, 459 (CCPA 1959); Burton-Dixie Corp. v. Restonic Corp., 234 F.2d 668, 110 USPQ 272, 273-74 (CCPA 1956); Hat Corp. of America v. John B. Stetson Co., 223 F.2d 485, 106 USPQ 200, 203 (CCPA 1955); and ITT Canteen Corp. v. Haven Homes Inc., 174 USPQ 539, 540 (TTAB 1972). Thus, the relevant comparison is between applicant's mark and each of the cited marks as shown in the registrations and not as to the latter marks if used in conjunction with any additional matter, which is legally irrelevant and immaterial to a determination of the issue of likelihood of confusion.

In addition, the Examining Attorney observes that because one of the cited marks is in standard character or what was formerly known as "typed drawing form," it is the case that "[r]egistration of a mark in typed drawing form means that the mark may be displayed in any lettering style." While, for instance, it is plain from the case of *Phillips Petroleum Co. v. C. J. Webb, Inc.*, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971), that a mark registered in typed or standard character form is not limited to the depiction thereof in any special form, the Board in *INB National Bank v. Metrohost Inc.*, 22 USPQ2d 1585 (TTAB 1992), has further indicated that, "[a]s the *Phillips Petroleum* case makes clear, when [a party] ... seeks a typed or block letter registration of its word mark, then the Board must consider all reasonable manners in which [the word mark] ... could be depicted." Consequently, while the stylized "UCS" mark, as shown in the other cited registration, would be one manner of reasonably displaying the mark "UCS" and is encompassed by the registration thereof in standard character form, we disagree with the suggestion by the Examining Attorney that such mark would reasonably include the presentation thereof in the unusual manner in which those letters are shown in applicant's mark, that is, an elongated letter "U" adjacent to two disproportionately sized smaller letters "C" and "S," but with the latter letters not running the height of the letter "U."

highly stylized form within a circular [or oval] design [were] held not confusingly similar to [a] ... mark consisting of the terms 'AMERICAN KHAKI' appearing superimposed in the stylized letters 'AK,'" the Examining Attorney urges that, at 60 USPQ2d 1663, "[t]he Board reasoned that 'the degree of stylization and integration of the letters forming both of registrant's 'AK' and design marks is so high that they are more properly treated ... as being akin to pure design marks rather than simply stylized displays of word marks.'" By contrast, the Examining Attorney insists that (*italics in original*):

It would be similarly inappropriate in this case to ignore the *absence* of a significant distinguishing design element or high degree of stylization in the cited registrations. The absence of such distinguishing elements places this case more squarely in line with *Code Consultants*, discussed *supra*. In this case, as in *Code Consultants*, applicant merely adds descriptive wording and a logo to the registered UCS trademarks.

The Examining Attorney, citing *In re Burndy Corp.*, 300 F.2d 938, 133 USPQ 196, 197 (CCPA 1962), in further noting that "[a] comparison of the visual similarities alone is only appropriate where the marks are essentially design marks and not capable of being spoken," additionally argues that the "literal portions are generally the dominant and most significant features of marks because consumers will call for the goods or services in the marketplace by that portion." See, e.g., *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987); and *In re Drug Research Reports, Inc.*, 200 USPQ 554, 556 (TTAB 1978). "For

this reason," she points out, "greater weight is often given to the literal portions of marks in determining whether there is a likelihood of confusion." In this case, she contends that:

The literal portion of applicant's mark comprises "UCS DUNGAREE CO." This sounds confusingly similar to registrants' marks because it begins with the same three letter "UCS" as the cited marks. The first three out of seven syllables in applicant's mark sound identical to the marks in the cited registrations. This gives rise to a likelihood of confusion with the cited ... UCS [marks] because of the distinctiveness of the shared term "UCS."

Moreover, as to the "the distinctiveness of the shared term 'UCS,'" which constitutes the entirety of each of the cited marks, the Examining Attorney maintains that such term is arbitrary and, on this record, has no meaning other than its significance as a mark. She specifically asserts, in this regard, that:

There is no evidence that the terms "UCS" have [any other] significance in the clothing field. This creates a strong commercial impression because UCS is "coined" or "fanciful" with respect to the identified clothing items.

As to applicant's mark, she maintains in view of the above principles that the dominant portion thereof is the phrase "UCS DUNGAREE CO." inasmuch as (citations omitted):

Applicant's composite mark consists of a logo and the words UCS DUNGAREE CO. The logo consists of a circle surrounding an arbitrary arrangement of letters. The literal portion of the mark, "UCS DUNGAREE CO. [,]" appears underneath and apart from the logo. The eye is drawn to the literal portion for an explanation of the arbitrary letters in the circle. The mind then comprehends that the letters in the logo are a derivation of the letters "UCS" and the "D" from "DUNGAREE" and

the "CO," in the literal portion "UCS DUNGAREE CO."

The literal portion of the mark lends meaning to the design element and therefore creates a stronger commercial impression as a source-indicator than the design element. In addition, as stated *supra*, the literal portion "UCS DUNGAREE CO." is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods

Therefore, the commercial impression, meaning, and connotation conveyed by the mark in its entirety is that the goods on which the mark is found originate from a company called "UCS DUNGAREE CO."

Nonetheless, because the terms "DUNGAREE CO." in applicant's mark, due to the disclaimer thereof, "are less significant or less dominant when comparing applicant's mark to the [marks in] the cited registrations," the Examining Attorney urges that it is actually "[t]he term 'UCS' [which] forms the dominant portion of applicant's mark because it serves as the key distinguishing identifier of source in the minds of the consumers who encounter the mark." Giving such term, therefore, greater weight, the Examining Attorney insists that:

When comparing the [marks of the] cited registrations and applicant's mark, the marks all create the highly similar commercial impression that "UCS" is the source of the clothing items. This gives rise to the likelihood that consumers will be confused as to the source of registrants' and applicant's goods because the shared term "UCS" forms the dominant portion of applicant's mark and comprises the entirety of the [marks of] the cited registrations.

With respect to applicant's argument, however, that because the two cited marks "are currently registered for use on similar clothing items," such marks are properly entitled to only

a narrow scope of protection, the Examining Attorney asserts that:

First, prior decisions and actions of other trademark examining attorneys in registering different marks are without evidentiary value and are not binding upon the Office. Each case is decided on its own facts, and each mark stands on its own merits. *AMF Inc. v. American Leisure Products, Inc.*, [474 F.2d 1403,] 177 USPQ 268, 269 (C.C.P.A. 1973); *In re International Taste, Inc.*, 53 USPQ2d 1604, 1606 (TTAB 2000) ("[W]hile the Office strives for consistency, the Board must decide each case on its own facts and record"); *In re Sunmarks Inc.*, 32 USPQ2d 1470 (TTAB 1994); *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 641 (TTAB 1984); *In re Consolidated Foods Corp.*, 200 USPQ 477 (TTAB 1978). For the Board to permit the decision of an examining attorney, whose reasons for allowing the second UCS registration are not of record, to bind it would violate the Board's statutory duties. *In re Sunmarks Inc.*, 32 USPQ2d at 1472.

Second, applicant urges that "the existence of the 3rd [sic] party registrations demonstrates that the 'UCS' mark is entitled to a narrow scope of protection." First, it should be noted that these are not "third party" registrations, these are the cited registrations. Second, the case law is clear that the co-existence of confusing registrations on the Register does not warrant registration of yet another mark that is likely to cause confusion. *NASA v. Record Chemical Co. Inc.*, [] 185 USPQ 563, 567 (TTAB 1975). That there may be confusion on the register is no excuse to add to it. *Plus Products v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983).

The Examining Attorney concludes, in summary, that confusion is likely because:

Applicant's mark and the marks in the cited registrations are found on highly related and identical goods in the same trade channels. The marks are confusingly similar in appearance, sound, commercial impression,

meaning and connotation because the marks share the same distinctive, arbitrary term "UCS." The cited registrations are comprised entirely of the term "UCS" and do not contain additional design material or a high degree of stylization that obviates a likelihood of confusion, mistake or deception. Applicant's mere addition of highly descriptive language and a logo to the cited registrations does not obviate the likelihood that consumers will be confused, mistaken, or deceived as to the source of the identified goods.

Although we candidly admit that the issue in this appeal is a close one, after careful consideration of the above arguments we are constrained to agree with the Examining Attorney that confusion is likely. As our principal reviewing court has noted, while marks which are at issue must be considered in their entireties, including any descriptive or other disclaimed matter therein, it is also the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "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 instance, according to the court, "that a particular feature is descriptive [or otherwise lacking in distinctiveness] ... with respect to the involved goods ... is one commonly accepted rationale for giving less weight to a portion of a mark" Id. Clearly, if applicant's mark were simply the phrase "UCS DUNGAREE CO.," there would be no question that contemporaneous use thereof in connection with, for example, applicant's coats, footwear, jackets, pants, skirts and headwear would be likely to

cause confusion with the use both of the stylized "UCS" mark for, among other items, coats, footwear, jackets, pants, skirts, hats and visors, and the standard character form "UCS" mark for, *inter alia*, leather shoes, boots, lounge shoes and sports shoes. The term "UCS," on this record, is arbitrary; there is no evidence of any third-party use of such term in connection with articles of clothing; and the language "DUNGAREE CO." in applicant's mark is essentially without source-indicative significance, given its descriptiveness in relation to a company which markets dungarees and apparel for wearing with such goods.

On the other hand, it is plain that if applicant's mark were limited to the logo design element, there would be little if any doubt that contemporaneous use of such a design by applicant, even on items of clothing identical in kind to those of each of the cited registrants, would not be likely to cause confusion with either of the cited "UCS" marks. The letters "U" and "D" in the logo design are much larger in size and hence more prominent than even the letter "S," which in turn is appreciably larger and thus more noticeable than either the letter "C" or the term "CO." As a result, upon first viewing, the logo design looks very little like the letters "UCS," which comprise the registered marks. The logo design, instead, appears overall to consist primarily of, for instance, the stylized term "USD," with the letter "C" and the term "CO." serving as subordinate matter, rather than being readily recognizable for what it actually is,

specifically, a composite abbreviation for, or shortened form of, the name "UCS DUNGAREE CO."⁸

The problem essentially presented by this appeal, however, is: What is the overall commercial impression which is engendered when the phrase "UCS DUNGAREE CO." is combined with the logo design so as to form the mark for which applicant is seeking registration? Considered in its entirety, it is true that the logo design is undeniably a visually prominent feature of applicant's mark, but the phrase "UCS DUNGAREE CO." also stands out visually and is not without source-indicative significance. In particular, such phrase is not so relatively small or otherwise buried in applicant's mark that it would fail to be readily noticed. Most importantly, such phrase serves to clarify that what, in the logo, might at first glance be any random combination of the letters therein, is instead a composite abbreviation for, or shortened form of, the name "UCS DUNGAREE CO." Moreover, the arbitrary initialism "UCS" in such phrase is itself a significant indication of source, given the inherent descriptiveness of the words "DUNGAREE CO." Inasmuch as such initialism is identical to the cited standard character form "UCS" mark and to the principal source-indicative element of the stylized "UCS" mark, applicant's mark overall so resembles the cited marks that, when used in connection with identical and otherwise closely related items of apparel, confusion as to

⁸ Due to the placement and relative sizes thereof, the arrangement of the letters in the logo is confusing in the abstract and such arrangement could, arguably, be instead taken for other letter combinations such as "USCD CO.," "UCSD CO." or even "UCDS CO."

source or sponsorship is likely to occur. That is, even though the logo design in applicant's mark is very prominent and thus is certain to be noticed, it is not sufficient to distinguish applicant's mark from either of the cited "UCS" marks in light of the identical, arbitrary term "UCS" which also prominently appears in applicant's mark as part of the phrase "UCS DUNGAREE CO."

As to applicant's chief reliance, nonetheless, upon *TSI Brands* for the proposition that the disclaimed terms "DUNGAREE CO." serve as significant features of its mark and, like the logo design therein, meaningfully distinguish such mark from the cited "UCS" marks, we find the quotation in applicant's brief from the Board's opinion in such case, specifically, that "[t]here is no ironclad rule that disclaimed matter will be disregarded as the dominant or most significant feature of a mark," to be extremely misleading. That quotation, as is clear from the Board's opinion at 67 USPQ2d at 1661, is actually an argument by the applicant in such case as recounted by the Board rather than, as applicant implies herein, a pronouncement or reasoning expressed by the Board in resolving the issue which was then before it. Furthermore, and in any event, we concur with the Examining Attorney that *TSI Brands* plainly is distinguishable from this appeal because the cited marks therein were "more than merely stylized presentations of the letters 'AK'." 67 USPQ2d at 1661. Rather, as the Board was careful to point out, "the degree of stylization and integration of the letters forming both of registrant's 'AK" and design marks is so high that they are akin

to pure design marks rather than simply stylized displays of word marks" 67 USPQ2d 1663. Here, by sharp contrast, neither of the cited "UCS" marks is in essence a pure design mark; rather, such marks literally are simply the letters which form the initialism "UCS"--which is the identical initialism which appears in the phrase "UCS DUNGAREE CO." in applicant's mark.

Concerning, furthermore, applicant's contention that marks which consist of or include the initialism "UCS" must be considered weak marks, as evidenced solely by the coexistence of the two cited "UCS" marks, which are entitled only to a narrow scope of protection, we agree with the Examining Attorney that such argument is without merit. Among other things, even if it could be said that the "evidence" referred to by applicant is sufficient to establish the weakness of the marks at issue herein, weak marks are still entitled to protection against registration by a subsequent user of the same or similar mark for the same or closely related goods or services. See, e.g., Hollister Inc. v. Ident A Pet, Inc., 193 USPQ 439, 442 (TTAB 1976).

Additionally, the Examining Attorney is correct that the cited registrations are not, technically speaking, "third-party registrations," which is a term of art in trademark law that refers to registrations owned by others that have, in pertinent part, the same or similar characteristics to a cited registration or an applicant's mark but which, of course, are not entirely identical thereto (e.g., registrations for the same mark for similar goods or services or registrations for similar marks

for identical goods or services). Nevertheless, even if the two cited registrations were to be considered as somehow analogous to third-party registrations, it is well established that in any event third-party registrations do not demonstrate use of the marks which are the subjects thereof in the marketplace or that the consuming public is familiar with the use of those marks and has learned to distinguish between them based on the differences therein. See, e.g., *Smith Brothers Manufacturing Co. v. Stone Manufacturing Co.*, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973); and *AMF Inc. v. American Leisure Products, Inc.*, supra. Third-party registrations, by themselves, are thus entitled to little weight on the issue of likelihood of confusion. See, e.g., *In re Melville Corp.*, supra; and *In re Hub Distributing, Inc.*, 218 USPQ 284, 285 (TTAB 1983). Finally, as our principal reviewing court pointed out in *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001), "[e]ven if some prior registrations had some characteristics similar to [applicant's] application, the ... allowance of such prior registrations does not bind the Board or this court." See also, *In re Broyhill Furniture Industries Inc.*, 60 USPQ2d 1511, 1514 (TTAB 2001); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753, 1758 (TTAB 1991).

We accordingly conclude that customers and prospective consumers who are familiar or acquainted with either the stylized "UCS" mark for, among other items, coats, footwear, jackets, pants, skirts, hats and visors, or the standard character form "UCS" mark for, *inter alia*, leather shoes, boots, lounge shoes and sports shoes, would be likely to believe, upon encountering

applicant's similar "UCS DUNGAREE CO." and design mark for items of apparel which include coats, footwear, jackets, pants, skirts and headwear, that such legally identical goods emanate from, or are sponsored by or associated with, the same source. In particular, even though customers and prospective consumers would undoubtedly notice the logo design element of applicant's mark in addition to the phrase "UCS DUNGAREE CO." therein, they still would be likely to believe that such mark, when used in connection with goods which are legally identical to those of each of the cited registrants, constitutes a new or expanded line of apparel from the same source as either the goods offered under the stylized "UCS" mark or the products marketed under the standard character form "UCS" mark. To the extent, however, that there could be any doubt as to our conclusion in this regard, we resolve such doubt, as we must, in favor of each of the cited registrants. See, e.g., In re Chatam International Inc., 380 F.3d 1340, 71 USPQ2d 1944, 1948 (Fed. Cir. 2004); In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 156, 223 USPQ 1289, 1290 (Fed. Cir. 1984; and In re Pneumatiques Caoutchouc Manufacture et Plastiques Kelber-Columbes, 487 F.2d 918, 179 USPQ 729, 729 (CCPA 1973).

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