

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
September 10, 2007

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**Trademark Trial and Appeal Board**

---

In re RP Creations Ltd.

---

Serial No. 76656180

---

Myron Amer, P.C. for RP Creations Ltd.

Ira Goodsaid, Trademark Examining Attorney, Law Office 101  
(Ronald R. Sussman, Managing Attorney)

---

Before Seeherman, Zervas and Kuhlke, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

RP Creations Ltd. has appealed from the final refusal of the Trademark Examining Attorney to register NATALIE in standard character format as a trademark for "accessories for women, namely, barrettes, buttons, embroidery, hair clips, hat pins and ornamental novelty pins" in Class 26.<sup>1</sup>

---

<sup>1</sup> Application Serial No. 76656180, filed March 7, 2006, based on Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b) (intent-to-use).

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if used for its identified goods, so resembles the mark NATALIE & ME, previously registered in the stylized form shown below for "clothing, namely, women's pants, skirts, tops, t-shirts, blouses, shorts, knit tops, dresses and jackets,"<sup>2</sup> that it is likely to cause confusion or mistake or to deceive.

*natalie & me*

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie*

---

<sup>2</sup> Registration No. 3020769, issued November 29, 2005.

Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We turn first to a consideration of the goods. The Examining Attorney has made of record third-party registrations which include some of the goods identified in applicant's application and some of the goods listed in the cited registration. See Registration No. 1993895 for GRIFFITH GRAY for, inter alia, buttons for clothing and for women's clothing, namely dresses, skirts and jackets; Registration No. 2062351 for RAMPAGE for, inter alia, hair accessories, namely hair clips and hair bands and for women's tops, shirts, t-shirts, shorts and dresses; Registration No. 2879970 for ARDEN B for, inter alia, hair ornaments, namely, clips, holders, sticks, and for women's clothing, namely, tops, shirts, shorts, pants, skirts and jackets; Registration No. 2308468 for GUESS? for, inter alia, buttons for clothing and for women's clothing, namely, tank tops, shirts, t-shirts, knit tops, skirts, pants, shorts, jackets, and dresses; and Registration No. 3130927 for NOLLIE for, inter alia, barrettes and hair clips and for women's clothing, namely, skirts, tank tops, t-shirts, polo shirts, shorts, outer jackets, knit tops, shirts, dresses and pants. Third-party registrations which individually cover a number of different items and which

are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Applicant argues that the goods are not "marketed in a way that they would be encountered in a situation that would create the incorrect assumption that they originate from the same source." Brief, p. 3. Specifically, applicant asserts that applicant's and the registrant's goods "would not be commingled but would be displayed separately and differently, the clothing vertically on hangers and the 'barrettes, etc.' in horizontal counter trays." Brief, p. 2 (emphasis in original).

We agree that women's clothing and the hair items, buttons, ornamental pins and embroidery are not likely to be sold or displayed next to each other in a store. However, they may be sold within a department store and are goods that might be used together, e.g., one might purchase hair ornaments such as barrettes or hair clips as accessories to be used with a particular item of clothing, or one might purchase buttons or embroidery to decorate clothing. Because of this, applicant's identified goods and those listed in the cited registration must be considered related. See *In re Melville Corp.*, 18 USPQ2d

1386 (TTAB 1991), in which women's shoes and items of women's clothing were found to be complementary and therefore related goods even though they are sold in different departments because such items are frequently purchased in a single shopping expedition with the intention of wearing them together. It is well established that the goods or services of an applicant and the registrant need not be similar or competitive, or even that they move in the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods or services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. See *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

Further, applicant's and the registrant's goods may be sold to the same classes of purchasers, which would include the public at large. Such purchasers are not particularly sophisticated or knowledgeable about these items.

Moreover, applicant's identified goods would include inexpensive items that may be purchased on impulse, or without great care or deliberation. In saying this, we note the declaration of applicant's president that

applicant has "personal direct relationships with retail store buyers." However, applicant's goods, as identified, are not limited to sales to professional buyers, and therefore we must assume that they can be sold in all channels of trade appropriate for such goods, which include retail stores where they would be encountered by and bought by ordinary purchasers. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (the question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-à-vis the goods and/or services recited in an opposer's registration, rather than what the evidence shows the goods and/or services to be). See also, *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Applicant's president's declaration actually confirms that its goods are, in fact, resold to the general public. The du Pont factors of the relatedness of the goods, the channels of trade and the conditions of purchase favor a finding of likelihood of confusion.

This brings us to a consideration of the marks. Applicant's mark is NATALIE; the cited mark is NATALIE & ME. Although the latter mark is depicted in stylized lettering, this stylization is not sufficient to

distinguish the marks because applicant's mark has been applied for in standard character format. Therefore, if this mark were to be registered, applicant could use the mark in a similar font to that of the registered mark. In any event, the stylized format of the cited mark is a rather ordinary font that is not particularly distinctive.

Applicant's mark also differs from the cited mark in that applicant's mark consists of only the name NATALIE, while the registered mark is NATALIE & ME. However, the presence/absence of "& ME" in the marks does not change the appearance or pronunciation of the word NATALIE, nor does it change the connotation of NATALIE as a woman's name. NATALIE per se, of course, indicates a single person, while NATALIE & ME connotes that person as well as another (perhaps the purchaser/wearer of the clothing). However, the slight difference in appearance, pronunciation and connotation of the marks caused by the presence/absence of "& ME" is not sufficient to distinguish the marks. Consumers are likely to view the marks as variations of each other, but with both identifying goods emanating from a single source, with NATALIE per se indicating the company's accessories line while NATALIE & ME is seen as the same company's mark for its clothing line. In saying this, we also note that there is no evidence of third-party

use of "NATALIE" marks, thus indicating that the cited mark is a strong mark and the registration is entitled to a broad scope of protection. In sum, the marks convey the same commercial impression.

We have considered the declaration of applicant's president, Natalie Ross, that she personally performs all business functions for applicant, including selling applicant's goods directly to retail store customers who then sell the items to the public, and that these retail store buyers would distinguish the marks NATALIE and NATALIE & ME because, in the case of applicant's business, there is no one other than the president, whose name is Natalie. As a result, according to the declaration, they would not understand "& ME as a reference to applicant. Even if we accept that Ms. Ross "personally performs all business functions for the applicant"<sup>3</sup> and that professional retail buyers would not view NATALIE & ME as referring to applicant, the ultimate purchasers of the goods, i.e., the public at large, would not know Ms. Ross personally or be aware that she is the person behind applicant who "performs all business functions for the applicant." Rather, we must assume that these consumers would know only the trademark,

and for the reasons stated above, they are likely to view the trademarks NATALIE and NATALIE & ME, if used on related goods, as identifying goods emanating from a single source.

Finally, in reaching our conclusion that applicant's mark is likely to cause confusion with the cited mark, we are guided by the well-established principle that, to the extent there is any doubt on the issue of likelihood of confusion, such doubt must be resolved in favor of the registrant and prior user. In *re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

Decision: The refusal of registration is affirmed.

---

<sup>3</sup> Ms. Ross's statement seems to be contradicted by the fact that the application was signed by applicant's vice president, Jed Forman.