

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

Mailed:
April 14, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Satellite Consultants, Inc.

Serial No. 77150272

Sven W. Hanson, Esq. for Satellite Consultants, Inc.

Scott A. Rappaport, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Holtzman, Rogers and Bergsman, Administrative
Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Satellite Consultants, Inc. filed an intent-to-use
application for the mark FLORIDA STATE OF MINE, shown
below,



Florida
State of Mine

for the following goods:

All purpose sport bags; beach bags; beach umbrellas;
handbags; backpacks; fanny packs; golf bags; shoulder

Serial No. 77150272

bags; golf umbrellas; book bags, key cases, in Class 18; and,

Clothing, namely, t-shirts, shirts, shorts, pants, jackets, skirts, dresses, bathing suits, beachwear, blouses, sweatpants, sweatshirts, neckties; footwear; headwear; rainwear; belts, in Class 25.

Applicant disclaimed the exclusive right to use "Florida."

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with the products described in the application, is likely to cause confusion with the mark STATE OF MINE, in standard character form, for "men's, women's and children's knit and woven shirts," in Class 25.¹

Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities or dissimilarities between the marks and the similarities or

¹ Registration No. 3218545, issued March 13, 2007.

dissimilarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("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").

A. The similarity or dissimilarity and nature of the goods.

Applicant is seeking to register its mark, *inter alia*, for a variety of clothing items, including shirts. The cited registration is for "men's, women's and children's knit and woven shirts." Because there are no restrictions or limitations as to the type of shirts described in the application at issue, we must presume that it includes all types of shirts, including knit and woven shirts. *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) ("There is no specific limitation and nothing in the inherent nature of Squirtco's mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration"); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

To the extent that the application and the cited registration both include knit and woven shirts, the goods in the application and cited registration are, in part, identical. The fact that there are some differences in the description of goods for the application and cited registration does not obviate the fact that both descriptions of goods are in part identical. *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

B. The similarity or dissimilarity of likely-to-continue trade channels.

Because the goods in the application and the cited registration are in part identical, we must presume that the channels of trade and classes of purchasers at least in part are the same. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade"); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the

same channels of trade, and be sold to the same class of purchasers").

C. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co., supra.* In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 9 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1988). In comparing the marks, we are mindful that where, as here, the goods are in part identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Real Estate One, Inc. v. Real Estate 100 Enterprises Corporation*, 212 USPQ 957, 959 (TTAB 1981); *ECI Division of E-Systems, Inc. v. Environmental Communications Incorporated*, 207 USPQ 443, 449 (TTAB 1980).

In addition, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison,

Serial No. 77150272

but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Applicant's mark incorporates the entire registered mark. "When one incorporates the entire arbitrary mark of another into a composite mark, inclusion in the composite mark of a significant, nonsuggestive element will not necessarily preclude a likelihood of confusion." *Wella Corp. v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT with a surfer design is similar to CONCEPT). See also *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) (BENGAL LANCER in association with the

Serial No. 77150272

design of a Bengal Lancer soldier is similar to BENGAL); *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (CCPA 1972) (griffin design above the words WEST POINT PEPPERELL is similar to WEST POINT).

The marks in their entireties are similar because they both include the arbitrary term "State Of Mine." The term "State Of Mine" is a play on the phrase "State Of Mind," that means "mood," or "outlook." The registered mark engenders the commercial impression of a general "state of mind," while the applicant's mark engenders the commercial impression of a Florida "state of mind." In this case, the inclusion of "Florida" and the design element in applicant's mark does not distinguish the marks because consumers familiar with both marks are likely to believe that FLORIDA STATE OF MINE is a derivation of the STATE OF MINE product line directed toward consumers in Florida. Accordingly, in our opinion, because the marks share the term STATE OF MINE, the marks are substantially similar.

D. Balancing the factors.

In view of the fact that all of the relevant likelihood of confusion factors favor finding that there is a likelihood of confusion and because there is no countervailing evidence that there will be no likelihood of confusion, we find that applicant's mark FLORIDA STATE OF

Serial No. 77150272

MINE and design, when used in connection with the products described in the application, is likely to cause confusion with the mark STATE OF MINE for "men's, women's and children's knit and woven shirts."

Decision: The refusal to register is affirmed.