

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

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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gruppo Arcte S.p.A.

Serial No. 78165903

Jeffrey H. Kaufman and Beth A. Chapman of Oblon Spivak
McClelland Maier & Neustadt, P.C. for Gruppo Arcte
S.p.A.

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(Chris Doninger, Managing Attorney).

Before Bucher, Holtzman and Zervas, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Gruppo Arcte S.p.A. seeks registration on the
Principal Register of the following mark:

Baci
RUBATI

for goods identified in the application as follows:

"clothing, namely coats, mantles, raincoats,
dresses, suits, skirts, jackets, parkas,
tuxedos, vests, shorts, waistcoats, shirts,
sport shirts, blouses, jerseys, sweaters,

blazers, cardigans, underwear, bathrobes, bathing suits, sun suits, sweat suits, nightgowns, pajamas, corsets, bras, wind resistant jackets, ties, neckties, shawls, foulards, gloves, caps, hats and belts" in International Class 25.¹

This case is now before the board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles the following two marks:

BACI

for "footwear, namely women's shoes" in Int. Class 25;² and



for "footwear, namely women's shoes," in International Class 25,³

¹ Application Serial No. 78165903 was filed on September 19, 2002 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. Applicant states that the term "Baci Rubati" means "stolen kisses" when translated into English.

² Registration No. 2581200 issued to Baci Shoes, Inc. on June 18, 2002 based upon an application filed on August 25, 2000 claiming first use anywhere and first use in commerce at least as early as July 14, 2000.

³ Registration No. 2581234 issued to Baci Shoes, Inc. on June 18, 2002 based upon an application filed on September 8, 2000 claiming first use anywhere and first use in commerce at least as early as July 14, 2000. Although the United States Patent and Trademark Office's bibliographic information for this registration shows "Kiss" to be a "pseudo mark" for the word "Baci," no explicit translation statement appears in either one of the cited registrations.

as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have fully briefed the case. We affirm the refusal to register.

In arguing for registrability, applicant contends that its mark is not similar to the cited marks as to sound, appearance, meaning or commercial impression; that the common feature of the marks (i.e., "BACI") has been registered and approved for publication for clothing and jewelry-related goods owned by different entities including pending applications owned by registrant; that the third-party registrations placed into the record by the Trademark Examining Attorney are of minimal value to establish the relatedness of the goods herein; that even with the advertisements placed into the record, we cannot presume that every product sold in a department store is related to every other product sold in a department store; and that merely because various items of clothing and shoes are worn on the human body does not establish the relatedness of the goods within the meaning of the Trademark Act.

By contrast, the Trademark Examining Attorney contends that consumers will most likely recall the first word of applicant's mark, BACI; that neither the stylization of applicant's mark nor the stylization of registrant's

stylized mark can overcome the similarities between the literal portions of such marks; that the differences in the connotations of the marks, when translated, are not significant enough to change the commercial impressions of the marks; that previous decisions of the Board have found shoes to be closely related to other items of clothing; and that the advertisements demonstrate that items of women's clothing and women's shoes are sometimes coordinated, might well be purchased during the same shopping trip, and often travel through the same channels of trade.

Likelihood of Confusion

We turn then to a consideration of the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. *See 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, however, two key, although not exclusive, considerations are the similarities between the marks and the relationship 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 Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The Goods

As seen above, the goods in the cited registrations are identified as "footwear, namely women's shoes." Applicant's goods are identified as "clothing, namely coats, mantles, raincoats, dresses, suits, skirts, jackets, parkas, tuxedos, vests, shorts, waistcoats, shirts, sport shirts, blouses, jerseys, sweaters, blazers, cardigans, underwear, bathrobes, bathing suits, sun suits, sweat suits, nightgowns, pajamas, corsets, bras, wind resistant jackets, ties, neckties, shawls, foulards, gloves, caps, hats and belts."

As to this critical *du Pont* factor, as argued by applicant, there are certainly no *per se* rules that goods in the same general field and bearing the same or similar marks must inevitably result in a likelihood of confusion. Nonetheless, the Trademark Examining Attorney points to a variety of prior likelihood of confusion decisions in the clothing field that have held many different types of apparel and footwear to be related under Section 2(d) of the Act. See *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974

F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992) [Court affirmed Board's holding of likelihood of confusion between KangaROOS (and design) for clothing, namely, athletic shoes, sweatsuits and athletic shirts and KANGOL (and design) for golf shirts having



vs.

collars]; *General Shoe Corporation v. Hollywood-Maxwell Co.*, 277 F.2d 169, 125 USPQ 442 (CCPA 1960) [Court affirmed Board's holding of likelihood of confusion for the same mark INGENUE used on shoes and hosiery, and bras]; *Cambridge Rubber Co. v. Cluett, Peabody & Co., Inc.*, 286 F.2d 623, 128 USPQ 549 (CCPA 1961) [WINTER CARNIVAL for women's boots v. men's and boys' underwear]; *Jockey Int'l, Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1233 (TTAB 1992) [ELANCE for underwear v. ELAAN for neckties]; *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991)

[stylized ESSENTIALS for women's shoes v. ESSENTIALS for women's clothing,



vs. **ESSENTIALS**

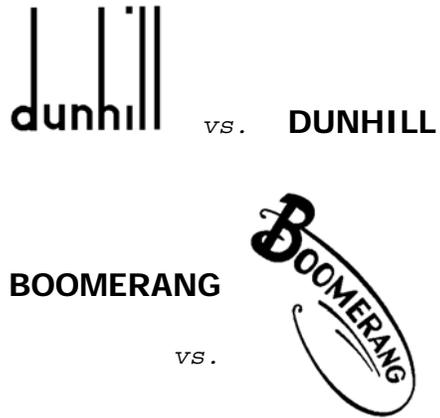
namely, pants, blouses, shorts and jackets]; *In re Apparel Ventures, Inc.*, 229 USPQ 225 (TTAB 1986) [SPARKS BY SASSAFRAS for women's



vs.



separates, namely blouses, skirts and sweaters v. SPARKS (stylized) for shoes, boots and slippers]; *In re Pix of America, Inc.*, 225 USPQ 691 (TTAB 1985) [NEWPORTS for women's shoes v. NEWPORT for outer shirts]; *In re Alfred Dunhill Limited*, 224 USPQ 501 (TTAB 1984) [DUNHILL in stylized lettering for various items of men's clothing including belts v. DUNHILL for shoes]; *In re Kangaroos U.S.A.*, 223 USPQ 1025 (TTAB 1984) [BOOMERANG for athletic shoes v. BOOMERANG (and design) composite mark for men's shirts]; *In re Mercedes Slacks, Ltd.*, 213 USPQ 397 (TTAB 1982) [OMEGA for hosiery v. slacks]; *In re Cook United, Inc.*, 185 USPQ 444 (TTAB 1975) [GRANADA for men's suits, coats, and trousers v. ladies' pantyhose and hosiery]; and *Esquire Sportswear Mfg. Co. v. Genesco Inc.*, 141 USPQ 400 (TTAB 1964) [SLEEX for women's brassieres and girdles v. men's slacks].



Among the many use-based, third-party registrations covering items of clothing such as those identified by applicant, and footwear such as shoes as identified by registrant, the Trademark Examining Attorney has pointed to a representative sampling of registrations, as follows:

ZAC POSEN

for "clothing for women, namely, coats, raincoats, anoraks, parkas, blazers, jackets, cardigans, boleros, capes, sport coats, wind resistant jackets, suits, tuxedos, vests, dresses, evening gowns, jumpers, skirts, pants, slacks, trousers, jeans, dungarees, jumpsuits, overalls, coveralls, flight suits, gym suits, jogging suits, sweat pants, thermal underwear, shorts, skorts, rompers, culottes, shortalls, shirts, sweaters, jerseys, blouses, tunics, sweatshirts, t-shirts, halter tops, tank tops, bodysuits, unitards, camisoles, chemises, undershirts, slips, foundation garments, bodyshapers, brassieres, bustiers, garter belts, briefs, boxer shorts, bloomers, underpants, panties, lingerie, loungewear, nightgowns, night shirts, negligees, robes, pajamas, hosiery, pantyhose, tights, knee highs, leg warmers, leggings, socks, head wear, hats, caps, hoods, head bands, neckwear, neckties, bow ties, ascots, pocket squares, scarves, shawls, neckerchiefs, gloves, mittens, belts, sashes, cummerbunds, shoes, footwear, boots, sandals, slippers, sneakers, athletic shoes, athletic footwear, galoshes, swimwear, bathing suits, bathing trunks, beachwear, beach coverups, sarongs, ski wear, ski suits, ski pants, ski gloves, ..." in International Class 25;⁴

SEVEN CANYONS

for "clothing for men, women and children, namely, shirts, sweatshirts and shorts, sweatbands, pants, t-shirts, golf shirts, sweaters, socks, shoes, jackets, hats, and visors" in International Class 25;⁵

**AQUA TEEN
HUNGER FORCE**

for "clothing for men, women and children - namely, shirts, t-shirts, sweatshirts, jogging suits, trousers, pants, shorts, tank tops, rainwear, ... skirts, blouses, dresses, suspenders, sweaters, jackets, coats, raincoats, snow suits, ties, robes, hats, caps, sun visors, belts, scarves, sleepwear, pajamas, lingerie, underwear, boots, shoes, sneakers, sandals, booties, slipper socks, swimwear ..." in Class 25;⁶

⁴ Registration No. 2667345 issued on December 24, 2002.

⁵ Registration No. 2780675 issued on November 4, 2003.

⁶ Registration No. 2870546 issued on August 3, 2004.

PHOTOFIGHTER

for "men's, women's and children's clothing, namely, t-shirts, shirts, pants, shorts, jackets, dresses, underwear, namely, boxer shorts, briefs, panties, and g-strings, swimwear, namely swimsuits, bikinis, trunks, swimsuit coverups, hats, socks, shoes" in International Class 25;⁷



for "men's, women's and children's clothing, namely, sweatshirts, sweatpants, shirts, jeans, jackets, coats, slacks, short pants, overalls, suits, hats, head and wristbands, dresses, skirts, rompers, blouses, scarves, gloves, socks, belts, neckties, undergarments, t-shirts, dress shirts, collared shirts, rugby shirts, polo shirts, knit shirts, and jerseys; sports caps namely baseball caps, knit caps, skull caps and visor caps; shoes, namely, sneakers, boots and sandals ..." in International Class 25;⁸



for "mens, womens and childrens clothing namely t-shirts, sweatshirts, shorts, pants, jackets, gloves, pajamas, swim suits, beach wear, wetsuits, skirts, dresses, tank tops, coats, sweaters, socks, belts, shoes, sandals, hats, caps, and visors" in International Class 25;⁹



for "men's, women's and children's clothing, namely, shirts, pants, shorts, skirts, vests, dresses, jackets, windshirts, T-shirts, shoes, socks, hats and coats" in International Class 25;¹⁰

⁷ Registration No. 2898297 issued on October 26, 2004.

⁸ Registration No. 2899536 issued on November 2, 2004.

⁹ Registration No. 2899708 issued on November 2, 2004.

¹⁰ Registration No. 2900678 issued on November 2, 2004.



EDUARDO BASSONI

for "men's and women's clothing, namely, swimwear, bathing suits, bikinis, cover-ups, tank tops, shirts, skirts, dresses, shorts, jumpers, capris, leggings, pajamas, robes, jerseys, socks, underwear, gloves, belts, ties, vests; headwear, namely, caps and visors; and footwear, namely, sandals, slippers, boots, and athletic shoes" in International Class 25;¹¹

for "clothing and clothing accessories for men, women and children, namely, coats, jackets, gloves, headwear, hats, caps, bonnets, earmuffs, stoles, scarves, capes, ponchos, mittens, handmuffs, vests, raincoats, overcoats, cardigans, blazers, pullovers, overalls, jumpers, sweaters, trousers, jeans, pants, shorts, dresses, suits, skirts, shirts, t-shirts, polos, gilets, blouses, foulards, shawls, ties, neckties, bow ties, swimwear, shoes, boots, clogs, sandals, slippers, sport coats, sport shirts, sweat pants, sweat shirts, sweat shorts, sweat suits, headbands, sweat bands, wrist bands, athletic uniforms, body suits, hoods, jerseys, jogging suits, jump suits, pantsuits, warmup suits, turtleneck sweaters, v-neck sweaters, underwear, lingerie, pajamas, socks, stockings, tights, leggings, and belts made out of fabric, fabric substitute, fur, imitation fur, leather, imitation leather, shearling, imitation shearling, wool or imitation wool" in International Class 25;¹²

ALL IN WEAR

for "mens, women and childrens clothing, namely, pants, shirts, jackets, sweaters, shoes, hats, socks, skirts, blouses, dresses, sweat suits, sweat pants, sweat shirts, shorts, underwear, bras, undergarments, hosiery, vests, swimwear, coats, pajamas, gloves, bandanas, and belts" in International Class 25;¹³

¹¹ Registration No. 2910899 issued on December 14, 2004.

¹² Registration No. 2910926 issued on December 14, 2004.

¹³ Registration No. 2911757 issued on December 14, 2004.

TASMANIAN DEVIL

for "clothing for men, women and children - namely, shirts, t-shirts, sweatshirts, jogging suits, trousers, pants, shorts, tank tops, rainwear, cloth baby bibs, skirts, blouses, dresses, suspenders, sweaters, jackets, coats, raincoats, snow suits, ties, robes, hats, caps, sunvisors, belts, scarves, sleepwear, pajamas, lingerie, underwear, boots, shoes, sneakers, sandals, booties, slipper socks, swimwear ... " in International Class 25;¹⁴

CEZANNE

for "clothing for men, women and children, namely, coats, raincoats, anoraks, parkas, blazers, jackets, cardigans, boleros, sport coats, wind resistant jackets, suits, tuxedos, vests, dresses, evening gowns, jumpers, skirts, pants, slacks, trousers, jeans, dungarees, jumpsuits, overalls, coveralls, flight suits, gym suits, jogging suits, sweat pants, thermal underwear, shorts, skorts, rompers, culottes, shortalls, shirts, sweaters, jerseys, blouses, tunics, sweatshirts, t-shirts, halter tops, tank tops, bodysuits, unitards, camisoles, chemises, undershirts, slips, foundation garments, bodyshapers, brassieres, bustiers, garter belts, briefs, boxer shorts, bloomers, underpants, panties, lingerie, loungewear, nightgowns, night shirts, negligees, robes, pajamas, hosiery, pantyhose, tights, knee highs, leg warmers, leggings, socks, head wear, hats, caps, hoods, head bands, neckties, bow ties, ascots, pocket squares, scarves, shawls, neckerchiefs, gloves, mittens, belts, sashes, cummerbunds, shoes, footwear, boots, athletic shoes, athletic footwear, galoshes, swimwear, bathing suits, bathing trunks, beachwear, beach coverups, sarongs ... " in International Class 25;¹⁵

¹⁴ Registration No. 2913170 issued on December 21, 2004.

¹⁵ Registration No. 2917223 issued under Section 2(f) of the Act on January 11, 2005.



for "clothing for men, women and children; namely, t-shirts, sportshirts, warm-up suits, sweatshirts, sweaters, polo shirts, shorts, tops, pants, jeans, jackets, skirts, dresses, jumpsuits, coats, sleepwear, underwear, lingerie, suits, socks, swimsuits, robes, shoes, belts" in International Class 25;¹⁶

AIMAGE

for "men's, women's and children's clothing and accessories, namely, dresses, suits, blouses, shirts, knit tops, slacks, ties, jackets, sweaters, trousers, pants, jeans, swimwear, shorts, jumpers, outerwear in the nature of blazers, coats, jackets, anoraks, raincoats, rain slickers, sport coats, and vests, and shoes, neckwear, socks, underwear, pajamas, robes, belts, hats, caps, gloves, scarves, skirts, polo shirts, and tuxedos; infants' and toddlers' clothing, namely, overalls, rompers, plastic baby bibs, cap and bootie sets, and boots and shoes; women's intimate apparel, namely, panties, bras, slips, hosiery, petticoats, bloomers, camisoles, bodysuits, nightgowns, pajamas, robes, bed jackets and lounge wear; women's wedding wear, namely, bridal gowns, head pieces, veils, shoes and related bridal accessories in the nature of gloves, and garter belts and fasteners sold as a unit" in International Class 25;¹⁷

TURNAROUND

for "clothing for men, women and children, namely pants, shorts, shirts, sweatshirts, t-shirts, skirts, dresses, sweaters, blouses, bathrobes, jackets, coats, gloves, mittens, scarves, ties, hats, caps, pajamas, socks, hosiery, underwear, boots, shoes, slippers, belts, swim suits, swim trunks and bandannas" in International Class 25; "retail store services featuring clothing, footwear and headwear" in International Class 35;¹⁸ and

¹⁶ Registration No. 2919145 issued on January 18, 2005.

¹⁷ Registration No. 2919899 issued on January 18, 2005.

¹⁸ Registration No. 2921477 issued on January 25, 2005.

MADE IN LOVE

for "men's and women's clothing and accessories, namely dresses, blouses, pants, skirts, jackets, coats, camisoles, vests, lingerie, slippers, bodices, scarves, and shoes" in International Class 25.¹⁹

As acknowledged by the Trademark Examining Attorney, third-party registrations are not evidence of commercial use of the marks shown therein, or if in use, that the public is familiar with them. Nevertheless, such registrations that individually cover a number of different items and that are based on use in commerce have some probative value to the extent they suggest that the listed goods emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, footnote 6 (TTAB 1988).

In further support of the refusal to register, the Trademark Examining Attorney has made of record copies of screenprints taken from Internet shopping websites (e.g., Nordstrom, Macy's, Banana Republic and J. Crew) showing that the same entity sells women's shoes as well as items of outerwear and clothing accessories. For example, the

¹⁹ Registration No. 2928286 issued on February 22, 2005.

J. Crew site that shows a pair of Cate casual wedge sandals adds, "WITH THIS STYLE, OUR EDITORS SUGGEST ..." followed by sales information for a matching sweater, pair of pants and a belt.



Accordingly, even if the items were sold in different fashion boutiques, specialty shops, or in different areas of large department stores, the record shows that shoes and items such as belts, sweaters and slacks are coordinated, and thus, may be purchased together in a single shopping excursion. That one might well purchase some of applicant's types of goods in order to coordinate them with registrant's types of footwear represents a relationship stronger than just posing, as does applicant, the relationship of any two random items that one might find within a large department store.

In fact, it is well settled that goods need not be identical or even competitive in order to support a finding of likelihood of confusion; it is sufficient that the goods be related in some manner or that the circumstances surrounding their marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. *See Monsanto*

Co. v. Enviro-Chem Corp., 199 USPQ 590, 596 (TTAB 1978); and *In re Peebles Inc.*, 23 USPQ2d 1795, 1796 (TTAB 1992).

Based on the record before us, we readily conclude that applicant's goods, a variety of clothing items, are clearly related to the cited registrant's "women's shoes," and this *du Pont* factor favors the position of the Trademark Examining Attorney that there is a likelihood of confusion herein.

Trade Channels and Conditions of Sales

Regarding the related *du Pont* factors focusing on the respective trade channels and classes of purchasers, the board must determine the issue of likelihood of confusion on the basis of the goods as identified in the application and the registration. See *Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Because there are no restrictions as to trade channels in either the application or the cited registration, we must consider that these respective goods could be offered and sold to the same classes of purchasers through all the normal channels of trade. See *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB

1994); and *In re Elbaum*, 211 USPQ 639 (TTAB 1981). As to the relevant classes of prospective consumers, we find that the purchasers of these respective goods overlap in that the purchasers of registrant's type of women's shoes would also be the purchasers for applicant's items of clothing. Therefore, the applicant's and registrant's respective goods could be offered and sold to the same classes of ordinary purchasers in the same stores.²⁰ Hence, these two related *du Pont* factors also support a finding of likelihood of confusion.

The Marks

We turn next to the *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. See *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). As shown above,

²⁰ Although applicant argues that "expensive clothing and shoes must be considered" (applicant's reply brief, at 4) in making our likelihood of confusion determination, we find, instead, that in the absence of any limitations as to the retail cost of products or the targeted audience(s), we must consider the least sophisticated purchasers who may be looking for inexpensive products, and hence, that such purchasers may exercise a lowered standard of care.

Baci
RUBATI

applicant's mark is BACI RUBATI in a stylized format. The mark in cited Registration No. 2581200 is **BACI** in standard character format. The mark in Registration No. 2581234 is BACI in a stylized format having a small heart design functioning as the dot on the terminal letter "I" and mimicking the heart-shaped look of the initial letter "B."

Baci 

While we must consider the similarity or dissimilarity of the marks when viewed in their entirety, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of the mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant's mark and registrant's special form mark both present the word "Baci" using a similar script for the letters A-C-I. Yet there are obvious differences in the appearance of these two marks if one subjects them to a side-by-side comparison. However, under actual market conditions, consumers generally do not have this luxury, and hence, the proper test in determining likelihood of

confusion is not whether the marks can be distinguished in a side-by-side comparison.

In this context, the Trademark Examining Attorney argues that whenever both words and a design comprise the mark, the words are normally accorded greater weight in making a determination as to likelihood of confusion. This is true because it is the literal portions of the marks that are likely to make an impression upon purchasers and would be remembered by them when calling for the goods or services in the marketplace. *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); and *Kabushiki Kaisha Hattori Tokeiten v. Scutto*, 228 USPQ 461, 462 (TTAB 1985). See also *Giant Food, Inc. v. Nation's Food Service, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983).

The only literal portion of the cited stylized mark and the entirety of the cited typed mark, is the word "Baci," a term that appears to be totally arbitrary as applied to women's shoes. The Trademark Examining Attorney contends that because "Baci" is the first word in applicant's mark, this is the portion that consumers are likely to remember and focus upon. In her opinion, the later appearance of the word "Rubati," albeit in larger-sized letters, does not eliminate the confusing similarity of these respective marks. However, particularly for those

consumers unable to translate the Italian word, "Rubati," we cannot agree with the Trademark Examining Attorney that the word "Baci" will appear to be more dominant than the larger word, Rubati, merely because of its prior placement within the composite. On the other hand, because of the inclusion of the initial word "Baci," which is the entirety of registrant's mark, the marks are quite similar in sound. Furthermore, for those who know Italian, the word "Rubati" will be viewed as simply modifying the first word, "Baci."

As to connotations, the Trademark Examining Attorney contends that the mere addition of the word "Rubati" is not sufficient to avoid a likelihood of confusion herein. Whether the kiss is a regular kiss ("baci") or a "stolen kiss" ("baci rubati"), either one is still a kiss. This commonality in meaning is especially important given the consuming public's fallibility of memory, as noted above. Applicant is reminded that the emphasis is on the likely recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks. *Spoons Restaurants, Inc. v. Morrison, Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd*. No. 92-1086 (Fed. Cir. June 5, 1992); and *In re Steury Corporation*, 189 USPQ 353 (TTAB 1975).

As to the commercial impressions of the respective marks, we find that registrant's marks and applicant's mark would all appear to represent some form of "Baci," or "Kiss" brand of clothing. None of the other identifiable components in either of the special form marks detracts from this impression. Rather, to the contrary, the heart imagery in registrant's second cited registration, for example, merely reinforces the "kiss(es)" impression. Hence, we find that these marks convey substantially the same commercial impression.

As to this critical *du Pont* factor, we agree with the Trademark Examining Attorney that it supports a likelihood of confusion.

The number and nature of similar marks in use on similar goods

Applicant has argued that inasmuch as the term "Baci" has been registered or approved for publication for related goods by several different entities, consumers are accustomed to distinguishing BACI marks based on other factors. *Information Resources, Inc. v. X*Press Information Services*, 6 USPQ2d 1034 (TTAB 1988); and *Plus Products v. Star-Kist Foods, Inc.*, 220 USPQ 541 (TTAB 1983). However, the two pending applications owned by

registrant were abandoned²¹ and the sole third-party registration entered into the record by applicant has expired.²² Consequently, on this record, it appears that the BACI mark is strong when used in connection with women's shoes.

Conclusion

In summary, we find that applicant's goods are related to registrant's goods under Section 2(d) of the Act; that applicant's and registrant's respective goods could be offered and sold to the same classes of ordinary purchasers in the same stores; that the marks are similar, especially as to sound, connotation and commercial impression; and that on this record, the term "Baci" is a strong source indicator when used in connection with women's shoes.

Decision: The refusal to register this mark under Section 2(d) of the Lanham Act is hereby affirmed.

²¹ Application Serial Nos. 78112615 and 78112616 were both filed on March 5, 2002 and both abandoned on August 12, 2004.

²² Registration No. 1788855 issued on August 17, 1993 for the mark BACI for children's jewelry, but was cancelled in 2004 when it was not renewed.