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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Thoroughbred Legends, LLC

Serial No. 78430194

Michael D. Hobbs, Jr. and Daniele E. Bourgeois of Troutman Sanders for Thoroughbred Legends, LLC.

Gina C. Hayes, Trademark Examining Attorney, Law Office 112 (Angela Bishop Wilson, Managing Attorney).

Before Hohein, Hairston and Walters, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Thoroughbred Legends, LLC has filed an application to register the standard character mark CITATION on the Principal Register for "clothing, namely, hats, caps, visors, aprons, shirts, t-shirts, jackets, vests, sweatshirts, sweatpants, pants, and shorts all sold in connection with the sport of thoroughbred horse racing," in International Class 25.¹

¹ Serial No. 78430194, filed June 4, 2004, based on an allegation of a bona fide intention to use the mark in commerce.

The examining attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark CITATION, previously registered for "jackets, sweaters, shirts and hats,"² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the examining attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

Our determination 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 likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the

² Registration No. 2890682 issued October 5, 2004, in International Class 25, to Cessna Aircraft Company, Inc. and is now owned by Textron Innovations Inc.

essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Applicant contends that "the goods identified by the respective marks are sold through entirely different and distinct trade channels and the connotation and commercial impression of the respective marks are completely different" (brief, p. 2). Applicant asserts that the registrant's mark is used primarily to identify a line of its Cessna airplanes and the identified clothing items are merely collateral products that are available only through registrant's online gift shop; and, referring to "real-world market conditions," that "applicant's goods will not be sold through registrant's online gift shop," but will be sold "through normal retail channels of trade and at venues and retail stores that cater to the sport of thoroughbred horse racing" (brief, p. 4). Applicant asserts that the connotations of the marks are different because in the context of applicant's goods, CITATION connotes the famous racehorse so named and, in the context of registrant's primary products, airplanes, CITATION will connote the airplane of that name. In support of its position, applicant submitted a list of results of its search of the Lexis/Nexis database showing

use of "Cessna Citation" as a reference to a model in registrant's fleet of airplanes; a list of results from an Internet search using the Google search engine, showing CITATION used to identify registrant's airplanes; excerpts from registrant's website showing use of CITATION to refer to registrant's airplanes, listing registrant's trademarks, including CITATION for "airplanes" and "collateral products (clothing items)," and noting that registrant's clothing items are available through its online gift shop.³

The examining attorney contends that the marks are identical; the connotations of the marks are the same; and that the connotations would be different, as argued by applicant, only if applicant's mark was superimposed upon an image of a thoroughbred racehorse and registrant's mark was superimposed upon an image of an airplane. The examining attorney notes that applicant's goods are identical to several of the goods listed in the registration and closely related to the other listed items; and that registrant's goods are not limited in any way and, thus, would encompass applicant's goods despite applicant's limitation to its identification of goods.

³ Applicant notes that its searches did not show any uses by registrant of the CITATION mark for clothing and that registrant's online gift shop is under construction, so products cannot be purchased therefrom. Applicant contends that registrant is not using its mark on clothing. This argument is essentially a collateral attack on the validity of the cited registration and is improper in the absence of a petition to cancel the registration. Therefore, this argument has been given no further consideration.

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. In this case we agree with the examining attorney that the marks are identical. Applicant's evidence that registrant also identifies airplanes with the CITATION mark and that there is a famous thoroughbred race horse named CITATION does not convince us that the connotations of the marks would necessarily be different.

Turning to consider the goods or services involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Applicants "hats," "jackets," and "shirts" are identical to the same items listed in the cited registration. Applicant's "caps" and "visors" are certainly

closely related to "hats." There is no need to discuss specifically the remaining goods, as they obviously are all closely related items of clothing, which likewise would be sold through the same channels of trade, for the same purpose and to the same classes of purchasers as the above noted articles of apparel. The clothing items listed in the cited registration clearly do not contain any limitations as to the class of purchasers, the use of the goods or the channels of trade. Therefore, as the examining attorney has noted, applicant's goods are not distinguished from registrant's goods by applicant's limitation to goods "sold in connection with the sport of thoroughbred horse racing."

Therefore, we conclude that in view of the identity of the marks, their contemporaneous use on the same and closely related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

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