

**THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB**

Mailed:
October 18, 2006
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jen USA Inc.

Serial No. 78457384

Myron Amer of Myron Amer, P.C. for Jen USA Inc.

Colleen Dombrow,¹ Trademark Examining Attorney, Law Office
101 (Ronald R. Sussman, Managing Attorney).

Before Seeherman, Bucher and Walsh, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark **PINK LADY** (*in standard character format*) for goods
identified in the application, as amended, as "backpacks
sold in specialty retail stores featuring luggage and
products for travel and transport convenience" in
International Class 18.²

This case is now before the Board on appeal from the
final refusal of the Trademark Examining Attorney to

¹ Ms. Dombrow was assigned this case immediately prior to the
filing of the Trademark Examining Attorney's appeal brief.

² Application Serial No. 78457384 was filed on July 27, 2004
based upon applicant's allegation of a *bona fide* intention to use
the mark in commerce.

register applicant's mark based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney asserts that applicant's mark, when used in connection with the identified goods, so resembles the mark **PINK LADY** (*in standard character format*), which is registered for "footwear, headwear and clothing, namely, athletic type T-shirts, sweatshirt[s], sweatpants, jogging suits, shorts, coats, jackets, wind resistant jackets, hats, caps, visors, underwear, socks, tank tops, sweat bands, golf shoes, wrist sweatbands, pants, belts, sweaters, shorts, and rain wear"³ in International Class 25, as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney submitted briefs. We affirm the refusal to register.

Despite identical marks herein, applicant argues that inasmuch as applicant's travel backpacks will be sold in specialty retail stores, while registrant's golf shoes will likely be marketed in a "specialty retail store featuring golf equipment and supplies" and registrant's "extensively enumerated clothing items are general merchandise and will

³ Registration No. 2622601 issued to GE Financial Assurance Holdings, Inc., on September 24, 2002, claiming first use anywhere and first use in commerce at least as early as December 30, 1998. As of May 24, 2004, this registration was assigned to Genworth Financial, Inc., according to the records in the Assignment Branch of the United States Patent and Trademark Office, at Reel 2936, Frame 0762.

be sold in ... a general merchandise store," there can be no likelihood of confusion.

By contrast, the Trademark Examining Attorney argues, based upon third-party registrations and excerpts of websites placed into the record, that these goods are closely related.

We turn first to the du Pont factor focusing on the similarity of the marks in their entirety. The Trademark Examining Attorney argues that applicant's mark is the same as the registered mark in appearance, sound, connotation and commercial impression. We agree with the Trademark Examining Attorney that the marks are identical, and applicant does not contend otherwise.

Accordingly, we turn to the relationship of the goods as described in the application and cited registration. As noted above, the marks are identical in every respect. With both registrant and applicant using the identical designation, "the relationship between the goods on which the parties use their marks need not be as great or as close as in the situation where the marks are not identical or strikingly similar." Amcor, Inc. v. Amcor Industries, Inc., 210 USPQ 70, 78 (TTAB 1981). See also In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) ["[E]ven when goods or services are not competitive or

intrinsically related, the use of identical marks can lead to an assumption that there is a common source."].

In order to support a holding of likelihood of confusion, it is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods 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). We agree with applicant that our analysis must focus on the way the identified goods are encountered in the marketplace by typical consumers and whether consumers will be confused as to the source of the products. See 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 23:58 (4th ed. 2004) [a tribunal must "attempt to recreate the conditions under which prospective purchasers make their choices" in order to arrive at a "realistic" evaluation of likelihood of confusion].

We certainly have no *per se* rule that travel bags are related to general clothing items or to golf shoes. However, the Trademark Examining Attorney has made of record third-party registrations which show that a number of third

parties have registered marks for both backpacks and items of clothing:

GASP

for *inter alia* "purses, tote bags and *backpacks*" in International Class 18; and "clothing, namely, knit tops and bottoms, woven tops and bottoms, *denim tops* and bottoms, pajamas, socks, *outerwear, namely denim jackets*, and footwear, namely shoes, for women and junior girls" in International Class 25;⁴

ALLYCO

for "*backpacks, fanny packs, all-purpose sport bags*" in International Class 18; and "*T-shirts, sweatshirts, sweaters, coats, caps, hats*" in International Class 25;⁵



for "leather goods, namely, handbags, traveling bags, wallets, purses, *backpacks, school bags and briefcases*" in International Class 18; and "clothing, namely, *jackets, coats, T-shirts, pants, underwear, raincoats, socks, belts and gloves; footwear and headwear, namely, caps and hats*" in International Class 25;⁶

LADJ

for "handbags, all purpose sports bags, *backpacks*" in International Class 18; and "polo shirts, *sweatshirts, t-shirts, pants, jeans, shorts* and jogging suits, and *footwear*" in International Class 25;⁷

NYDJ

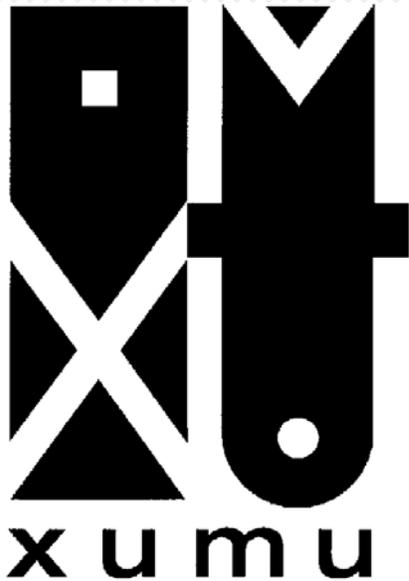
for "handbags, all purpose sports bags, *backpacks*" in International Class 18; and "polo shirts, *sweatshirts, t-shirts, pants, jeans, shorts* and

⁴ Registration No. 2748566.

⁵ Registration No. 2833039.

⁶ Registration No. 2779607.

⁷ Registration No. 2818363.



LIFE NATURE LOVE

jogging suits, and footwear" in International Class 25;⁸

for "handbags and *backpacks*" in International Class 18; and "T-shirts, pants, dresses, skirts, shirts, hats and belts" in International Class 25;⁹

for "purses, handbags, *backpacks*, fanny packs, tote bags, cosmetic cases sold empty, toiletry cases sold empty, coin purses and wallets" in International Class 18; and "clothing, namely *jackets, sweaters, vests, sweat shirts, sweat pants, shirts, blouses, t-shirts, pants, jeans, shorts, skirts, dresses, swim wear, cover-ups, head wear, and footwear*" in International Class 25;¹⁰

AQUA EAST

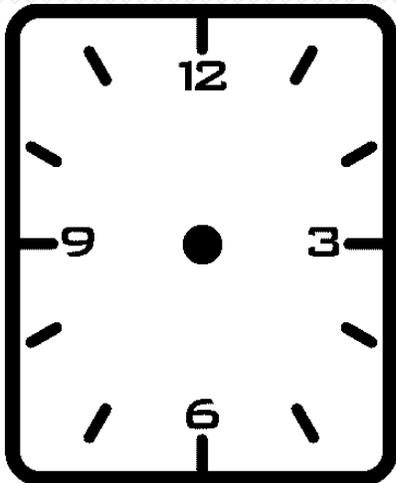
for *inter alia* "wallets, *backpacks*, and luggage" in International Class 18; and "clothing, namely, t-shirts, hats, sweatshirts, swim wear, shirts, shorts, *pants*, footwear, *wet suits, rash guards*" in International Class 25;¹¹

⁸ Registration No. 2841567.

⁹ Registration No. 2794568.

¹⁰ Registration No. 2856929.

¹¹ Registration No. 2836412.



SEPARATED FROM THE PACK

for "handbags, wallets, key cases, change purses, briefcases, and *backpacks*, all made of leather" in International Class 18; and "belts, *jackets*, boots and shoes, all made of leather" in International Class 25;¹²

for "backpack systems, namely, *backpacks* that feature interchangeable modular containers" in International Class 18; and "clothing, namely, *shirts*, shorts, pants, clothing belts, *hunting and fishing vests*, coats, *jackets*, parkas, rainwear, gloves, shoes, socks, hiking boots, hats, and sun visors" in International Class 25;¹³



for *inter alia* "articles made of leather or imitation leather, namely handbags, purses, clutch bags, shoulder bags, tote bags, *backpacks* and luggage of all types" in Int. Class 18; and "women's apparel, namely skirts, blouses, pants, trousers, slacks, *jackets*, coats, sweaters suits and dresses; footwear, namely loafers, espadrilles, sandals, thongs, mules, pumps; belts; scarves and hats" in International Class 25;¹⁴

KLIM AGGRESSIVE SLED WEAR

for "all-purpose sport bags, *backpacks*" in Int. Class 18; and "clothing, namely, parkas, *iackets*. pullovers. ski bibs.

¹² Registration No. 2842911.

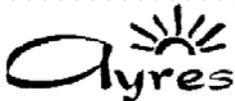
¹³ Registration No. 2893507.

¹⁴ Registration No. 2895136.

pants, vests, jerseys, T-shirts, sweatshirts, shirts, gloves, socks, headwear, footwear" in International Class 25;¹⁵

FREE CITY

for "purses, handbags, *backpacks*, fanny packs, tote bags, cosmetic cases sold empty, toiletry cases sold empty, coin purses and wallets" in International Class 18; and "clothing, namely *jackets, sweaters, vests, sweat shirts, sweat pants, shirts, blouses, t-shirts, pants, jeans, shorts, skirts, dresses, swimwear, cover-ups, headwear, and footwear*" in International Class 25;¹⁶

Flavia Ayres 

for "leather goods, namely, handbags, travel bags, trunks, leather *backpacks*, leather knapsacks, leather wallets, leather briefcases, leather duffel bags, and leather accessories associated with these products, namely, straps for handbags, travel bags, and luggage, luggage tags" in International Class 18; and "clothing made of leather, namely, belts, *jackets, shirts, shawls, ponchos, vests and pants*; headwear made of leather, namely, hats and caps; *footwear made of leather, namely, shoes, boots, and sandals, and leather slippers*" in International Class 25;¹⁷

MEGAMI BOOGIE

for "*backpacks*, wallets, purses, handbags, travel bags, book bags, athletic bags" in International Class 18; and "clothing, mainly *T-shirts, socks, heads, beanies, baseball caps, shoes, jeans, shorts, sweatshirts, shirts, dresses,*

¹⁵ Registration No. 2913404.

¹⁶ Registration No. 2925845.

¹⁷ Registration No. 2945790.

woven shirts, coats, sweaters, belts, pajamas" in International Class 25;¹⁸ and

ANALOG

for "duffel bags, tote bags, sport bags, backpacks, hand bags, and wallets" in International Class 18; and "coats, jackets, t-shirts, sweatshirts, hats, caps, skirts, footwear, socks, gloves, mittens, and pants" in International Class 25;¹⁹

These third-party registrations, which are based on use in commerce, and which individually cover a number of different items, provide support for the Trademark Examining Attorney's position that backpacks and a variety of clothing items are related because they show that these goods have been registered by the same source under the same mark. See In re Mucky Duck Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) [Although third-party registrations "are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may have some probative value to the extent that they may serve to suggest that such goods or services are the type which may emanate from a single source"]. See also In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1786 (TTAB 1993). Hence, we conclude that the goods are related, and the

¹⁸ Registration No. 2928272.

¹⁹ Registration No. 2968261.

du Pont factor of the similarity of the goods favors a finding of likelihood of confusion.

As to the du Pont factor focusing on the channels of trade, applicant argues that the channels of trade are different, in that applicant's travel backpacks will be sold only in specialty retail stores. However, even if these respective goods were to be sold in different stores, they could be encountered by the same prospective purchasers. In planning a hiking trip, for example, one might well purchase a backpack and a sweater, jacket or blouse during the same shopping excursion. Therefore, when consumers who are familiar with PINK LADY clothing products encounter PINK LADY backpacks in specialty outlets, they are likely mistakenly to believe there is an association in source between applicant's backpacks and the goods of the registrant.

In conclusion, we find that applicant has adopted an arbitrary mark identical to that of registrant, and that these respective goods are related in such a manner that consumers exposed to enumerated items of outerwear and then to backpacks being marketed simultaneously under this identical mark are likely to be confused as to source.

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