

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re LIFEstyle Uhren GmbH

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Serial No. 78590532

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Carl H. Pierce of Reed Smith LLP for LIFEstyle Uhren GmbH.

Shaila E. Settles, Trademark Examining Attorney, Law Office  
114 (K. Margaret Le, Managing Attorney).

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Before Zervas, Kuhlke and Bergsman, Administrative  
Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

LIFEstyle Uhren GmbH seeks registration on the  
Principal Register of the mark MO (in standard character  
form) for goods ultimately identified as "clothing, namely  
shirts, pants, hats, dresses, socks, beachwear, underwear,  
footwear, headwear, infantwear, loungewear, neckwear,  
rainwear, skiwear, sleepwear, swimwear, tenniswear, and  
jackets" in International Class 25.<sup>1</sup>

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<sup>1</sup> Application Serial No. 78590532, filed March 18, 2005, alleging  
a bona fide intention to use the mark in commerce under Section  
1(b) of the Trademark Act. 15 U.S.C. §1051(b).

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Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used with its identified goods, so resembles the registered mark MO'S (in typed form) for "clothing and headgear; namely sweaters, sweatshirts, jackets, shirts, aprons, caps, hats, and shorts" in International Class 25, as to be likely to cause confusion, mistake or deception.<sup>2</sup>

When the refusal was made final, applicant appealed and briefs have been filed. We affirm the refusal to register.

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. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie*

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<sup>2</sup> Registration No. 2587019, issued July 2, 2002.

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

We first consider the goods, the channels of trade and the class of purchasers. In making our determination, we must consider the cited registrant's and applicant's goods as they are described in the registration and application, and we cannot read limitations into those goods. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the cited registration describes goods broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration and application encompass all goods of the type described, that they move in all channels of trade normal for these goods, and that they are available to all classes of purchasers for the described goods. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

The identified goods of applicant and those of the cited registrant include identical items (e.g., shirts, hats, headwear and jackets), and otherwise related clothing items (e.g., pants, dresses, sweatshirts). Moreover, the fact that applicant's identification in International Class

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25 includes other goods does not obviate the relatedness of the identical goods. See, e.g., *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

Considering the channels of trade and class of purchasers, with regard, at least, to the identical goods, inasmuch as there are no limitations in either the registration or the subject application, we must presume that applicant's and registrant's goods will be sold in the same channels of trade and will be bought by the same classes of purchasers. See *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); and *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994).

Applicant has not presented argument as to these factors.

In view of the above, the du Pont factors of the similarity of the goods, the channels of trade and class of purchasers favor a finding of likelihood of confusion as to the mark in the cited registration.

With regard to the conditions of sale, these goods include general consumer items that would not be purchased with a great deal of care or require purchaser sophistication.

In arguing against the refusal, applicant primarily relies on its position that applicant's mark MO and registrant's mark MO'S are sufficiently dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression to avoid a likelihood of confusion.

Applicant argues that the marks "are visually distinct" and "sound different" because of the absence of the element 'S from applicant's mark. Applicant further argues that registrant's mark creates a different impression in that it is in the possessive form and "consumers would think of the entity whose product was associated with the MO'S mark." Br. p. 3.

We do not find this difference sufficient to distinguish the marks. We must determine whether the marks are sufficiently similar that there is a likelihood of confusion as to source and, in doing so, we must consider the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Applicant's mark MO is nearly identical to registrant's mark MO'S; the only difference being the possessive form in registrant's mark. As noted by the examining attorney, "it is highly likely that

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consumers will use both the possessive and singular forms of the dominant term 'MO'." Br. p. 6. See Hess's of Allentown, Inc. v. National Bellas Hess, Inc., 169 USPQ 673, 677 (TTAB 1971) ("no distinction for practical purposes can be made between a name and the possessive form thereof"; HESS and HESS'S would be recognized as the same designation for tacking purposes).

As to connotation, applicant argues that the "recollection of the average purchaser would be different for each mark due to ... the possessive connotation of the cited Registration and the various meanings available to the Applicant's mark," including "modus operandi, having more, cutting off or destroying." Br. p. 4. While it is possible that applicant's mark could be perceived as connoting something other than the nickname MO, there is nothing in the application or the record to exclude the shared connotation of the nickname. For example, there is nothing in the goods that would suggest a different meaning for the respective marks. See *In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1984) (CROSS-OVER for bras different connotation than CROSSOVER for sportswear).

Overall, we find that the marks have a very similar commercial impression and that the factor of the similarity of the marks weighs in favor of likelihood of confusion.

In addition, citing the sixth du Pont factor, "the number and nature of similar marks in use on similar goods," applicant argues that "significant third party usage of similar marks supports there is no likelihood of confusion." In support of this argument, applicant has submitted search results from the Trademark Applications and Registrations Retrieval (TARR) database for applications and registrations of marks which incorporate the term MO in International Class 25 and TARR print-outs of selected registrations.

It is well settled that registrations are not evidence of use and, thus, are not probative for purposes of analyzing the sixth du Pont factor. *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269-70 (CCPA 1973); *In re Comexa Ltd.*, 60 USPQ2d 1118 (TTAB 2001). Applications serve no evidentiary purpose other than to show that they were filed. *Glamorene Products Corp. v. Earl Grissmer Co., Inc.*, 203 USPQ 1090, 1092 n. 5. (TTAB 1979). However, registrations may serve to show, in the nature of a dictionary definition, how language is used. *Specialty Brands, Inc. v. Coffee Bean Distributors Inc.*, 748 F.2d 669, 675, 223 USPQ 1281, 1285-86 (Fed. Cir. 1984). Thus, third-party registrations may be relevant to show that a term is descriptive or suggestive such that the

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public will look to other elements to distinguish the marks. See *Textronix, Inc. v. Dacronics, Inc.*, 53 F.2d 915, 189 USPQ 693 (CCPA 1976).

Applicant highlighted six registrations for marks that contain "MO" and are registered for identical or related clothing items: MO'P, MADAME MO, Mo'tour, JO-MO, "MO" BETTA, and MO-SHEN. As noted by the examining attorney, the marks in the third-party registrations contain matter which distinguish the registered marks from the commercial impression engendered by the term "MO" as a stand alone mark. Even the mark MO'P does not serve to show that MO by itself has a particular meaning or suggestiveness such that consumers would not look to that element in the mark for source identifying purposes; "the 'MO'P' marks are distinguishable from applicant's mark because the addition of the letter 'P' creates a unique mark that goes beyond a mere change in grammatical form of the mark 'MO'." Br. p. 9. In view thereof, the third-party registrations do not diminish the source-identifying significance of registrant's mark, such that the public can easily distinguish the marks based on such a slight difference. Even if we were to find that the term has a particular meaning in the field, there is no meaningful difference to

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distinguish the marks, inasmuch as registrant's mark is merely the possessive form of applicant's mark.

In conclusion, we find that because the marks are similar, the goods are identical and otherwise related, and the channels of trade and purchasers overlap, confusion is likely between applicant's mark and the mark in the cited registration.

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