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**THIS DISPOSITION  
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Paper No. 20  
JQ

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Niblick Pty. Ltd.  
v.  
Kriton Golf Corporation

Opposition No. 110,763  
to application Serial No. 75/088,018  
filed on April 15, 1996

Richard W. Young, Liisa M. Thomas and Jared D. Solovay of  
Gardner, Carton & Douglas for Niblick Pty. Ltd.

Jay F. Moldovanyi<sup>1</sup> for Kriton Golf Corporation.

Before Seeherman, Quinn and Rogers, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Kriton Golf

<sup>1</sup> The Board, in an order dated December 13, 2000, denied applicant's attorney's request to withdraw as counsel of record in this proceeding. Mr. Moldovanyi had indicated that it was difficult to communicate with applicant and that applicant had not paid his legal bills for over one year. Mr. Moldovanyi further indicated that he gave notice to applicant of his withdrawal from employment on August 21, 2000, and that all papers and property pertaining to this proceeding had been delivered to applicant. A copy of this final decision is being mailed to applicant at its mailing address of record, as well as to applicant's attorney.

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Corporation to register the mark shown below

for "golfing accessories, namely golf club locks and golf bag locks."<sup>2</sup>

Registration has been opposed by Niblick Pty. Ltd. under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles opposer's previously used and registered mark NIBLICK for "sports clothing, namely shirts, jackets, pants, rainwear and caps, footwear; [and] golf shoes"<sup>3</sup> as to be likely to cause confusion.

Applicant, in its answer, denied the salient allegations of the notice of opposition, and set forth, as "affirmative defenses," amplifications of its denial of likelihood of confusion, including an allegation that opposer's mark is descriptive when applied to golf equipment.

The record consists of the pleadings; the file of the involved application; and a certified copy of opposer's pleaded registration introduced by way of opposer's notice of reliance. Applicant neither took testimony nor introduced any other evidence. When opposer failed to file

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<sup>2</sup> Application Serial No. 75/088,018, filed April 15, 1996, based on Canadian Registration No. 485,957, issued December 11, 1997. The term "Lock" is disclaimed apart from the mark.

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a brief, the Board issued an order, pursuant to Trademark Rule 2.128(a)(3), to show cause why the Board should not treat such failure as a concession of the case. Opposer responded by indicating its continued interest in the proceeding, and the order to show cause was discharged. The Board ruled, however, that opposer failed to show excusable neglect for the late filing of its brief on the case and, therefore, the Board stated that it would not consider the brief. Applicant did not file a brief. An oral hearing was not requested.

In view of opposer's ownership of a valid and subsisting registration, there is no issue with respect to opposer's priority. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Insofar as likelihood of confusion is concerned, our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In *re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). As indicated above, the only evidence

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<sup>3</sup> Registration No. 1,952,944, issued January 30, 1996.

introduced at trial consists of opposer's pleaded registration.

Our comparison of opposer's mark NIBLICK and applicant's mark NIBLOCK (stylized) begins with taking judicial notice of the dictionary definition of the term "niblick:" "an iron golf club with a wide deeply slanted face used for short shots out of sand or long grass or for shots where quick loft and little roll is desired." *Webster's Third New International Dictionary* (unabridged ed. 1993) In light of this meaning, opposer's mark is suggestive as used in connection with opposer's goods, and it is clear that applicant's mark is a play on this golf term. The marks suggest the same idea, both conjuring up images of the game of golf.<sup>4</sup> Further, the marks sound alike, differing only slightly in the sound of the short vowels which are the fifth letters in the marks. And, although the fifth letters of the marks are different and applicant's mark is stylized, these differences are insufficient to significantly distinguish the marks in terms of appearance. In comparing the marks, we have kept in mind the normal fallibility of human memory over time and the fact that consumers retain a general rather than a specific impression of trademarks encountered in the marketplace. We

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<sup>4</sup> Notwithstanding this suggestiveness, the record is devoid of any other third-party uses or registrations of the same or similar marks in the golf trade.

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conclude that the similarities in appearance, sound, connotation and overall commercial impression outweigh the differences between the marks.

With respect to the goods, we start with the premise that they need not be identical or even competitive to support a holding of likelihood of confusion. It is sufficient that the goods are so related or that conditions surrounding their marketing are such that they are encountered by the same persons who, because of the relatedness of the goods and the similarities between the marks, would believe mistakenly that the goods originate from or are in some way associated with the same producer. *Hercules Inc. v. National Starch and Chemical Corp.*, 223 USPQ 1244, 1247 (TTAB 1984).

The identification of goods in opposer's registration includes golf shoes. Further, the sports clothing items listed in opposer's registration are identified broadly enough to encompass golf shirts, pants, caps and rainwear. We find that opposer's golf shoes and clothing are related to golf accessories such as those listed in the involved application. It is obvious, based on a comparison of the goods as set forth in opposer's registration and applicant's application, that the parties' goods travel in the same channels of trade (i.e., golf equipment stores, golf pro

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shops and sporting goods stores), and are purchased by the same classes of purchasers (i.e., golfers).

To the extent that any of the dissent's points would cast doubt on our finding of likelihood of confusion, we resolve that doubt, as we must in favor of the prior registrant. *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 395 (Fed. Cir. 1983).

Decision: The opposition is sustained and registration to applicant is refused.

Seeherman, Administrative Trademark Judge, dissenting:

I respectfully dissent from the majority's view that opposer has sustained its burden in proving likelihood of confusion.

I do agree with the majority that opposer's identified golf shoes and clothing items (which we must, under well-settled principles, treat as including golf clothing) and applicant's golf club locks and golf bag locks would be sold to golfers in the same channels of trade. However, there are very real differences between the goods, namely, opposer's are clothing items while applicant's are hardware. Opposer has submitted no evidence whatsoever to show that the same companies manufacture both clothing and golf club and bag locks. Thus, there is nothing in this record that

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shows that golfers would expect golf shoes and clothing and golf club and bag locks to emanate from the same source.

Further, opposer's mark NIBLICK, which has the meaning of a type of golf club, is obviously a suggestive mark for golf clothing. As such, it is not entitled to a broad scope of protection. There is nothing in this record to show that opposer has promoted the mark, or has had any sales, or done anything which would entitle the mark's protection to extend to all items in the golfing field, including the hardware sold by applicant. Opposer has simply not shown that consumers are likely to believe that any mark similar to NIBLICK used for any items associated with playing golf identifies goods emanating from opposer.

Further, although applicant's mark is similar in pronunciation, its appearance is different from opposer's. In this respect, I disagree with the majority's view that the stylization of applicant's mark is insufficient to distinguish the marks. Applicant's mark is depicted with a space between NIB and LOCK, so that LOCK stands out as a separate word. Moreover, the interlocking "O" and "C" emphasizes the LOCK portion of the mark, not just visually but connotatively. Consumers viewing applicant's mark will certainly notice that it is a play on the word "niblick," but the overall connotation, because of the LOCK portion, and the goods on which the mark is used, is to suggest a

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lock for one's niblick (i.e., clubs). Opposer's mark, on the other hand, has only the connotation of a golf club, and suggests merely that its clothing items are for playing golf.

In an opposition the burden is on the opposer to prove likelihood of confusion. Here, opposer has chosen to rely only on its registration for NIBLICK, and has submitted no other evidence. Opposer has simply not shown that applicant's use of the stylized NIB LOCK mark for golf club locks and golf bag locks is likely to cause confusion. Given the differences in the goods and the marks, and the suggestiveness of opposer's mark, I would dismiss the opposition.