

THIS DISPOSITION IS  
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Mailed: June 22, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Anvil Knitwear, Inc.

v.

Success Ware Inc.

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Opposition No. 91117782  
and  
Cancellation No. 92030393

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Marie V. Driscoll of Fross Zelnick Lehrman & Zissu, P.C. for  
Anvil Knitwear, Inc.

Success Ware Inc., pro se.

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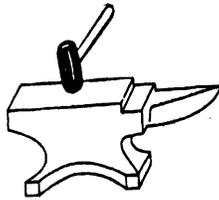
Before Seeherman, Chapman and Holtzman, Administrative Trademark  
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Success Ware Inc. ("Success  
Ware" or "defendant") to register the mark shown below on the  
Principal Register for the following goods (as amended):  
"clothing, namely t-shirts, sweat tops, and sweat pants."<sup>1</sup>

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<sup>1</sup> Application Serial No. 75494063 filed on June 1, 1998, alleging dates  
of first use and first use in commerce on August 22, 1996.



On March 13, 2000, opposer, Anvil Knitwear, Inc. ("Anvil Knitwear" or "plaintiff"), filed an opposition to registration of the above application. As grounds for opposition, plaintiff asserts that through its predecessor, plaintiff has used and registered the mark ANVIL and the design of an anvil for wearing apparel including sportswear; that plaintiff's marks are strong and represent a valuable business and goodwill; and that defendant's mark consisting of the design of an anvil for the goods identified in the application so resembles plaintiff's previously used and registered marks as to be likely to cause confusion, mistake or deception. Plaintiff has pleaded ownership of the following four registrations for the mark ANVIL in typed form: Registration No. 903069 for "men's, women's, boy's, girl's and children's shirts";<sup>2</sup> Registration No. 783710 for "men's and boy's shirts";<sup>3</sup> Registration No. 1659008 for "tank top shirts, sweat shirts and knitted dresses";<sup>4</sup> and Registration No. 2201382 for "caps."<sup>5</sup>

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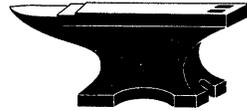
<sup>2</sup> Issued November 24, 1970.

<sup>3</sup> Issued January 19, 1965.

<sup>4</sup> Issued October 1, 1991.

<sup>5</sup> Issued November 3, 1998.

Plaintiff has also pleaded ownership of Registration No. 783711 for the mark shown below for "men's and boy's shirts."<sup>6</sup>



Success Ware, by its original and amended answers, denied the salient allegations in the opposition.

On March 24, 2000, Anvil Knitwear filed a petition to cancel Success Ware's Registration No. 2284417 for the mark shown below for "t-shirts, sweat pants, sweat shirts, sweat jackets, and sweatshorts."<sup>7</sup> The terms "WARE," "INC." and "SPORTSWEAR" have been disclaimed.



The petition to cancel is based on the same ground, the same pleaded registrations and the same essential allegations as the notice of opposition.

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<sup>6</sup> Issued January 19, 1965.

<sup>7</sup> Issued October 12, 1999.

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Success Ware filed an answer denying the allegations in the petition to cancel.

On November 16, 2000, the Board consolidated the opposition and cancellation proceedings.

The record in these consolidated cases includes the pleadings; the files of defendant's involved application and registration; plaintiff's testimony (with exhibits) of Mario F. Ortiz, a paralegal at the law firm of Fross Zelnick Lehrman & Zissu, P.C., and Anthony Corsano, Anvil Knitwear's vice president of sales and marketing; and defendant's notices of reliance on opposer's answers to certain interrogatories and on third-party registrations for marks containing or comprising the word "anvil" and/or the design of an anvil.<sup>8</sup> Defendant also submitted the testimony (with exhibits) of Reva Payne, defendant's president. The plaintiff has objected to this submission. Neither party attended the other's depositions.

Both parties have filed briefs.<sup>9</sup> An oral hearing was not requested.

Before proceeding to the merits of these cases, some preliminary matters require our attention.

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<sup>8</sup> It was unnecessary for defendant to file notices of reliance on a status and title copy of its own challenged registration and portions of the testimony deposition of Mr. Corsano since these materials were already of record.

<sup>9</sup> Defendant filed a "reply" brief that was properly stricken by the Board on December 3, 2002.

Plaintiff has pointed out that defendant's trial brief was late, having been filed nearly a month after the due date for the brief as last reset by the Board. Defendant provided no explanation for the delay. However, we note that this matter was raised solely as an informational statement in a footnote in plaintiff's reply brief, that plaintiff did not move to strike the brief, and moreover, that plaintiff has not indicated any prejudice as a result of the late brief. Under the circumstances, and because it benefits the Board to have the briefs of both parties of record, we will consider defendant's late brief.

In addition, during trial, plaintiff filed a motion to strike defendant's notice to take the deposition of Reva Payne. Because the motion did not come to the attention of Board until after the deposition was taken, the motion to strike was denied by the Board as moot. The Board otherwise deferred consideration of any objection to defendant's introduction of this deposition until final decision. We will address that objection now.

Plaintiff had objected to the notice on the ground that to the extent it was intended to be a notice to take a deposition on written questions, the notice did not set forth the name or descriptive title of the officer before whom the deposition was to be taken under Trademark Rule 2.124(c) and it did not provide the 20-day notice required by Trademark Rule 2.124(d) for plaintiff to serve cross-questions. The notice was served on

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March 28, 2001 for the deposition to be taken on April 11, 2001. Defendant, incorrectly believing that plaintiff was objecting to defendant's alleged failure to identify the officer status of the deponent, insisted that it had fully complied with that requirement. In an effort to correct the time-frame deficiency, defendant re-served the notice on April 6, 2001 and changed the date of the deposition to April 19, 2001. However, defendant incorrectly relied on Rule 31(4) of the Federal Rules of Civil Procedure rather than the Trademark Rules which govern these proceedings, and as a result, the re-served notice only allowed plaintiff 14 days to serve cross-questions. Nevertheless, defendant believed it had complied with or remedied all the procedural deficiencies in the notice, and proceeded with the deposition on the rescheduled date of April 19, 2001. Plaintiff did not serve cross-questions and filed its motion to strike the notice on April 17, 2001.

While we do not consider the manner in which the deposition was taken to be an adequate basis on which to strike the testimony, defendant's failure to provide plaintiff with the requisite notice for the deposition is a serious deficiency. Nevertheless, taking defendant's pro se status into consideration and its unfamiliarity with Board rules and procedures, we have decided to consider this testimony, over plaintiff's objection, and accord it whatever probative value it may have.

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We feel compelled to point out, however, that we are going to great lengths to accommodate defendant's pro se status with respect to these matters. While any party, including a corporate party, is entitled to represent itself in Board proceedings, (see Patent and Trademark Office Rule 10.14(e)), the Board in at least two prior rulings in this consolidated proceeding advised defendant corporation, through Ms. Payne, defendant's president, that in light of the technicalities of the procedural and substantive law involved in Board proceedings, it was recommended that defendant secure the services of an attorney who is familiar with such matters. Defendant was twice warned that compliance with the applicable rules and laws would be expected whether or not defendant is represented by counsel.

Nevertheless, defendant chose not to obtain counsel, and as a result, there are many procedural irregularities in this case that stem from defendant's unfamiliarity with proper procedures. Despite these irregularities, we have given defendant great leeway in defending these cases by allowing defendant's testimony that was taken on faulty notice and its brief which was submitted nearly a month late.<sup>10</sup>

We turn now to the merits of these cases.

Plaintiff, Anvil Knitwear, Inc., is a manufacturer of sportswear, principally shirts. Mr. Corsano (plaintiff's vice

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<sup>10</sup> Defendant's claim in its brief that its motion to reopen discovery and its motion to compel are still pending is incorrect. In fact,

president of sales and marketing) testified that plaintiff has used "the Anvil name and trademark" (Dep. p. 4) for at least the 21 years since he has been with the company and that t-shirts with an ANVIL neck label are typical of the kinds of products sold by the company over the years. Plaintiff services primarily the imprinted sportswear market, selling its shirts to screen printers, embroiderers, and distributors who in turn sell the imprinted products, with the original ANVIL label, to retail outlets such as tourist shops and sports stores, and at special events such as the Super Bowl and the Boston Marathon. Plaintiff also sells directly to major retail chains such as K-mart and Ames as well as to ad specialty and promotion houses that focus on promotions and giveaways for major corporations such as Coca-Cola and IBM.

According to Mr. Corsano, in the year 2000, plaintiff sold about 6 million "units" of t-shirts bearing the ANVIL mark with sales "for the last few years" in excess of 40 million units.<sup>11</sup> (Dep., p. 6.) Plaintiff advertises and sells its products primarily through yearly catalogues that are sent to plaintiff's customers "as well as part of [its] customers' customer base." (Dep., p. 9.) As many as 50,000 of the catalogues have been sent out in a given year. Once or twice a year, plaintiff mails out between 10,000 and 20,000 promotional samples (including pens,

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these matters have already been decided by the Board and they will not be considered further herein.

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mugs and key chains) with the "Anvil" name "and the logo" to 10,000 to 20,000 different users.<sup>12</sup> (Dep., p. 10.) In addition, plaintiff advertises its clothing in trade publications which are sent to those in the imprinted active wear business, embroiderers, screen printers, and retailers. These customers also advertise ANVIL apparel in advertisements and catalogues for their own products. Plaintiff also attends trade shows to target the promotional products business and has operated a website for the past three or four years allowing plaintiff's "customers and its customers' customer" (Dep., p. 18) to order products directly through the website. Mr. Corsano testified that a marketing study was conducted in 1999 to determine t-shirt brand recognition in the trade for its "Anvil brand" (Dep., p. 20). According to Mr. Corsano, the study shows that 52 percent had unaided brand awareness and 99 percent had "total awareness," which, Mr. Corsano stated, is an "extremely high number" from an industry standpoint. (Dep., p. 21.)

Defendant, Success Ware Inc., began its operations on May 6, 1996. Ms. Payne testified that defendant uses its "anvil" design on t-shirts, sweat pants, sweat shorts, sweatshirts, caps, mugs and stationery. During her own deposition, Ms. Payne introduced examples of these products bearing defendant's "anvil" design

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<sup>11</sup> The specific nature of a "unit" has not been explained but we will presume that a unit is a single shirt.

<sup>12</sup> Plaintiff's exhibits show that a number of different design logos of plaintiff, other than the "anvil" design logo, also appear on some of

accompanied by various words or phrases. Defendant did not provide any testimony or evidence regarding its date of first use of either of its marks and has relied on the June 1, 1998 filing date of its opposed application and the May 9, 1997 filing date of the application underlying its challenged registration.

PRIORITY

Mr. Corsano has testified that Anvil Knitwear is the owner (through a predecessor) of its pleaded registrations for the ANVIL word marks and the "anvil" design mark, and defendant has acknowledged in its trial brief that these registrations are of record.<sup>13</sup>

In an opposition, when a registration pleaded by opposer is properly of record, the issue of priority does not arise. See *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Anvil Knitwear's pleaded registrations are properly of record. Thus, for purposes of the opposition against defendant's application, Anvil Knitwear has priority as the prior registrant of the pleaded ANVIL word marks and the "anvil" design mark. Anvil Knitwear need not also prove

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plaintiff's shirts. It is not clear which logo Mr. Corsano is referring to here.

<sup>13</sup> Specifically, Ms. Payne stated, "Opposer/Petitioner has made of record status copies of its trademark Anvil and Anvil Design trademark Registrations for noting use of trademarks on various products." (Brief, p. 2.) During her deposition, Ms. Payne made reference to the introduction of these registrations.

that it is the prior user of these marks.<sup>14</sup> See King Candy Co., Inc. v. Eunice King's Kitchen, supra.

In a cancellation proceeding, the plaintiff must show that it was the first to use the mark or, if no evidence is presented by the defendant and the plaintiff owns a registration, that the plaintiff has the earliest filing date of the applications which matured into the registrations. See Brewski Beer Co. v. Brewski Brothers Inc., 47 USDPQ2d 1281 (TTAB 1998).

The filing date of the application underlying plaintiff's pleaded registration for the "anvil" design (Registration No. 783711) is April 4, 1964 and plaintiff has testified that the "anvil" name and mark have been used since at least as early as 1980.<sup>15</sup> Defendant could only defeat those dates with either an earlier filing date (i.e., the filing date of the application which matured into the subject registration)<sup>16</sup> or evidence of earlier use of its mark. Defendant's filing date is not earlier, and defendant has provided no evidence regarding its date of

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<sup>14</sup> Nevertheless, plaintiff has shown use of its ANVIL word marks prior to any date of first use on which defendant can rely, i.e., the June 1, 1998 filing date of its opposed application. However, plaintiff has not shown prior actual use of the "anvil" design. To the extent that plaintiff is alleging that the word "anvil" and the design of the anvil are equivalent marks for purposes of establishing priority of the "anvil" design mark, this argument is flawed. The fact that two marks may be confusingly similar does not necessarily mean that they are legal equivalents for purposes of priority. See Van Dyne-Crotty Inc. v. Wear-Guard Corp., 926 F.2d 1156, 17 USPQ2d 1866 (Fed. Cir. 1991).

<sup>15</sup> This date reflects Mr. Corsano's testimony that the mark has been used for at least the 21 years since he has been with plaintiff's company.

<sup>16</sup> The issue dates of the registrations are not relevant to priority.

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first use, and certainly no evidence of actual use preceding the dates shown by plaintiff.<sup>17</sup> Thus, plaintiff's priority in the cancellation proceeding has been established.

While admitting that plaintiff's "anvil" design mark (Registration No. 783711) "is the mark in issue with regards to the likelihood of confusion," defendant contends that "this is not the 'anvil design' mark submitted into evidence affixed to labels and attached to the products in question." (Brief pp. 7 and 9.) First, as explained above, if a plaintiff's pleaded registration is properly of record, as Registration No. 783711 is in this case, proof of earlier actual use on products is not required.

Furthermore, to the extent defendant is alleging that plaintiff has abandoned use (or has not shown continuous use) of the design mark in Registration No. 783711, defendant at no time filed or moved to file a counterclaim to assert this issue. An allegation of this nature constitutes an attack on the validity of the registration and cannot be considered in the absence of a

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<sup>17</sup> Mr. Corsano also testified as to plaintiff's ownership of two additional registrations one of which is Registration No. 2409194 for another "anvil" design for pants for women, men and children. This registration was not pleaded either in the notice of opposition or the petition to cancel nor were the pleadings amended to assert these registrations. Whether or not we consider this registration of record, and whether or not defendant has an earlier filing date than the underlying applications for this registration will not affect the priority determination in this case. Priority of use as to the "anvil" design has already been shown through Registration No. 783711, the registration that has been pleaded and made of record. Thus, defendant's argument that it has priority over plaintiff's subsequent registration of another "anvil" design is not relevant.

counterclaim to cancel the registration. See Trademark Rules 2.106(b)(2)(ii) and 2.114(b)(2)(ii). See also *The Gillette Company v. "42" Products Ltd., Inc.*, 158 USPQ 101 (CCPA 1968); and *Contour Chair-Lounge Co., Inc. v. The Englander Company*, 139 USPQ 285 (CCPA 1963). Accordingly, no consideration has been given to these arguments.

We turn then to the question of likelihood of confusion.

#### LIKELIHOOD OF CONFUSION

In our analysis we will direct our attention to the mark of plaintiff which can be considered closest to the challenged marks in the application and registration, that is, Registration No. 783711 for the "anvil" design mark.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

In plaintiff's registration for the "anvil" design, the goods are identified as "men's and boy's shirts."<sup>18</sup> The goods

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<sup>18</sup> The identification of goods in this registration originally also included "shorts, pants, coats, jackets, overalls, and dungarees." These goods were subsequently deleted from the registration.

identified in defendant's application are "clothing, namely t-shirts, sweat tops, and sweat pants." The goods identified in defendant's registration are "t-shirts, sweat pants, sweat shirts, sweat jackets, and sweatshorts."

Defendant maintains that the parties' respective goods are "different." However, the question is not whether purchasers can differentiate the goods, but rather whether purchasers are likely to confuse the source of the goods. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Thus, it is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from or are associated with the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

In fact, the goods in these cases are, in part, legally identical. Defendant's t-shirts are fully encompassed within plaintiff's broadly identified shirts, which the evidence shows includes t-shirts. Thus, the parties' goods are not only legally identical, but are identical in fact. The goods are otherwise closely related items of casual apparel. There is an obvious relationship between plaintiff's shirts, which would include casual shirts such as tank tops and t-shirts, on the one hand, and defendant's sweat pants and sweat shorts on the other.

Defendant attempts to distinguish the channels of trade for the respective goods, arguing that whereas plaintiff's primary customers are distributors, screen printers, embroiderers and retail chain stores (and not the general public), defendant allegedly sells its clothing at exhibitions, special community fairs and events apparently directed to the general public.<sup>19</sup> However, the question of likelihood of confusion is based on the goods as identified in the applications and registrations regardless of what the record may show as to the actual channels of trade for the goods. See *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983). There are no limitations as to channels of trade in either plaintiff's or defendant's identification of goods. Therefore, we must assume that their clothing is sold through all normal channels of trade for these goods, including all the usual retail outlets. In fact, plaintiff has testified that its imprinted shirts, still bearing the original neck label, are ultimately sold in the retail market.

There is also a presumption that the goods reach all the usual classes of purchasers and users. While men and boys are the specified users of plaintiff's shirts, defendant's clothing, as identified, is presumed to include clothing for men and boys.

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<sup>19</sup> This statement was made in defendant's brief. There was no testimony or other evidence as to the actual trade channels for defendant's goods.

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In any event, women would also be considered potential purchasers of men's and boy's shirts.

It is clear that these identical and closely related items of apparel, if offered under similar marks, would be likely to cause confusion.

Thus, we turn our attention to the marks, keeping in mind that when marks would appear on identical or closely related goods, as in this case, the degree of similarity between the marks necessary to support a finding of likely confusion declines. *Century 21 Real Estate v. Century Life*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

The mark in plaintiff's Registration No. 783711 and the mark in the subject application are both design marks and not capable of being spoken. Therefore, the determination of whether the marks are similar must be made solely on the basis of a visual comparison of the two marks. These marks are visually quite similar; both are undeniably anvils, and both anvils are similar in overall size, shape, position (both in profile, albeit facing opposite directions), and proportion. Although defendant insists that the two marks create different commercial impressions, the fact is that these "anvil" designs, when applied to the parties' identical and closely related goods, convey identical meanings and commercial impressions.

There are certain differences in the two marks as defendant points out. However, these differences for the most part involve

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minute details that would be lost on the average purchaser and, in any event, do not affect the overall commercial impression in any significant way. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison. See *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd. unpub'd.*, Appeal No. 92-1086 (Fed. Cir. June 5, 1992). Average purchasers are not infallible in their recollection of trademarks and often retain only a general overall impression of marks that they may previously have seen in the marketplace. See *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988). The differences in these anvil designs are not so significant that they are likely to be noted or remembered by purchasers when seeing these marks at different times on identical or closely related goods.

Nor is the appearance or commercial impression significantly changed by the addition of the hammer to defendant's mark, as this feature merely adds to the overall perception of the design as an anvil. Purchasers may even believe the version of the anvil design with the hammer is simply a slight modification of plaintiff's original design and assume both indicate origin in the same source. See, e.g., *In re Mucky Duck Mustard Co. Inc.*, *supra*.

Moreover, there is no persuasive evidence that the image of an anvil is anything but an arbitrary and unique mark for

clothing, and therefore it is entitled to a broad scope of protection.<sup>20</sup>

Defendant's third-party registrations for "anvil" or the design of an "anvil" do not convince us otherwise. The factor to be considered in determining likelihood of confusion under *du Pont* is the number and nature of similar marks "in use on similar goods." See *In re E.I. du Pont de Nemours & Co.*, supra. First, third-party registrations are not evidence that the marks shown therein are in use. *In re Albert Trostel & Sons Co.*, supra. Ms. Payne testified that "[t]hese are copies of companies who use the word 'anvil,'" (Dep., p. 12) and, referring to one third-party registration (No. 1379258 shown below), "I know of another company in the trade using an anvil design with regards to clothing" (Dep., p. 14). However, without any details regarding the extent of any such use, we cannot conclude that consumers have been exposed to the marks such that they would make distinctions among "anvil" design marks by looking to other elements in those marks. See *Smith Bros. Mfg. Co. v. Stone Mfg.*

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<sup>20</sup> To the extent, if any, plaintiff is asserting that its mark is "famous" under this *du Pont* factor, the evidence thereof is not particularly persuasive. Plaintiff's testimony as to its policing efforts is vague, and moreover it is not clear to which mark (the word "anvil" or the design of the anvil) or to which market (trade or retail) plaintiff's evidence of sales and advertising expenditures relate. In addition, the brand awareness study referred by plaintiff in its brief as indicating "consumer" recognition (Main Brief, p. 9 and Reply Brief, p. 1) was actually described by Mr. Corsano in his deposition as a trade awareness study ("Gives you an idea of what percentage of the trade recognized different brands." Dep., p. 21). Plaintiff introduced only a summary page from the study which did not identify the class of participants.

Co., 476 F.2d 1004, 177 USPQ 462 (CCPA 1973); and *In re The United States Shoe Corporation* 229 USPQ 707 (TTAB 1985).



Moreover, with one exception, the third-party registrations are not for similar goods. The one exception is Registration No. 1379258 (shown above) for men's and women's clothing.

Third-party registrations can have a bearing on the strength or weakness of a mark to the extent that they can be used to show that a particular mark or element of a mark has a suggestive or commonly understood meaning in a particular field. *Conde Nast Publications Inc. v. Miss Quality, Inc.*, 180 USPQ 149 (TTAB 1973), *aff'd.* 184 USPQ 422 (CCPA 1975). However, the existence of a single third-party registration incorporating an "anvil" design into several other elements forming a composite mark for clothing is simply not sufficient to show any significance or suggestive meaning of this design in the apparel field.

Furthermore, the "anvil" design itself is not even a particularly noticeable element of this mark apart from the overall composite that includes the superimposed image of a large horseshoe.

In any event, we certainly cannot find, based on this evidence, that the scope of protection accorded plaintiff's mark

should not extend to defendant's highly similar mark for identical and closely related goods.

We turn then to a comparison of defendant's registered mark with plaintiff's "anvil" design mark. While plaintiff's mark consists solely of the "anvil" design, the mark in defendant's registration is a composite consisting of an "anvil" design and the words "SUCCESS WARE INC." and "SPORTSWEAR," with the terms "WARE," "INC." and "SPORTSWEAR" disclaimed. Defendant contends that this mark is distinguishable from plaintiff's design mark in sound, appearance and meaning.

Again, the marks convey similar meanings and create similar commercial impressions when used with identical and closely related goods. The "anvil" design, which is plaintiff's entire arbitrary mark, is a significant component of defendant's composite mark and creates a strong visual impact apart from the wording.

There are obvious differences in sound and appearance in view of the presence of words in defendant's mark. However, these words are not sufficient to distinguish the marks. The generic word "SPORTSWEAR" has no significant effect on the commercial impression conveyed by defendant's mark. Moreover, the addition of defendant's corporate name, "SUCCESS WARE INC.," to plaintiff's similar trademark does not avoid a likelihood of confusion particularly where, as here, the shared element is unique and arbitrary. See *In re Emulex Corporation*, 6 USPQ2d

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1312 (TTAB 1987). In fact it has been held that the inclusion of a trade name along with the mark may actually aggravate likelihood of confusion rather than reduce it. See *In re Dennison Manufacturing Company*, 220 USPQ 1015 (TTAB 1983).

Finally, it is well settled that purchasers of casual, low cost ordinary consumer items are held to a lesser standard of purchasing care and are more likely to be confused as to the source of the goods. See *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984).

In view of the foregoing, we find that purchasers familiar with plaintiff's t-shirts sold under its "anvil" design mark would be likely to believe, upon encountering a mark that consists entirely of, or substantially of, a similar anvil design for the same and closely related goods, that the goods originated with or are associated with or sponsored by the same entity.

**Decision:** The opposition is sustained; and the petition to cancel is granted and Registration No. 2284417 will be cancelled in due course.