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Paper No. 11
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Loewe, S.A.
v.
Fierres, Inc.

Opposition No. 119,784
to application Serial No. 75/794,377
filed on September 8, 1999.

Marie Driscoll of Fross Zelnick Lehrman & Zissu, P.C., for
Loewe, S.A.

Juan-Carlos Fierres of Martinez Odell & Calabria for
Fierres, Inc.

Before Cissel, Hanak and Walters, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On September 6, 1999, Fierres, Inc., a Puerto Rican
corporation, filed the above-referenced application to
register the mark "RALPH LOEWE" on the Principal Register
for "clothing namely casual pants, shirts, jeans," in Class
25. The application was based on applicant's assertion that
it possessed a bona fide intention to use the mark in
commerce on or in connection with these products. The mark

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was passed to publication after applicant amended the application to state that the name shown in the mark, "Ralph Loewe," does not identify a particular living individual.

A timely Notice of Opposition was filed on August 2, 2000, by Loewe, S.A., a Spanish corporation located and doing business in Madrid, Spain. As grounds for opposition, opposer alleged that since as early as 1973, well before any date upon which applicant can rely, opposer has used the mark "LOEWE" as a trademark in the United States for clothing; that opposer owns incontestable United States Trademark Registration No. 1,276,262, registered on May 1, 1984, for the mark "LOEWE" and design for "clothing for men and women, namely, jackets, coats, vests, suits, shirts, blouses, pants, skirts, t-shirts, bathing suits, ties, scarves, pocket squares and belts"; that the mark applicant seeks to register is "strikingly similar in sound, appearance and commercial impression" to opposer's mark; that the goods set forth in the application are the same as or closely related to the goods with which opposer uses its registered mark; and that in view of these facts, confusion would be likely if applicant were to use the mark it seeks to register in connection with the goods listed in the opposed application.

Opposer's pleaded registered mark is shown below.



LOEWE

At applicant's request, the Board extended the time for applicant to answer the Notice of Opposition. Applicant timely filed an attempt to answer opposer's pleading, but applicant's response was insufficient, so the Board, on November 28, 2000, allowed applicant additional time in which to file a proper responsive pleading. Applicant did so on December 28, 2000, denying the essential allegations set forth in the Notice of Opposition.

A trial was conducted in accordance with the Trademark Rules of Practice. Only opposer, however, took testimony or introduced evidence. Opposer made of record its pleaded registration, applicant's responses to opposer's first set of interrogatories and requests for production, and the testimonial deposition, with exhibits, of Phillipe Soussand, opposer's president.

Only opposer filed a brief. An oral hearing before the Board was not requested.

The issues presented in this proceeding are priority and likelihood of confusion. Based on careful consideration

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of the record and opposer's brief, we hold that opposer has met its burden of establishing both that it has priority and that confusion would be likely if applicant were to use the mark it seeks to register on the goods set forth in the application.

The record establishes that opposer is a well-known fashion house which operates a network of over one hundred retail outlets all over the world, including in the United States, where for more than twenty years it has been marketing clothing, fragrances and fine leather goods under the "LOEWE" trademark. The line of products marketed under this mark includes a wide variety of products, ranging from garments costing thousands of dollars to shampoo which can be purchased for as little as twenty dollars. As noted above, opposer's valid, subsisting and incontestable trademark registration covers clothing for both men and women, including pants and shirts, which are the same products listed in the opposed application for registration. Opposer has generated large volumes of annual sales of its "LOEWE" brand products by means of extensive promotional efforts. The record shows that opposer's "LOEWE" mark and its registered mark combining this name with the design are well known in this country and throughout the world, and that opposer's products bearing the "LOEWE" mark are highly regarded for their quality and style.

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As noted above, the opposed application is based on applicant's assertion that it intends to use the mark "RALPH LOEWE" in connection with casual pants, shirts and jeans. Applicant has not claimed use of the mark it seeks to register, so the earliest data which applicant can claim for priority is the date its application was filed, August 2, 2000. *Zirco Corp. v. American Telephone and Telegraph Co.*, 21 USPQ2d 1542 (TTAB 1991). This is more than two decades after opposer began using its "LOEWE" mark on the same or closely related products. Opposer's priority is clear.

The only remaining question, then, is whether confusion would be likely if applicant were to use its mark in connection with the goods set forth in the application.

In the case of *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), the predecessor to our primary reviewing court set out the factors to be considered in determining whether confusion is likely. Chief among these factors are the similarity of the marks as to appearance, pronunciation, meaning and commercial impression, and the similarity of the goods as set forth in the application and the registration, respectively.

As noted above, the goods in the application are encompassed within the goods specified in opposer's pleaded registration, and the testimony establishes that the goods

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overlap. The trade channels through which they move and the customers who purchase them are the same.

Accordingly, this case boils down to whether the mark applicant seeks to register, "RALPH LOEWE," so resembles opposer's mark "LOEWE" and its registered mark, "LOEWE" and design, that if applicant were to use its mark in connection with the goods set forth in the application, confusion would be likely. This is clearly the case. Confusion would be likely because applicant's proposed mark is quite similar to opposer's marks.

It is well settled that in determining whether confusion is likely, we must consider the marks in their entireties, but that under appropriate circumstances, one portion of a mark may play a more dominant role in creating the commercial impression of the mark as a whole. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Applying this principle to the case at hand, we find that the surname "LOEWE," which is the mark that opposer has used for decades, is the dominant component of both the mark applicant seeks to register, "RALPH LOEWE," and the registered mark pleaded by opposer. These marks all create similar commercial impressions in connection with the identical items of apparel this case presents because they would all be understood to be references to the same

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designer, "Loewe," who would appear to be using his full name in some instances and only his surname in others.

Because the mark applicant seeks to register is similar to both opposer's registered mark and it's other pleaded trademark and the goods with which applicant intends to use its mark are in part identical to those with which opposer has used and registered its marks, confusion would be likely.

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