

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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Pacific Sunwear of California, Inc.  
v.  
Leon P. Hart

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Opposition Nos. 91153356 and 91156593

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Matthew D. Murphey and Eric M. Jaegers of Gordon & Rees,  
L.L.P. for Pacific Sunwear of California, Inc.

Leon P. Hart, appearing pro se.

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Before Quinn, Hairston, and Walsh, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Leon P. Hart (applicant) has filed applications to  
register the marks IT'S BULL SHIRT and design, as shown  
below,



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for "clothing and athletic wear, namely, shirts, shorts, pants and hats;"<sup>1</sup> and IT'S BULL SHORTS (in standard character form) for "clothing, namely, pants, shorts, shirts, and hats."<sup>2</sup>

Pacific Sunwear of California, Inc. (opposer) opposed registration in each instance. As grounds for opposition, opposer alleges, pursuant to Section 2(d) of the Trademark Act, that applicant's marks, if used in connection with applicant's goods, so resemble opposer's previously used and registered mark BULLHEAD for a wide variety of men's and women's clothing;<sup>3</sup> and perfume, cologne and scented body spray,<sup>4</sup> as to be likely to cause confusion.

Applicant, in his answers, denied the salient allegations in the notices of opposition.

The record consists of the files of the involved applications; the testimony deposition, with exhibits, of opposer's president and chief merchandising officer, Timothy Harmon; and opposer's notice of reliance on the discovery deposition, with exhibits, of applicant Leon Hart. Applicant did not take any testimony or submit any other evidence in his behalf. Only opposer filed a brief.

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<sup>1</sup> Application Serial No. 76288973, filed July 23, 2001, and asserting a bona fide intention to use the mark in commerce.

<sup>2</sup> Application Serial No. 76448053, filed September 9, 2002, and asserting a bona fide intention to use the mark in commerce.

<sup>3</sup> Registration No. 1833388.

<sup>4</sup> Registration No. 2194135.

The oppositions were consolidated by the Board in an order dated April 6, 2005.

Priority and Standing

Opposer introduced plain copies of its pleaded registrations during the testimony of its president, Mr. Harmon. Although Mr. Harmon testified with respect to certain aspects of the registrations, he did not testify as to the current status and title of the registrations. Thus, for purposes of priority, opposer may not rely on its pleaded registrations, but rather must rely on its common law rights in the mark BULLHEAD. In this regard, Mr. Harmon testified that opposer's first retail sales of BULLHEAD products occurred in February 1993 in connection with jeans, T-shirts, and boxers, and that opposer has continuously used the mark on clothing items since that date. This is sufficient to establish opposer's use of the mark BULLHEAD since prior to the filing date of applicant's application, the earliest date on which applicant is entitled to rely for purposes of priority in the absence of any evidence of use. Further, we find that opposer, by virtue of its common law rights arising from use of the mark BULLHEAD on clothing items, has established its standing to challenge the involved applications. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

Likelihood of Confusion

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). The du Pont factors deemed pertinent to this proceeding are discussed below.

The first factor we consider is the relatedness of the parties' goods. We observe that the shirts, shorts, and pants in applicant's applications are legally identical and otherwise closely related to opposer's jeans, T-shirts, and boxers. This factor weighs in opposer's favor.

With respect to the factors of trade channels and classes of purchasers, the record shows that opposer's products are sold in its "PacSun" retail and outlet clothing stores primarily to teenagers. In the absence of any limitations in the applicant's identifications of goods, we must presume that applicant's goods will move through all reasonable channels of trade for such goods to all usual classes of consumers for such goods. Octocom Systems Inc.

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v. Houston Computer Services Inc., 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990). Thus, it must be presumed that the applicant's goods will be sold by retail and outlet clothing stores, including opposer's "PacSun" stores, to ordinary consumers, including teenagers. The factors of similar trade channels and classes of purchasers also weigh in favor of opposer.

The next du Pont factor is fame, because fame of the prior mark, if it exists, plays a dominant role in likelihood of confusion cases. *Recot, Inc. v. M. C. Becton*, 214 F.3d 1322, 54 USPQ 1894 (Fed. Cir. 2000). Opposer argues that its BULLHEAD mark is a famous mark entitled to a broad scope of protection. However, we find that the evidence falls short of establishing the fame of opposer's mark. Opposer offered its sales figures for BULLHEAD clothing for the years 2003 and 2004 (63 million and 66 million dollars, respectively), and its total advertising figures for the period between 2002-2004 (approximately 1 million dollars). While the sales figures, in particular, indicate that opposer has enjoyed some success, the sales and advertising figures are not extraordinarily large. Moreover, while opposer's president, Mr. Harmon, testified that among the clothing brands sold at opposer's "PacSun" stores, BULLHEAD ranks 6<sup>th</sup> or 7<sup>th</sup>, he never testified as to the ranking of BULLHEAD among all clothing brands marketed

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to teenagers. We cannot conclude on this scant record that the BULLHEAD mark is famous. Compare: *Bose Corp. v. QSC Audio Products, Inc.*, 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002); and *Kenner Parker Toys v. Rose Art Industries*, 963 F.2d 350, 2 USPQ2d 1453 (Fed. Cir. 1992). Thus, the factor of fame is neutral.

The next du Pont factor we consider is the similarity or dissimilarity of the marks when compared in their entirety in terms of appearance, sound, connotation and commercial impression. The test under this factor is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, while marks must be considered in their entirety, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. In *re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Finally, in cases such as this,

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where the applicant's goods are identical in part to opposer's goods, the degree of similarity between the marks which is necessary to support a finding of likelihood of confusion is less than it would be if the goods were not identical. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Applying these principles in the present case, we find that when considered in their entirety, each of applicant's marks IT'S BULL SHIRT and design and IT'S BULL SHORTS is more dissimilar than similar to opposer's mark BULLHEAD in appearance, sound, connotation and commercial impression. The only common element of the parties' marks is the word "BULL." Each of applicant's marks, which consists of/includes a phrase, looks different and sounds different from opposer's single word mark. Moreover, the connotations of each of applicant's marks is different from opposer's mark. Each of applicant's marks suggests a slang phrase and a particular clothing item. Opposer's mark, on the other hand, suggests a bull's head. While one of applicant's marks includes the image of a bull's head, it is well settled that when a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. In *re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). Thus, in this

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case, it is the word portion of applicant's mark IT'S BULL SHIRT and design that is the dominant portion of this mark. In addition, the image of the bull's head in this mark serves to reinforce the word BULL, rather than connoting a bull's head. In short, the respective marks project different meanings and commercial impressions. See, e.g., *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) [The mark PLAYERS for men's underwear versus the mark PLAYERS for shoes were found to project different meanings as applied to the respective goods].

In view of the foregoing, we find that the appearance, sound, connotation and commercial impression of each of applicant's marks is dissimilar from opposer's mark. We conclude therefore that, notwithstanding the parties' identical and closely related goods, and the identical trade channels and purchasers, each of applicant's marks is so dissimilar from opposer's mark that purchasers are unlikely to be confused.

**Decision:** The oppositions are dismissed.