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Mailed: May 7, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Lane Bryant Purchasing Corp.
v.
Denise Reed

Opposition No. 91173467
to application Serial No. 78780714
filed on December 26, 2005

Roberta Jacobs-Meadway of Ballard Spahr Andrews and
Ingersoll, LLP for Lane Bryant Purchasing Corp.

Denise Reed, pro se.

Before Rogers, Kuhlke, and Wellington,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Applicant, Denise Reed, seeks registration of the
following mark (in standard character form):

"L.B. Soc"
...for locs, braids & more.

for "headgear, namely, scarves" in International Class 25.¹

¹ Serial No. 78780714, filed December 26, 2005, alleging a date of first use on January 10, 2002 under Trademark Act Section 1(a), 15 U.S.C. §1051(a).

Opposer, Lane Bryant Purchasing Corp., has opposed registration of applicant's mark on the ground that the mark so resembles opposer's previously used and registered mark LB for a variety of clothing and accessories, including "scarves,"² that when applied to applicant's goods, "confusion of the relevant public and trade is likely to result, which will damage and injure opposer." Opposer also pleaded ownership of other marks that contain, in part, the letters LB, and use of such marks in connection with "women's wearing apparel and accessories," but did not specifically identify any of these marks in the complaint.

Applicant filed an answer wherein she denied a majority of the allegations, but also made several admissions. Of importance, applicant states that she "does not contest" that opposer is the owner of its pleaded registration and said registration is "valid and subsisting, incontestable and renewed" (Answer, para. 6); that "opposer has long prior use in commerce of the mark LB for its women's wearing apparel and accessories" (Answer, para. 4); and that opposer's "use of the LB marks [has been] continuous and commercially significant" (Answer, para. 5).

² Registration No. 1211680 (issued on October 5, 1982) for "women's, nurses', and children's clothes and accessories-namely, suits, dresses, shirt waists and skirts for outer and underwear; sweaters, hats, hosiery, belts, neckties, scarves, shawls, fur collars, fur muffs, gloves, corsets, and brassieres"; an assignment to opposer was recorded with the USPTO on June 21, 2005 (at reel 3108/frame 0480).

Only opposer presented evidence at trial and filed a trial brief. While there is no indication that applicant actively defended her application, other than by filing an answer, we are cognizant of the burden that remains with opposer, namely, establishing its pleaded case (in this case, its standing and Section 2(d) ground of opposition) by a preponderance of the evidence. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1848 (Fed. Cir. 2000).

By operation of the rules, the evidence of record in this case consists of the file of applicant's involved application and the pleadings. In addition, opposer has submitted copies of the trial depositions, with exhibits, for the following witnesses: Scott Glaser, vice president of finance for Lane Bryant (a related company of opposer); John Metzger, a senior legal assistant with Ballard Spahr Andrews and Ingersoll, LLP (counsel for opposer); and Kathleen Quickert, director of business management in marketing for Lane Bryant. And, under notices of reliance, opposer submitted the following: a recently-issued, certified status and title copy of opposer's pleaded registration; copies of applicant's responses to opposer's interrogatories Nos. 6, 10-12, 15, 18; TARR database copies of five (5) third-party registrations for marks covering both headwear and other articles of women's apparel; TARR database copies of eight (8) third-party registrations for

marks covering both retail store services for clothes and for scarves and similar goods; copies of twenty-two (22) articles or published matter involving the Lane Bryant name and mark from newspapers, periodicals and journals; copies of seventeen (17) articles or published matter from newspapers, periodicals and journals that purportedly establish that "the Lane Bryant name and mark are well known among women of color."

Because opposer's pleaded registration is of record, we find that opposer has established its standing to oppose registration of applicant's mark. *See Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *see also Cunningham*, 222 F.3d 943, *supra*.

In addition, Section 2(d) priority is not an issue in this case as to the mark and goods covered by said registration because the pleaded registration is of record. *See King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our likelihood of confusion determination under Section 2(d) 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 and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of

differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Although opposer pleaded ownership of marks containing, in part, the letters "LB" for various items of women's apparel and for retail store services, we have focused our likelihood of confusion analysis solely on the mark and goods which are the subject of opposer's pleaded registration.

We turn first to the second *du Pont* factor regarding the similarity of the parties' goods. Here, applicant's identified goods are "headgear, namely, scarves" and the goods in opposer's registration include "scarves." Thus, the respective marks are used for identical goods. Furthermore, several other goods identified in opposer's pleaded registration, e.g., hats, neckties, shawls, fur collars, fur muffs, are also closely related to applicant's headscarves.

Applicant's identification of goods is unrestricted as to the trade channels and classes of purchasers. The identification of goods in opposer's pleaded registration is somewhat narrowed inasmuch as they are prefaced with "women's, nurses' and children's clothes and accessories, namely...." And, we must make our findings based on the goods

as they are recited in the application and registration, respectively. See *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992); *In re Elbaum*, 211 USPQ 639 (TTAB 1981). We must also presume that the parties' goods are marketed in all of the normal trade channels for such goods, and that the goods are bought by the usual classes of purchasers. Accordingly, given that the parties' goods are, in part, identical and headscarves are worn primarily by women, it is presumed that they move in the same trade channels to the same classes of purchasers. In other words, both applicant's and opposer's scarves will be sold primarily to women through the usual trade channels, e.g., retail clothing stores, department stores, through internet or catalog sales, or any other means by which scarves may be sold.

Lastly, because scarves are relatively inexpensive articles of clothing, they may be purchased with less attention or on impulse.

Therefore, the *du Pont* factors of the trade channels, as well as the conditions under which and buyers to whom sales are made, weigh in favor of a finding of likelihood of confusion.

We now turn our attention to the *du Pont* factor involving the similarity of the parties' marks. In doing

so, we initially note that when the respective marks are used in connection with identical goods, as they are here with respect to scarves, "the degree of similarity [between the marks] necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Under this *du Pont* factor, we look to the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. The test 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 their overall commercial impressions that confusion as to the source of the goods/ services offered under the respective marks is likely to result. The focus is on the perception and recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. See *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). In articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a

consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For example, merely descriptive matter may be accorded subordinate status relative to the more distinctive portions of a mark. *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997).

We find that the dominant feature of applicant's mark is the phrase "L.B. Soc" (quotation marks used in applicant's mark). As the initial phrase in the mark, "L.B. Soc" is the part that is most likely to be impressed upon the mind of a purchaser and will be remembered and used when calling for the goods. *See Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). The quotation marks enclosing this phrase also provide added emphasis or highlight this portion. As to the latter phrase "...for locs, braids & more" (quotation marks not forming part of the mark), it appears a line below and will be perceived as merely describing some of the intended uses of applicant's scarves, i.e., that they are suitable for particular hairstyles.

Opposer goes further and argues that "Soc" is a "generic term which does not add to distinguish [applicant's] mark." Brief, p. 9. In support of this contention, opposer relies on applicant's response to Interrogatory No. 18 wherein she states that "the slang

spelling 'Soc' is the accepted African-American vernacular (sic) used to identify ethnic use hair grooming coverings." While this statement alone, albeit made by applicant herself, is insufficient for us to conclude that the term "Soc" is generic for head scarves, this evidence is sufficient to support a finding that the term SOC is at least perceived by applicant as suggestive of the goods, may also be so perceived by consumers, and has less source indicating significance than the letters "L.B."

In sum, we find that the dominant feature of applicant's mark is the phrase "L.B. Soc", and that this phrase is highly similar to opposer's mark, LB, in sound, appearance, connotation and overall commercial impression. Even upon considering the marks as a whole, as we must, we find the similarity between the marks which results from the presence of the letters L.B. or LB outweighs any possible distinguishing features.

Accordingly, as to similarity of the marks, this *du Pont* factor favors opposer.

Balancing all of the *du Pont* factors for which there is evidence of record, we find that a likelihood of confusion exists.

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