

**THIS OPINION IS  
NOT A PRECEDENT  
OF THE TTAB**

*Decision Mailed:  
March 11, 2008  
GDH/gdh*

UNITED STATES PATENT AND TRADEMARK OFFICE

\_\_\_\_\_  
Trademark Trial and Appeal Board

Troy Ladd  
v.  
Dexter Gordon

\_\_\_\_\_  
Opposition No. 91173879 to application Serial No. 78807659  
filed on February 6, 2006

\_\_\_\_\_  
Davida M. Frieman, Esq. for Troy Ladd.

Dexter Gordon, *pro se*.

\_\_\_\_\_  
Before Sams, Hohein and Rogers, Administrative Trademark Judges.  
Opinion by Hohein, Administrative Trademark Judge:

Dexter Gordon has filed an application to register the mark "RESPECT TRADITION" in standard character form on the Principal Register for "men's, women's and children's wearing apparel, namely, shirts, pants, jackets, sweaters, jerseys, caps, socks, underwear, knits[,] namely knit skirts, jackets and pants, fleeces[,] namely vests and jackets, shorts, sportswear[,] namely sweat shirts, running shorts, sweat pants and sports bras, outerwear[,] namely coats, ponchos and shawls, sleep wear, shoes and sneakers" in International Class 25.<sup>1</sup>

<sup>1</sup> Ser. No. 76228781, filed on February 6, 2006, which is based on an allegation of a bona fide intention to use the mark in commerce.

Troy Ladd has opposed registration on the ground that opposer, "prior to [the] filing date of ... application Serial No. 78807659, has adopted and continuously used in interstate commerce the ... mark RESPECT TRADITION for ... men's, women's, [and] children's wearing apparel, namely, shirts, pants, jackets, sweaters, jerseys, cap's [sic], socks, underwear, knits, namely knit skirts, jackets, [and] pants, fleeces, namely, vests and jackets, shorts, sportswear, namely, sweatshirts, running shorts, sweatpants and sports bras, outerwear[, namely] coats, poncho's [sic] and shawls, sleepwear, shoes and sneakers"; that opposer's "products bearing the RESPECT TRADITION ... mark have been extensively and continuously offered to the public through various channels of trade"; that opposer "has also extensively and continuously advertised its goods ... under said ... mark throughout the United States"; and that applicant's mark "so resembles Opposer's mark, RESPECT TRADITION, as to be likely, when applied to the goods ... set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act."

Applicant, by his amended answer,<sup>2</sup> has admitted that contemporaneous use of his mark in connection with his goods is

---

<sup>2</sup> Applicant's filing of his amended answer on December 19, 2006 is considered to be of right under Fed. R. Civ. P. 15(a), which to the extent made applicable by Trademark Rule 2.116(a), provides in relevant part that an answer to an opposition may be amended "within 20 days after serving" the original answer. While it is noted that the amended answer, like the original answer which was received on November 30, 2006, is not accompanied by proof of service of a copy thereof upon counsel for opposer as required by Trademark Rules 2.119(a) and (b), a copy of the amended answer is forwarded herewith to opposer's attorney to expedite the disposition of this proceeding.

likely to cause confusion, mistake or deception with opposer's mark for opposer's goods, but has otherwise denied the salient allegations of the opposition.<sup>3</sup>

The record consists solely of the pleadings, the file of the involved application and, as opposer's case-in-chief, a notice of reliance on opposer's requests for admissions, which stand admitted in view of applicant's failure to respond thereto.<sup>4</sup> Only opposer has filed a brief on the case.

Among other things, by applicant's failure to respond, the matters in the following requests for admission by opposer are "conclusively established" under Fed. R. Civ. P. 36(b):

Request No. 2 -- "Applicant ... has never used Applicant's alleged mark in commerce prior to filing for the registration of Applicant[']s alleged mark";

Request No. 3 -- "Applicant is aware that prior to filing date of the subject application Serial No. 78807659, Opposer had adopted and continuously used in interstate commerce the ... mark 'Respect Tradition' for [wearing apparel in] International Class 025"; and

---

<sup>3</sup> As made applicable by Trademark Rule 2.116(a), Fed. R. Civ. P. 8(b)(6) provides in pertinent part that an allegation "is admitted if a responsive pleading is required and the allegation is not denied," while Fed. R. Civ. P. 8(e) specifies that "[p]leadings must be construed so as to do justice." In view thereof, it is noted that the amended answer differs from the original answer inasmuch as the original answer simply parroted back the allegations of the opposition without specifically admitting or denying such and, thus, effectively admitted all allegations and not just likelihood of confusion.

<sup>4</sup> See Fed. R. Civ. P. 36(a), Trademark Rule 2.120(j)(3)(i) and TBMP §704.10 (2d ed. rev. 2004). In addition to copies of the requests relied upon, the notice of reliance is accompanied by the declaration of opposer's attorney, Davida M. Frieman, who states that on May 29, 2007, the closing date of the discovery period, she "served Opposer's First Request for Admissions to Applicant on Applicant"; that responses thereto "were due on July 3, 2007"; and that, as of the filing date of the notice of reliance, opposer "has not received responses to the Request for Admission[s]."

Request No. 4 -- "Applicant is aware that Opposer's products bearing the 'Respect Tradition' ... mark has [sic] been extensively and continuously offered to the public through various channels of trade."

We agree with opposer that the record herein is sufficient not only to establish his standing to bring this proceeding but also to show that opposer has priority of use of his mark and that confusion is likely from contemporaneous use of the parties' identical marks in connection with their respective goods. In this regard, opposer correctly states in his brief that because applicant has neither taken testimony nor otherwise submitted any proof of its alleged dates of first use, the earliest date upon which applicant is entitled to rely in this proceeding for purposes of priority is the February 6, 2006 filing date of the involved application. See, e.g., Lone Star Mfg. Co., Inc. v. Bill Beasley, Inc., 498 F.2d 906, 182 USPQ 368, 369 (CCPA 1974); Columbia Steel Tank Co. v. Union Tank & Supply Co., 277 F.2d 192, 125 USPQ 406, 407 (CCPA 1960); Zirco Corp. v. American Telephone & Telegraph Co., 21 USPQ2d 1542, 1544 (TTAB 1991); and Miss Universe, Inc. v. Drost, 189 USPQ 212, 213 (TTAB 1975). Thus, by admitting that he has never used the "RESPECT TRADITION" mark in commerce prior to his filing for the registration thereof with respect to men's, women's and children's wearing apparel and also admitting his awareness of opposer's use in interstate commerce of the "RESPECT TRADITION" mark in connection with men's, women's, and children's wearing apparel prior to the filing date of the involved application, applicant has conceded, in light of the identity of the

respective marks and goods, opposer's standing to bring this proceeding and that opposer, rather than applicant, has priority of use.

Moreover, not only has applicant, by his amended answer, admitted that there is a likelihood of confusion from contemporaneous use of the parties' marks in connection with their respective goods, but in any event, given that it is clear that the parties' marks are identical in sound, appearance, connotation and overall commercial impression and that, on their face, applicant's goods consist of the same items of men's, women's and children's wearing apparel as those of opposer, confusion as to source or sponsorship of such goods would inherently be likely to occur from the contemporaneous use of the marks at issue in connection therewith. Opposer, therefore, has satisfied his burden of proof in this proceeding.<sup>5</sup>

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

---

<sup>5</sup> Nonetheless, it is further observed that not only is the declaration in the involved application signed by "Chris Rucker" as "[d]uly authorized officer" for applicant, Dexter Gordon, who is identified as an individual and a citizen of the United States, but the original answer, like the amended answer in this proceeding, was filed by Chris Rucker, who states in the amended answer that he is applicant's "corresponding business partner" and makes reference therein to "Rucker Sports World, Inc." In view thereof, if applicant ultimately prevails herein, the application will be remanded to the Examining Attorney pursuant to Trademark Rule 2.131 for determination as to whether applicant was in fact the owner of the applied-for mark as of the filing date of the application and is still the owner of such mark. TBMP §805 (2d ed. rev. 2004).