

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB

May 2, 1997

Paper No. 18  
PTH

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Rockwear**

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Serial No. 74/432,590

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**Keith C. Norris and Stan Hubbard for Rockwear.**

**Darren B. Cohen**, Trademark Examining Attorney, Law Office  
101 (**Chris Wells**, Acting Managing Attorney).

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Before **Hohein**, **Hairston** and **Walters**, Administrative  
Trademark Judges.

Opinion by **Hairston**, Administrative Trademark Judge:

An application has been filed by Rockwear, a  
partnership composed of Keith Norris and Stan Hubbard, to  
register on the Supplemental Register the mark shown below



for "clothing, namely, hats, shirts, shorts, jackets, and shoes."<sup>1</sup> The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark, when applied to applicant's goods, so resembles the previously registered marks ROCKWARE for "graphics and personality apparel, namely, t-shirts, jerseys, sweatshirts, hats and visors;"<sup>2</sup> and ROCK GEAR for "clothing, namely, shirts and jackets,"<sup>3</sup> as to be likely to cause confusion. The cited registrations are owned by different entities, with the latter registration having issued over the existence of the earlier registration.

When the refusals were made final, applicant appealed. Applicant and the Examining Attorney have submitted briefs on the case.

There is no dispute that applicant's goods and the goods of each registrant are identical in part and otherwise closely related. We turn our attention then, as have applicant and the Examining Attorney, to the respective marks. It is essentially applicant's position that there is no likelihood of confusion in this case because the design

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<sup>1</sup>Application Serial No. 74/432,590, filed March 31, 1994, alleging dates of first use of May 12, 1993. The words "Rock" and "Wear" have been disclaimed apart from the mark as shown.

<sup>2</sup>Registration No. 1,595,529 issued May 8, 1990; Sections 8 & 15 affidavit filed.

<sup>3</sup>Registration No. 1,724,685, issued October 13, 1992. The word "Gear" is disclaimed apart from the mark as shown.

element of its mark serves to distinguish its mark from each of the cited marks.

Our primary reviewing court, the Court of Appeals for the Federal Circuit has stated, "When marks would appear on virtually identical goods or services, the degree of similarity 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).

In the case at hand, we find that, when considered in their entireties, applicant's mark ROCK WEAR and design and the cited mark ROCKWARE are identical in sound and substantially similar in appearance. In comparing these marks, we recognize that the design element in applicant's mark cannot be ignored. *Giant Food, Inc. v. National Food Service, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983). However, it is well established that 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 the consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Here, we believe it appropriate to give more weight to the word portion of applicant's mark because it is the words that purchasers will remember and use in calling for the goods. *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987).

We find, therefore, that purchasers familiar with t-shirts, jerseys, sweatshirts, hats and visors sold under the mark ROCKWARE would be likely to believe, upon encountering applicant's mark ROCK WEAR and design for hats, shirts, shorts, jackets and shoes, that the clothing items originated with or were somehow associated with or sponsored by the same entity.

In finding that applicant's mark ROCK WEAR and design is similar to the cited mark ROCKWARE, we have kept in mind the normal fallibility of human memory over time, and the fact that purchasers retain a general, rather than a specific impression of trademarks encountered in the marketplace. *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255 (TTAB 1980).

We turn then to applicant's mark ROCK WEAR and design and the cited mark ROCK GEAR. In support of his position that confusion is likely because these marks have identical meanings, the Examining Attorney submitted dictionary definitions of the words "wear" and "gear." Among the meanings of "wear" in the Random House Unabridged Dictionary (1993) is "clothing or other articles for wearing, esp. when fashionable or appropriate for a particular function" and among the meanings of "gear" in the same dictionary is "wearing apparel; clothing."<sup>4</sup> We note, however, that both ROCK WEAR and ROCK GEAR are highly suggestive terms as used

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<sup>4</sup>We judicially notice these dictionary definitions which accompanied the Examining Attorney's appeal brief.

in connection with clothing one would wear when playing basketball, e.g., t-shirts, jerseys, shorts, and athletic shoes. Applicant, in this regard, has submitted excerpts from basketball magazines and a book about basketball in which the basketball is referred to as the "rock."

We find therefore that, notwithstanding the nominal identity in meaning of ROCK WEAR and ROCK GEAR, confusion is not likely because the terms are highly suggestive and, when the marks are considered in their entireties, they significantly differ in sound and appearance.

**Decision:** The refusal to register based on Registration No. 1,595,529 is affirmed. The refusal to register based on Registration No. 1,724,685 is reversed.

G. D. Hohein

P. T. Hairston

C. E. Walters  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board

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