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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Klein Bicycle Corporation

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Serial No. 74/444,307

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Jim Zegeer for applicant.

Andrew P. Baxley, Trademark Examining Attorney, Law Office  
104 (Sidney I. Moskowitz, Managing Attorney).

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Before Hanak, Quinn and Hohein, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Klein Bicycle  
Corporation to register the mark STRATUM for "bicycle  
handlebars."<sup>1</sup>

The Trademark Examining Attorney has refused  
registration under Section 2(d) of the Act on the ground  
that applicant's mark, when applied to applicant's goods, so

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<sup>1</sup>Application Serial No. 74/444,307, filed October 5, 1993,  
alleging dates of first use of September 20, 1992.

resembles the previously registered mark STRATOS for "bicycles"<sup>2</sup> as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.<sup>3</sup>

Applicant, in urging that the refusal be reversed, argues that the marks have significantly different meanings and that the goods, while related, are purchased by sophisticated buyers. Applicant submitted a dictionary definition of the word "stratum": "a layer of material, naturally or artificially formed, often one of a number of parallel layers placed one upon another."

The Examining Attorney counters by contending that the difference in meanings is outweighed by the similarities between the marks in sound and appearance. According to the Examining Attorney, these similarities, coupled with the close relationship between bicycles and bicycle handlebars, dictate a finding of likelihood of confusion. The Examining Attorney submitted dictionary listings for the words "stratum" (a word meaning "a bed or layer artificially made") and "stratos" (a Greek word meaning "army").

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<sup>2</sup>Registration No. 1,747,019, issued January 19, 1993.

<sup>3</sup>Applicant's appeal brief was accompanied by third-party registrations. The Examining Attorney, in his brief, correctly objected to this evidence as untimely. Applicant then requested a remand of the application to allow the Examining Attorney to consider the third-party registrations. The Board, in an order dated November 18, 1996, denied the request for remand. Accordingly, the third-party registrations do not form part of the record and, therefore, this evidence has not been considered. We hasten to add, however, that consideration of this evidence would not change the result on the merits of this case.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion analysis. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods.

With respect to the marks, we readily recognize that the terms have different meanings. However, we agree with the Examining Attorney that STRATOS and STRATUM are similar in sound and appearance, and that these similarities outweigh the difference in meanings. Each mark has two syllables, the first one of which is identical.

Insofar as the goods are concerned, even applicant agrees that bicycles and bicycle handlebars are "related." (brief, p. 5) Indeed, we find the goods to be closely related, with bicycle handlebars being replacement parts for bicycles. These goods are likely to travel in the same channels of trade (bicycle shops) to the same class of purchasers. Further, in the absence of evidence, we are not persuaded by applicant's argument concerning the level of sophistication of the relevant purchasers. Purchasers of bicycles and bicycle parts include casual and ordinary purchasers as well as experienced cyclists. Even assuming that some purchasers may be sophisticated, such purchasers are not immune as to source confusion.

**Ser No.** 74/444,307

We conclude that consumers familiar with registrant's bicycles sold under the mark STRATOS would be likely to believe, upon encountering applicant's mark STRATUM for bicycle handlebars, that the goods originated with or were somehow associated with or sponsored by the same entity.

Decision: The refusal to register is affirmed.

E. W. Hanak

T. J. Quinn

G. D. Hohein  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

**Ser No.** 74/444,307