

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Finetex International (USA), Inc.**

Serial No. 74/503,783

John A. Harre of **Richards, Medlock & Andrews** for **Finetex International (USA), Inc.**

Jeri J. Fickes, Trademark Examining Attorney, Law Office 107
(**Tom Lamone**, Managing Attorney)

Before **Simms**, **Seeherman** and **Hanak**, Administrative Trademark Judges.

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

Finetex International (USA), Inc. (applicant), a Texas corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark FINETEX for novelty footwear, namely, plush stuffed animal and stuffed toy slippers.¹ The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC 1052(d), on the basis of Registration No. 1,354,245, issued August 13, 1985, Sections 8 and 15 affidavit filed, for the mark FINETEX for neckties, belts, scarves, sweaters, blouses and

¹ Application Serial No. 74/503,783, filed March 21, 1994, claiming use and use in commerce since 1990.

dresses. Applicant and the Examining Attorney have submitted briefs but no oral hearing has been held.²

It is the Examining Attorney's position that there is a likelihood of confusion between the registered mark FINTEX for the items listed in that registration and applicant's mark FINETEX for novelty slippers. Concerning the marks, the Examining Attorney maintains that there is no "correct" pronunciation of the involved marks and that they could be pronounced in an identical fashion. The Examining Attorney also argues that the respective marks are nearly identical in appearance. Further, the Examining Attorney contends that these marks might be confused because the average purchaser will normally retain or remember the general rather than the specific impression of the registered mark. With respect to the goods, the Examining Attorney contends that applicant's novelty slippers are accessory items like registrant's goods. Because all are items of apparel, they are related, according to the Examining Attorney. Final refusal, issued April 27, 1995, p. 3. All of these accessory items, according to the Examining Attorney, could be sold in the same department of a large store.

Applicant, on the other hand, argues that the minor differences in the marks create significant and distinctive differences in pronunciation and connotation. In this regard, applicant's attorney argues that, while there may be

² While applicant requested an oral hearing, applicant subsequently withdrew that request.

no correct pronunciation of arbitrary terms which have no accepted English meaning, this is not the case with respect to ordinary words or marks formed from them or from easily pronounced common words with accepted pronunciations.

Applicant argues that the respective marks would be pronounced differently and would have different connotations. In this regard, applicant contends that the connotation of its mark FINETEX would be clothing of high quality, whereas the registered mark FINTEX would not have that connotation. With respect to the goods, applicant's argues that its bunny slippers are novelty items which are not likely to be sold as accessory items with other everyday accessory items such as scarves, belts and neckties.

Applicant's novelty footwear is likely to be worn only at home, which is not the case for other ordinary items of apparel such as registrant's goods. Also, applicant argues that its goods would not be purchased as part of a matching ensemble as would registrant's goods. Applicant further contends that the channels of trade may differ because applicant sells its goods in large department stores and toy stores. However, even if these goods do travel in similar trade channels, applicant argues, applicant goods are likely to be sold in separate departments of those stores.

Moreover, applicant contends that this similarity is overcome by the differences in the marks and the goods.

Finally, applicant points to the fact that applicant itself

is aware of no instances of actual confusion despite over five years concurrent use with the registered mark.

Upon careful consideration of this record and the arguments of the attorneys, we agree with applicant that there is only a remote possibility, and not a likelihood, of confusion. While it is true that there is only one letter difference in the respective marks, this difference is likely to lead to different pronunciations and different connotations of the respective marks. Furthermore, applicant's novelty footwear is specifically different from the ordinary items of apparel in the listed registration. These cumulative differences in the marks and the goods are likely to avoid any confusion.

Decision: The refusal of registration is reversed.

R. L. Simms

E. J. Seeherman

E. W. Hanak
Administrative Trademark
Judges, Trademark Trial
And Appeal Board

Ser No. 74/503,783