

Hearing:
April 9, 1997

Paper No. 15
CEW

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

DEC 18, 97

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Missionary Athletes International

Serial No. 74/539,501

Jeffrey S. Whittle of Allen, Dyer, Doppelt, Franjola &
Milbrath for applicant.

Theresa K. Kaiser, Trademark Examining Attorney, Law Office
104 (Sidney Moskowitz, Managing Attorney).

Before Quinn, Hohein and Walters, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Missionary Athletes International has filed a trademark
application to register the mark CHARLOTTE EAGLES SOCCER
CLUB and design, shown below, for "lapel pins; clothing,
namely, shirts, sweatshirts, sweatsuits and hats; toys and
sporting goods, namely, soccer balls; and entertainment

services, namely, presentation of soccer exhibitions and games."¹



Examining Attorney has finally refused application 2(d) of the Trademark Act, 15 U.S.C. § 1052(e) on the ground that applicant's mark so similar to the mark shown below and previously registered for "sporting goods and toys, namely, soccer balls, flying disks, and stuffed animal toys"²; "clothing, namely, shirts, sweatshirts, caps, visors, shorts, jackets, jerseys, warm-up suits, gloves and scarves"³; "retail store services in the field of soccer memorabilia and clothing"⁴; and "entertainment services; namely, arranging and conducting professional soccer exhibitions and games, and live performances by a mascot; and educational services; namely, arranging and conducting soccer camps and clinics for players and coaches"⁵ that, if used on or in connection

¹ Serial No. 74/539,501, in, respectively, International Classes 14, 25 and 28, filed June 20, 1994, based on allegations of use of the mark in commerce, alleging dates of first use and first use in commerce, respectively, of May 8, 1993, May 7, 1993, and July 1, 1993. The application includes disclaimers of SOCCER CLUB and of CHARLOTTE apart from the mark as a whole.

² Registration No. 1,816,013 issued January 11, 1994, to John Daniel Van Voorhis, in International Class 28.

³ Registration No. 1,815,967 issued January 11, 1994, to John Daniel Van Voorhis, in International Class 25.

⁴ Registration No. 1,815,227 issued January 4, 1994, to John Daniel Van Voorhis, in International Class 42.

⁵ Registration No. 1,816,207, issued January 11, 1994, to John Daniel Van Voorhis, in International Class 41.

with applicant's goods and services, it would be likely to cause confusion or mistake or to deceive.



Both applicant and the
briefs, and an oral hearing
sal to register.

likelihood of confusion in this
are the similarities between
s between the goods and
services. Considering the goods and services, we note that
both the application and the registrations herein include in
their identifications of goods "soccer balls" as well as
several identical items of clothing. As applicant admits,
the remaining goods and services of the parties are related.

Turning to a consideration of the marks, both applicant
and the Examining Attorney recognize the well-established
principle that, in articulating reasons for reaching a
conclusion on the issue of likelihood of confusion, while
the marks are compared in their entireties, "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
consideration of the marks in their entireties." *In re*

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National Data Corp., 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant's mark consists of a crest-like design which includes a shield with a small crown resting on its top and framed above and below by banners upon which appear the words CHARLOTTE EAGLES SOCCER CLUB. Upon the shield is the outline of a cross superimposed on a lined sphere. Superimposed in front of the lower half of the shield is an eagle upon a soccer ball with its wings spread.

We conclude from viewing the mark in its entirety that the representation of the eagle with the soccer ball is a prominent feature of this mark. While the eagle with ball representation is not the largest component of the mark, there are several factors that contribute to its prominence. It is centrally positioned immediately above the midpoint of the bottom banner in front of the shield; the bird of prey is opaque, whereas the other portions of the mark are mere outlines; and the shield, crown and banner appear primarily as background design and the shield and crown may be perceived as suggesting the regal nature of the bird of prey and, by implication, of the team. Further, as part of the team name on the banner, the term SOCCER CLUB is primarily informational text, whereas the relevant consumers are likely to know or refer to the team as the EAGLES or the

CHARLOTTE EAGLES. In this regard, the image of the eagle reinforces the EAGLES portion of the team name.⁶

Our conclusion that the eagle and soccer ball representation is likely to be perceived as a prominent feature of applicant's mark is reinforced by the separate use of that design in two places on applicant's brochure submitted as a specimen herein and reproduced below.

⁶ It has frequently been held that a picture and the word that describes the picture have the same effect and must be treated as legal equivalents. *Rousch Bakery Products Co., Inc. v. Ridlen*, 203 USPQ 1086 (TTAB 1979). Thus, the word EAGLES appearing on the banner is equivalent to the eagle design component of the mark.

Registrant's mark is a design consisting, in its entirety, of a representation of a bird of prey that appears to be a hawk with its wings raised in flight and carrying in its claws a soccer ball. Comparing the bird of prey and soccer ball portion of applicant's mark to registrant's mark, we note, first, that where design marks are involved the question of likelihood of confusion must be decided primarily on the basis of the visual similarity of the marks. *Alpha Corporation v. Columbia Broadcasting System, Inc.*, 343 F.2d 1098, 175 USPQ 31 (CCPA 1972). In this case, both birds are large birds of prey, with wings raised, alighting on or carrying a soccer ball. While some potential purchasers of the parties' goods and services might be knowledgeable enough to distinguish between hawks and eagles,⁷ there is undoubtedly a large segment of the purchasing public which does not have this expertise and would see both representations, simply, as large birds or birds of prey.⁸ See, *Puma-Sportschuhfabriken Rudolf Dassler KG v. Garan, Inc.*, 224 USPQ 1064 (TTAB 1984).

There is no doubt that in a side-by-side comparison there are certain differences in the birds - in the representation of the heads, such that one may be perceived

⁷ Although such distinctions may be particularly difficult to discern in the drawings herein as the birds lack detailed features.

⁸ Applicant provides no evidence for its further assertion that purchasers of the parties' goods and services are accustomed to distinguishing between different bird names and designs for different sports teams; thus, we draw no conclusion in this regard.

as a hawk while the other may be perceived as an eagle, and in the positioning of the bird's body, its feet and its wings. However, we find that the similarities between these two bird and ball designs far outweigh their differences, especially when we consider that the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall commercial impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). Due to the consuming public's fallibility of memory, the emphasis is on the recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks. *Spoons Restaurants, Inc. v. Morrison, Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd*. No. 92-1086 (Fed. Cir. June 5, 1992); and *In re Steury Corporation*, 189 USPQ 353 (TTAB 1975).

In this case, we find that the two bird and ball designs create substantially similar commercial impressions of large birds of prey in flight with a soccer ball - both designs implying control by the bird over the ball, which is positioned as the bird's prey.

While applicant's mark includes additional matter, as discussed herein, the bird of prey and soccer ball design is a prominent feature of applicant's mark. In this regard,

applicant's mark includes as a prominent feature a design which is substantially similar in appearance, connotation and commercial impression to registrant's mark in its entirety. Thus, we conclude that the overall commercial impressions of the parties' marks, considered in their entireties, are substantially similar.

We note that, in determining likelihood of confusion, a lesser degree of similarity between two parties' marks is required when the marks are applied to identical goods or services. *HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989). Further, as the Board stated in *In re J.M. Originals*, 6 USPQ 1393 (1987):

A finding of likelihood of confusion need not necessarily be premised on a finding that prospective purchasers would not be able to distinguish the two marks when used on identical or closely related goods. Even if prospective purchasers could distinguish the two marks, a finding of likelihood of confusion may nevertheless be premised on a finding that these prospective consumers would erroneously believe, because of the similarities in the marks, that goods bearing the two marks emanate from the same, albeit perhaps anonymous, source.

In view of the substantial similarity in the commercial impressions of applicant's mark, CHARLOTTE EAGLES SOCCER CLUB and design, and registrant's design mark, their contemporaneous use on the same and closely related goods and services involved in this case is likely to cause confusion as to the source or sponsorship of such goods and services. To the extent that we have any doubt concerning

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our conclusion that confusion is likely, we resolve such doubt in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed Cir. 1988).

Decision: The refusal under Section 2(d) of the Act is affirmed.

T. J. Quinn

G. D. Hohein

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