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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Irv Malvin, Inc.

Serial No. 74/573,304

Dale Paul DiMaggio of Malin, Haley, DiMaggio & Crosby, P.A. for
Irv Malvin, Inc.

Jill C. Alt, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Simms, Quinn and Hohein, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Irv Malvin, Inc. has filed an application to register
the mark "CONTEMPO ELEGANCE" for "jewelry."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that
applicant's mark, when applied to its goods, so resembles the
mark "CONTEMPO FASHIONS" and design, which among other things is
registered, as reproduced below,

¹ Ser. No. 74/573,304, filed on September 14, 1994, which alleges dates
of first use of August 1994.



for "jewelry--namely, necklaces, earrings, finger rings, anklets, bracelets, pendants and stick pins all composed of precious metals,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed and an oral hearing was held. We affirm the refusal to register.

As a general proposition, our principal reviewing court has noted that, "[w]hen marks would appear on virtually identical goods . . . , the degree of similarity [of the marks] 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, 1701 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 1034 (1994). Here, as the Examining Attorney notes, applicant's goods are identical in part, and are otherwise closely related, to the jewelry items offered by registrant since registrant's specific products are encompassed by the broad term "jewelry," which constitutes the entirety of the identification of applicant's goods. The respective goods, as the Examining Attorney further points out, would thus be sold to the same classes of purchasers,

² Reg. No. 1,194,285, issued on April 27, 1982, which sets forth, for the above goods in International Class 14, dates of first use of September 22, 1977; combined affidavit §§8 and 15. The word "Fashions" is disclaimed. Although the registration also lists "hair combs" in International Class 21, it is plain from the final refusal that the refusal to register pertains only to the jewelry goods for which the cited mark is registered in International Class 14.

including ordinary consumers, through the identical channels of trade, such as jewelry stores, the jewelry counters of department stores and mail-order catalogs. Applicant, in fact, does not argue to the contrary. It is plain, therefore, that if items of jewelry, including those made of precious metals, were to be sold under the same or similar marks, confusion as to the source or sponsorship of such goods would be likely to occur.

Applicant contends, however, that when the marks "CONTEMPO ELEGANCE" and "CONTEMPO FASHIONS" and design are considered in their entireties, it is apparent that each is a unitary term and that "the only similarity between the marks resides in the word 'CONTEMPO,'" given the differences in sound, meaning and appearance in the words "ELEGANCE" and "FASHIONS"³ and the presence of a "'shining sun' design" in registrant's mark. Such differences in the respective marks, according to applicant, "are sufficient to render them, in their entireties, quite distinct from each other." In view thereof, and inasmuch as jewelry products are assertedly "purchased only after careful consideration and ... several examinations and/or comparisons," applicant insists that confusion is not likely.

The Examining Attorney, on the other hand, maintains that the respective marks engender essentially the same overall impression. In particular, the Examining Attorney urges that:

³ In particular, applicant observes in its initial brief that, "[a]s seen in the definitions cited by the Examining Attorney [from Webster's Third New International Dictionary], 'fashions' is defined as the latest style or fad in dressing, while 'elegance' is defined as having taste or grace. These definitions are clearly different and do not leave one with the same impression."

[T]he two marks in their entireties consist of the common, clever, arbitrary term "CONTEMPO" plus a weak descriptive or highly suggestive term, i.e. "ELEGANCE" or "FASHIONS". Clearly the term that will stand out in the mind of the prospective customer is "CONTEMPO".

In view thereof, and inasmuch as it is the literal elements of registrant's mark, rather than the "shining sun" or sparkle design therein, which purchasers and prospective customers would use in calling for and referring to registrant's items of jewelry, the Examining Attorney asserts that contemporaneous use of the marks "CONTEMPO ELEGANCE" and "CONTEMPO FASHIONS" and design for identical and closely related pieces of jewelry is likely to cause confusion as to origin or affiliation.

We agree with the Examining Attorney that confusion is likely. Plainly, the dominant, source-signifying element of registrant's "CONTEMPO FASHIONS" and design mark is the term "CONTEMPO," given the facts that it is the first word in registrant's mark, it appears in noticeably larger size type, the "shining sun" or sparkle design feature is highly suggestive of the brilliance of a cut gemstone in a jewelry item and the word "FASHIONS" merely describes various styles of jewelry. Consequently, and since applicant's mark "CONTEMPO ELEGANCE" similarly features the identical term "CONTEMPO" as a prominent portion thereof, due to its position as the initial word in the mark and the high degree of suggestiveness inherent in the term "ELEGANCE" when used in connection with items of jewelry, purchasers and prospective customers familiar with registrant's mark for particular items of jewelry composed of precious metals

could reasonably believe, upon encountering applicant's mark on the same or related items of jewelry, that registrant has introduced a new or second line of, for example, costume or precious metal jewelry products. Moreover, even if such consumers, especially in the case of jewelry made from precious metals, could be described as careful and discriminating consumers due to the customary expense of such items, the mere fact of being knowledgeable and sophisticated about buying jewelry does not mean that they are sophisticated or otherwise knowledgeable in the field of trademarks or immune from confusion as to source or sponsorship. See, e.g., Wincharger Corp. v. Rinco, Inc., 297 F.2d 261, 132 USPQ 289, 292 (CCPA 1962); In re Decombe, 9 USPQ2d 1812, 1814-15 (TTAB 1988); and In re Pellerin Milnor Corp., 221 USPQ 558, 560 (TTAB 1983).

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

R. L. Simms

T. J. Quinn

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