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21 MAY 1998

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No 09  
EWH/CV

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sports Heritage, U.S.A. Inc.

Serial No. 74/620,191

Leland P. Schermer of Dickie, McCamey & Chilcote, P.C. for  
Sports Heritage, U.S.A. Inc.

Kim Saito, Trademark Examining Attorney, Law Office 109  
(Deborah S. Cohn, Managing Attorney).

Before Hanak, Quinn and Hohein, Administrative Trademark  
Judges.

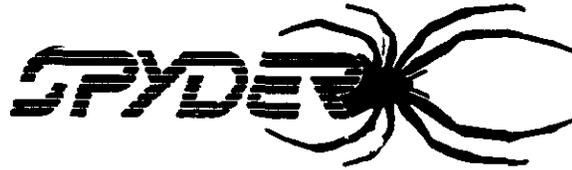
Opinion by Hanak, Administrative Trademark Judge:

Sports Heritage, U.S.A. Inc. (applicant) seeks  
registration of CLEVELAND SPIDERS in typed capital letters  
for "clothing, namely t-shirts, sweatshirts, jerseys,  
hats/caps, sport shirts and jackets." The intent-to-use  
application was filed on January 11, 1995.

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The Examining Attorney refused registration pursuant to Section 2(d) of the Lanham Trademark Act on the basis that applicant's mark, as applied to applicant's apparel, is likely to cause confusion with the mark SPYDER and design, previously registered in the form shown below for a wide array of apparel including sweatshirts and t-shirts.

Registration Nos. 1,468,326 and 1,281,632 Both registrations are owned by the same company, Spyder Active Sports, Inc. For ease of reference, both registrations will be referred to as "the registered mark."



When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key factors are the similarities of the goods and the similarities of the marks. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to

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the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”)

In this case, some of applicant’s goods (sweatshirts and t-shirts) are identical to some of registrant’s goods (sweatshirts and t-shirts).

Turning to a consideration of the marks, it is important to remember that “when marks would appear on virtually identical goods or services, 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, 1700 (Fed. Cir. 1992).

Turning to a consideration of the marks, the most prominent portion of the registered mark is the word SPYDER. The design of the spider in the registered mark merely emphasizes the notion that the mark consists of a very slight misspelling of the word “spider” (i.e. SPYDER). We simply do not share the view of applicant that “the dominant part of the cited [registered] mark is the design, not the word [SPYDER].” (Applicant’s brief page 8). It should be made clear that in comparing the marks, we have not dissected the registered mark. Rather, we have considered the registered mark in its entirety. When considered in its entirety, both portions of the registered mark (the word and the design) convey the notion of a spider. Of course, the

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word SPIDER (in its plural form) constitutes one of the two words in applicant's mark CLEVELAND SPIDERS. In this regard, we note that applicant concedes that both marks share a word which is phonetically common. (Applicant's brief page 7) Moreover, it is common knowledge that basic items of apparel are often requested by consumers in oral fashion, as well in written fashion.

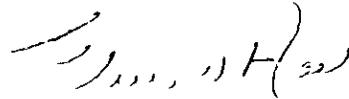
We note that at page 5 of its brief, applicant argues that "the Examining Attorney has certainly cited no evidence for concluding that the term SPIDERS [in applicant's mark] is the 'dominant' portion of the mark " We need not decide whether the word CLEVELAND or the word SPIDERS is the dominant portion of applicant's mark. In response to Office Action No. 1, applicant acknowledged at page 2 that "both words are important to [applicant's] mark." Moreover, while not dispositive, we note that applicant has disclaimed the exclusive right to use CLEVELAND apart from applicant's mark in its entirety. Finally, we note that applicant has never disputed the following contentions of the Examining Attorney, namely, "that the mark CLEVELAND SPIDERS conveys the commercial impression of a sports team," and that "consumers often drop the geographic designation and call their teams solely by their team name, for example, the WASHINGTON REDSKINS are frequently called the REDSKINS, just as the WASHINGTON BULLETS and WASHINGTON CAPITALS are called

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the BULLETS and the CAPITALS." (Examining Attorney's brief page 5). Thus, when applicant's mark CLEVELAND SPIDERS is shortened to simply SPIDERS, the result is a mark which is identical to the registered mark in terms of pronunciation and meaning or connotation. Moreover, applicant's shortened mark (SPIDERS) is also somewhat similar to the registered mark in terms of visual appearance.

In conclusion, given the fact that the goods of applicant and registrant are in part identical, we find that there is enough similarity between applicant's mark CLEVELAND SPIDERS and registrant's mark SPYDER and design such that there exists a likelihood of confusion.

Decision: The refusal to register is affirmed.



E. W. Hanak



G. D. Hohein

G. D. Hohein

Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board

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