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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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

Serial No. 74/620,616

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

George M. Lorenzo, Trademark Examining Attorney, Law Office 109
(Deborah Cohn, Managing Attorney).

Before Cissel, Hohein and Hairston, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Sports Heritage, U.S.A. Inc. has filed an application
to register the mark "BOSTON PILGRIMS" for "clothing, namely, t-
shirts, sweatshirts, jerseys, hats/caps, sport shirts, and
jackets."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

¹ Ser. No. 74/620,616, filed on January 11, 1995, which alleges a bona
fide intention to use the mark in commerce. The word "BOSTON" is
disclaimed.

mark "PILGRIM," which is registered for "wearing apparel, namely, shirts, pants, jackets, sweaters, coats, shorts, skirts, dresses, blouses and hats,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Applicant, citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976),³ correctly notes in its brief that, "in any likelihood of confusion analysis[,] two key considerations are the similarity of the goods and the similarity of the marks." As to the respective goods, applicant insists that because the Examining Attorney, in his final refusal, broadly characterized registrant's goods "as being 'primarily women's clothing goods,'" it follows that applicant's goods, which implicitly are not so limited, "are not closely related" to registrant's goods. Applicant's contention, however, ignores the glaring fact that the respective goods are absolutely identical in part (shirts, hats and jackets). All of the goods at issue herein, moreover, plainly are familiar items of outerwear which would be sold through the identical channels of trade (such as clothing stores and the apparel sections of department stores and other mass merchandisers) to the same

² Reg. No. 1,351,824, issued on July 30, 1985, which sets forth dates of first use of 1947; combined affidavit §§8 and 15.

classes of purchasers (including men, women and teenagers). The respective goods, consequently, are by their very nature so closely related that, if sold under the same or similar marks, confusion as to the source or sponsorship thereof would be likely to occur.

Turning, therefore, to consideration of the respective marks, we note as a preliminary matter 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, 1700 (Fed. Cir. 1992), cert. denied, 506 U.S. 1034 (1994). See also *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443, 449 (TTAB 1980). Applicant maintains, however, that "the presence of the word BOSTON in applicant's mark (BOSTON PILGRIMS) causes applicant's mark to have only minimal similarities to the registered mark (PILGRIM) in terms of visual appearance and pronunciation." Furthermore, applicant urges that:

As to "similarity of meaning," the mark BOSTON PILGRIMS evokes the image of a sports team when it is used in connection with apparel items such as t-shirts, jerseys, and the like. On the other hand, the mark PILGRIM, when used in connection with women's clothing goods, conveys an image of a New England style of clothing, perhaps old fashion in its basic design.

Applicant, in view thereof, argues that the respective marks, when considered in their entirety, convey significantly

³ The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the

different commercial impressions and thus are not likely to cause confusion.

We agree with the Examining Attorney, however, that confusion is likely. While applicant is, of course, correct that the respective marks must be compared in their entireties, it is nevertheless the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "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 [that] the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 753 F.3d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, "that a particular feature is descriptive ... with respect to the involved goods ... is one commonly accepted rationale for giving less weight to a portion of a mark" 224 USPQ at 751.

Here, we concur with the Examining Attorney that, in light of the geographically descriptive significance of the term "BOSTON" (as confirmed by applicant's disclaimer thereof), the more prominent or distinguishing element of applicant's mark, when considered as a whole, is the word "PILGRIMS," which is virtually identical to registrant's mark "PILGRIM". As the Examining Attorney notes, the presence of the geographical term "BOSTON" in applicant's "BOSTON PILGRIMS" mark "merely serves the function of describing geographic origin and does not change the commercial impression created by the term 'PILGRIM' alone" in registrant's mark. In fact, as the Examining Attorney points

essential characteristics of the goods and differences in the marks."

out, the evidence which he made of record with the final refusal⁴ indicates that, due to historical circumstances, "the addition of the wording BOSTON reinforces the idea of Pilgrims because BOSTON is a chief city of Massachusetts[,] where the Pilgrims settled in the year 1620." By contrast, there simply is no evidence to support applicant's assertion that, as applied to its items of clothing, the mark "BOSTON PILGRIMS" would necessary evoke the image of a sports team, nor is there anything which persuasively demonstrates that the mark "PILGRIM," which is an arbitrary term as applied to registrant's wearing apparel, would connote an old-fashioned design, or a traditional "New England" style, of clothing.

In summary, when considered in their entirety, the marks "BOSTON PILGRIMS" and "PILGRIM," especially when used in connection with identical items of outerwear such as shirts, hats and jackets, are substantially similar in sound, appearance, connotation and commercial impression due to the readily apparent geographical significance of the term "BOSTON" and the arbitrary nature of the words "PILGRIMS" and "PILGRIM" as applied to wearing apparel. We accordingly conclude that purchasers and potential customers, familiar with registrant's "PILGRIM" mark for such items of wearing apparel as shirts, pants, jackets, sweaters, coats, shorts, skirts, dresses, blouses and hats, would be likely to believe, upon encountering applicant's substantially

⁴ Specifically, Webster's New Geographical Dictionary (1988) at 738 not only defines "Massachusetts" as "[a] northeast state of U.S.A.," but also lists Boston as one of three "[c]hief cities" and refers to the city of Plymouth as being "settled by Pilgrims [in] 1620".

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similar "BOSTON PILGRIMS" mark for t-shirts, sweatshirts, jerseys, hats/caps, sport shirts, and jackets, that such identical and otherwise closely related items of clothing emanate from, or are sponsored by or associated with, the same source. See, e.g., In re Collegian Sportswear Inc., 224 USPQ 174, 176-77 (TTAB 1984) [stylized mark "COLLEGIAN OF CALIFORNIA" (with disclaimer of "CALIFORNIA") for women's jackets, skirts, pants, blouses, t-shirts, sweaters, and jacket and top ensembles is likely to cause confusion with stylized mark "COLLEGIENNE" for, inter alia, girls' and juniors' coats, suits, dresses, sweaters, skirts and blouses].

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

R. F. Cissel

G. D. Hohein

P. T. Hairston
Administrative Trademark Judges,
Trademark Trial and Appeal Board