

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

JUNE 24, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Ming International, Inc.**

Serial No. 74/**678,296**

Maurice B. Pilosof of **Novian, Novian & Younesi** for **Ming International, Inc.**

Katherine Stoides, Trademark Examining Attorney, Law Office 109
(**Deborah S. Cohn**, Managing Attorney).

Before **Quinn, Hohein** and **Hairston**, Administrative Trademark
Judges.

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

Ming International, Inc. has filed an application to register the mark "STAMP" for "clothing, namely[,] jackets, pants, shirts, dresses and blouses".¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that

¹ Ser. No. 74/678,296, filed on May 22, 1995, which alleges dates of first use of February 1988.

applicant's mark, when applied to its goods, so resembles the mark "THE STAMP COLLECTION" and design, as reproduced below,



which is registered for "retail store services in the toy and clothing fields,"² as to be likely to cause confusion, mistake or deception.³

Applicant has appealed. Briefs have been filed,⁴ but an oral hearing was not requested. We affirm the refusal to register.

Turning first to consideration of the respective goods and services, applicant "concedes that the goods and services are related, and that in the absence of any evidence to the contrary,

² Reg. No. 1,199,121, issued on June 22, 1982, which sets forth dates of first use of July 14, 1980; combined affidavit §§8 and 15. The words "Fine Children's Clothes" are disclaimed.

³ Although originally, the Examining Attorney also refused registration in view of Reg. No. 829,833, which issued to another registrant on June 6, 1967 for the mark "POSTAGE STAMP" for "girdles," the Examining Attorney states in her final refusal that, "[u]pon further consideration, the refusal under Section 2(d), citing U.S. Registration No. 829,833[,] is hereby withdrawn."

⁴ While the Examining Attorney, in her brief, argues the merits of the refusal under Section 2(d) as to both of the registrations originally cited, applicant in its reply brief correctly points out that, in the final refusal, the Examining Attorney "withdrew the objection to Applicants's [sic] registration of its mark on the basis of the previously cited registration for the mark 'POSTAGE STAMP'." Consequently, as applicant observes, "the issue of whether there is a

the trade channels are similar," as contended by the Examining Attorney. Applicant asserts, however, that "[t]his concession does not alter the fact that no likelihood of confusion is presented with respect to the marks involved in this appeal." Nevertheless, it bears emphasizing that the question of likelihood of confusion is determined, in part, on the basis of the goods and services as set forth in the respective application and cited registration.⁵ Thus, as the Examining Attorney properly observes:

[Since] the application describes the goods broadly and there are no limitations as to their nature, type, channels of trade or age group of purchasers, it is presumed that the identification [of goods] encompasses all those of the type described, that they will move in all normal channels of trade, and that they are available to all potential customers. [See, e.g., In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).] As the applicant has not restricted the identification of goods with respect to channels of trade and/or intended customer[s], it is presumed that the jackets, pants, shirts, dresses and blouses [marketed by applicant] will be made for all sizes, including children's sizes, and that these items of clothing will be offered for sale in all normal channels of trade, including the registrant's retail stores.

Applicant's goods and registrant's services plainly are so closely related that, if offered under the same or similar marks, confusion would be likely as to the source or sponsorship thereof.

likelihood of confusion as between Applicant's mark and the mark 'POSTAGE STAMP' is not properly before the Board."

⁵ See, e.g., CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 F.2d 937, 940

Considering, then, the respective marks, we disagree with applicant's contention that, because the marks "STAMP" and "THE STAMP COLLECTION" and design have only the word "STAMP" in common, they are similar only in appearance and have no similarity in sound, meaning or commercial impression. Although we also disagree with the Examining Attorney's assertion that, in terms of its similarities to applicant's "STAMP" mark, the dominant portion of registrant's mark is merely the word "STAMP," consideration of such marks in their entireties, together with the fact that stamps plainly form the basis of any stamp collection, lead us to the conclusion that contemporaneous use of the respective marks in connection with items of clothing and retail store services featuring clothing would be likely to cause confusion.

In the present case, applicant's "STAMP" mark is similar in appearance and sound to the words "THE STAMP COLLECTION" in registrant's mark. Such words, which appear in much larger type than the words "Fine Children's Clothes," visually and phonetically comprise the most prominent of the literal elements in registrant's mark. Moreover, registrant's mark depicts a bold and striking stamp design which, in connotation, is synonymous in meaning with the word "STAMP" in applicant's mark.⁶ Furthermore, in addition to the descriptive

(Fed. Cir. 1983); and *Paula Payne Products Co. v. Johnson Publishing Co., Inc.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973).

⁶ As stated in *Pink Lady Corp. v. L. N. Renault & Sons, Inc.*, 265 F.2d 951, 121 USPQ 465, 466 (CCPA 1959): "It is well settled that words and the symbols identified thereby will be given the same significance in determining the likelihood of confusion between two marks." See

phrase "Fine Children's Clothes," registrant's mark contains a teddy bear design and the word "COLLECTION". Such features indicate that registrant is a retailer of a line of clothing for children. Taken together, the elements of registrant's mark create a mark which conveys the image of a retail store which sells a collection of children's apparel.

In view thereof, and since a stamp collection obviously is composed of stamps, consumers who are familiar or acquainted with registrant's "THE STAMP COLLECTION" and design mark for retail store services in the toy and clothing fields could reasonably believe, upon encountering applicant's highly similar "STAMP" mark for clothing, namely, jackets, pants, shirts, dresses and blouses, that such goods constitute a line of fine children's clothing which is sold, licensed or otherwise sponsored by or affiliated with registrant. The overall similarities in the respective marks in sound and appearance, coupled with the significant fact that, in terms of the connotation of the marks, a stamp--as underscored by the design thereof in registrant's mark--is an item which would be found in any stamp collection, combine to create marks which, given the children's theme in registrant's mark, are substantially similar in overall commercial impression when used in connection with items of children's clothing, on the one hand, and retail store

also *Izod, Ltd. v. Zip Hosiery Co., Inc.*, 405 F.2d 575, 160 USPQ 202, 203 (CCPA 1963) [picture of a tiger head and word mark "TIGER HEAD"]; *In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB 1974) [picture of a golden eagle and word mark "GOLDEN EAGLE"]; and *In re Penthouse Int'l Ltd.*, 175 USPQ 42, 43 (TTAB 1974) [picture of a key and word mark "KEY"].

Ser. No. 74/678,296

services which feature children's clothing, on the other. Confusion as to the origin or affiliation of such closely related products and services would consequently be likely to occur.

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

T. J. Quinn

G. D. Hohein

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