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

Paper No. 10
JQ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*SAMS
attys
"in"
3-31-98*

In re Sage Manufacturing Corporation

Serial No. 74/707,015

Faye L. Mattson and James R. Uhlir of Christensen O'Connor
Johnson & Kindness for applicant.

Cynthia H Mancini, Trademark Examining Attorney, Law Office
109 (Deborah S. Cohn, Managing Attorney).

Before Simms, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge.

An application has been filed by Sage Manufacturing
Corporation to register the mark shown below



for "luggage and carrying bags" (in International Class 18)
and "clothing, namely shirts, hats and gloves, and

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outerwear, namely jackets and vests" (in International Class 25).¹

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, if applied to applicant's goods, would so resemble the previously registered mark shown below



for "men's and women's clothing; namely, T-shirts, sweat shirts, skirts, pants, sweat pants, jackets, blouses, dresses, polo shirts, socks, tunics, belts, sweaters, and capes" as to be likely to cause confusion.

When the refusal to register was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.

Applicant argues, in urging that the refusal be reversed, that the involved marks create different overall commercial impressions and that, therefore, the likelihood of confusion between the marks is remote.

¹ Application Serial No 74/707/015, filed July 27, 1995, alleging a bona fide intention to use the mark in commerce.
- Registration No 1,739,921, issued December 15, 1992; combined Sections 8 and 15 affidavit filed.

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The Examining Attorney maintains that the marks are confusingly similar when applied to the closely related goods. The Examining Attorney has submitted third-party registrations and applications and catalog excerpts to show that goods of the type involved in this appeal may emanate from the same source under the same mark. The Examining Attorney has submitted other third-party registrations in connection with her argument that registrants, with the passage of time, sometimes update or modernize their trademarks, and that applicant's mark may be viewed as a modernized version of registrant's mark. The Examining Attorney also has relied upon a dictionary listing for the term "spiral."³

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods.

³ Although the dictionary definition was untimely submitted with the Examining Attorney's brief (see Trademark Rule 2.142(d)), we are able to take judicial notice of the definition. University of Notre Dame du Lac v J. C. Gourmet Food Imports Co., 213 USPQ 594 (TTAB 1982), *aff'd*, 701 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983)

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We first turn our attention to the goods. With respect to the refusal to register in International Class 25, we acknowledge that there is no per se rule governing likelihood of confusion in cases involving clothing items. In re British Bulldog, Ltd., 224 USPQ 854 (TTAB 1984). Nonetheless, applicant's and registrant's clothing items are substantially similar or, at least with respect to two items, legally identical. Both identifications of goods include shirts and jackets; as identified, applicant's "shirts" are broad enough to encompass registrant's "T-shirts" and "polo shirts," and registrant's "jackets" encompass "outerwear jackets." In re Elbaum, 211 USPQ 639, 640 (TTAB 1981) [where goods are broadly described in the identification, it is presumed that the identification encompasses all goods of the nature and type described]. Applicant's and registrant's clothing items would travel in the same channels of trade and would be purchased by the same classes of purchasers. Further, inasmuch as the identifications of goods do not include any limitations as to price, we must assume that the listed clothing items include ones that are inexpensive and, therefore, subject to casual purchases.

As to the refusal in International Class 18 pertaining to applicant's luggage and carrying bags, we likewise find that these goods are related to applicant's clothing items.

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See *Jantzen, Inc. v. Evans-Aristocrat Industries, Inc.*, 147 USPQ 531, 532 (TTAB 1965) [pocketbooks and related items of luggage are considered as accessories or coordinates to sportswear and, thus, "must be considered as closely related in kind"]. In connection with this refusal, the Examining Attorney submitted catalog excerpts which show that goods of the type involved here are offered for sale in the same catalog. The Examining Attorney also relied upon third-party registrations showing that the same entity has registered the same mark for clothing and items of luggage. Although not conclusive, this evidence serves to suggest that the goods are of a type which may emanate from a single source under a single mark. In re *Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993), and In re *Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

With respect to the design marks, we find that they are sufficiently similar that, when applied to related goods, there is a likelihood of confusion. Having said this, we recognize that there are differences between the marks, and applicant has pointed out, in exacting detail, these differences. Nonetheless, we agree with the Examining Attorney's assessment that the similarities between the marks outweigh the differences. Both marks essentially comprise white ribbon spirals on black backgrounds. Because purchasers do not generally have the opportunity to analyze

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marks in a detailed, side-by-side comparison, our focus must be on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. This is especially so with design marks. Puma-Sportschuhfabriken Rudolf Dassler KG v. Roller Derby Skate Corporation, 206 USPQ 255, 259 (TTAB 1980) ["A design mark may and often does mean different things to different viewers, and more frequently than not, it would be described and remembered by those encountering it in considerably more general than specific terms."]; and Freedom Federal S & L Association v. Heritage Federal S & L Association, 210 USPQ 227, 231 (TTAB 1981) ["[A] person's recollection of design marks is often imprecise and of a vague or hazy nature "] We also note the absence in the record of any evidence of third-party uses of similar spiral design marks in connection with goods of the type involved here. When the marks are viewed in light of the above, we believe that consumers are likely to be confused.

To the extent that any of the points raised by applicant cast doubt on our decision, we resolve that doubt, as we must, in favor of the prior registrant. In re Hyper Snoppes (Ohio), Inc , 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir 1988).

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Decision: The refusal to register is affirmed.


R. L. Simms



E. W. Hanak



T. J. Quinn
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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