

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB SEPT 9, 98

Paper No. 9  
RFC

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Garment Group of California

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Serial No. 74/707,092

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**Thomas Rozsa** of Rozsa & Chen LLP for Garment Group of California.

**Sue Carruthers**, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

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Before **Cissel**, Hanak and Quinn, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On July 28, 1995, applicant, a California general partnership, filed the above-referenced application to register the mark "GIORGIO BELLINI" on the Principal Register for "garments, namely men's socks," in Class 25. Use of the mark in interstate commerce since May 18, 1995 was claimed as the basis for the application. Applicant stated that "GEIRGIO BELLINI" is a fanciful name and is not

the name of any living individual known to applicant or associated with applicant.

The Examining Attorney refused registration under Section 2(d) of the Lanham Act on the ground that applicant's use of "GIORGIO BELLINI" on men's socks so resembles three registered marks, "BELLINI" for women's footwear<sup>1</sup>, "BELLINI KIDS" for children's footwear<sup>2</sup>, and

which is registered for women's non-athletic leather and leather-like shoes and espadrilles<sup>3</sup>, that confusion is likely.

Applicant responded to the refusal to register with argument that confusion is not likely, but the Examining Attorney was not persuaded. The refusal to register was made final in the second Office Action on October 30, 1996. Attached to that Office Action were copies of eleven third-party registrations wherein the lists of goods include both men's socks and women's footwear.

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<sup>1</sup> Reg. No. 1,408,592, issued on the Principal Register to Bellini Imports Ltd. on September 9, 1986; combined affidavit filed under Sections 8 and 15; now owned by M. C. Shoe Co., Inc.

<sup>2</sup> Reg. No. 1,796,450, issued on the Principal Register to M. C. Shoe Co., Inc. on October 5, 1993.

<sup>3</sup> Reg. No. 1,564,623, issued on the Principal Register to Bellini Imports, Ltd. on November 7, 1989; Section 8 affidavit filed; assigned to M. C. Shoe Co., Inc.

On June 27, 1997, applicant filed a combined notice of appeal and appeal brief, but did not request an oral hearing before the Board. The Examining Attorney timely filed her brief on September 4, 1997. Applicant did not file a reply to it.

Based on careful consideration of the record in this appeal, the arguments made by applicant and the Examining Attorney, and the relevant legal principles and precedents, we conclude that the refusal to register is appropriate because the marks in question are similar, and the goods set forth in the application are commercially related to those listed in the cited registrations.

The factors which may come into play in resolving the issue of whether confusion is likely in a given case were listed by our primary reviewing court in *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Relevant factors to the case at hand are the similarity of the marks as they are applied to the goods of the applicant and the registrant, respectively; the similarity of the goods as they are identified in the application and the registrations; the similarity of the established, likely to continue channels of trade through which the goods move,

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and the conditions under which, and buyers to whom, sales of these goods are made.

Applicant argues that consideration of these factors leads to the conclusion that confusion is not likely, but we disagree.

Two of the registered marks are essentially the surname "BELLINI," and the third combines "BELLINI" with the descriptive (and hence disclaimed) word "KIDS." Applicant has appropriated the same surname which dominates all three of the registered marks and merely added to it a given name, "GIORGIO."

The Examining Attorney cites a number of previous decisions of the Court and of this Board which stand for the proposition that simply adding descriptive and/or subordinate words to a registered mark is not sufficient to avoid a likelihood of confusion. Further, she cites another group of cases wherein it was held that confusion is not avoided by adding a given name to a surname which is registered by itself.

We agree that both of these principles are applicable to the situation presented in the instant application. Apparel purchasers who are familiar with the use of either of the "BELLINI" marks or the "BELLINI KIDS" mark on the footwear sold by the registrant under these marks are

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likely, when presented with related goods offered under the mark "GIORGIO BELLINI," to assume that a single source, probably controlled or headed by a man named Giorgio Bellini, is responsible for them all. The purchaser may figure that different product lines or quality levels are sold by this enterprise under different versions of Mr. Bellini's name, e.g., his surname by itself, his given name by itself, or both his given name and his surname together, but the assumption would likely be that "GIORGIO BELLINI" products come from the same source as "BELLINI" and "BELLINI KIDS" goods do.

As pointed out by the Examining Attorney, the issue is whether the marks, when considered in their entireties, create similar overall commercial impressions. Visual Information Institute, Inc. v. Vicon Industries, Inc., 209 USPQ 179 (TTAB 1980). The average ordinary consumer, who is the normal purchaser for both registrant's footwear and applicant's socks, is known to have imperfect recall, and ordinarily retains a general, rather than specific, impression of the trademarks on the products he or she buys. Chemetron Corp. v. Morris Coupling & Clamp Co., 193 USPQ 537(TTAB 1979). Socks and footwear are not necessarily bought with great care after somber reflection by sophisticated purchasers.

Under these circumstances, applicant's mark, "GIORGIO BELLINI," as applied to men's socks, creates a commercial impression similar to the ones generated by the registered marks for footwear, each of which has the name "BELLINI" as its dominant component.

Turning then to the remaining duPont factors to which the record in this appeal relates, we find that the goods set forth in the application are related to the goods listed in the cited registrations. When these products are sold under these similar marks, purchasers would assume that they emanate from a single source.

The Examining Attorney cites a number of prior decisions in which various items of clothing have been held to be related. None of these cases, however, presents the precise factual situation which exists in the case at hand, and it is axiomatic that each case before us must be decided on its own merits and facts.

As a general rule, in order for the Board to find that confusion is likely when similar marks are used, the goods on which they are used do not need to be identical, or even competitive, for that matter. All that is necessary is that the products be related in some way, such that the conditions surrounding their marketing make it so that they can be encountered by the same purchasers under

circumstances that could give rise to the mistaken belief that the goods come from the same source. In re International Telephone & Telegraph Corp., 197 USPQ 910 (TTAB 1978).

While the goods in question here, men's socks, on one hand, and women's and children's footwear, on the other, are plainly not identical, they are sold in the same places, such as retail shoe stores and department stores, and they are purchased by the same types of people, ordinary consumers, for related purposes.

Further, the Examining Attorney introduced the evidence of third-party registrations wherein the goods listed include both men's socks and women's footwear. That so many registrations cover both kinds of products suggests that purchasers have a reasonable basis for expecting these types of goods to emanate from a single source. In re Albert Trostel & Sons, 29 USPQ2d 1783 (TTAB 1993).

In summary, we find confusion to be likely because these marks create similar commercial impressions and the goods specified in the application are commercially related to the products listed in the cited registrations. Even if we had any doubt as to this conclusion (and we do not), such doubt would necessarily be resolved in favor of the registrant and against applicant, who, as the newcomer, had

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a duty to select a trademark which is dissimilar to the marks already in use and registered for the same or related goods. In re Hyper Shoppes(Ohio) Inc., 6 USPQ2d 1025 (Fed. Cir. 1988).

The refusal to register is accordingly affirmed.

R. F. Cissel

E. W. Hanak

T. J. Quinn  
Administrative Trademark Judges  
Trademark Trial & Appeal Board

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