

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT
OF THE TTAB

DEC. 8, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pepi Kelman, Inc.

Serial No. 75/162,017

Michael A. Painter of Isaacman Kaufman & Painter PC for
applicant.

Odette Bonnet, Trademark Examining Attorney, Law Office 109
(Deborah S. Cohen, Managing Attorney)

Before Hanak, Chapman and Wendel, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Pepi Kelman, Inc. has filed an application to register
the mark RHAPSODY for "men's and women's fine jewelry,
namely, rings."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, on the ground of likelihood of
confusion with the registered mark RHAPSODY, in the

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stylized format reproduced below, for "watches, namely, wrist or strap watches."²

Rhapsody

Applicant and the Examining Attorney have filed briefs, but no request was made for an oral hearing.

It is obvious that the marks of applicant and registrant are virtually identical. Although the registered mark is restricted to a stylized version of the word RHAPSODY, applicant has applied to register its mark in a typed drawing and thus is not limited to any particular style. As a result, applicant could present its mark in a stylized format very similar to registrant's. See *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937 (Fed. Cir. 1983); *Jockey International Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1233 (TTAB 1992).

It is well established that the greater the degree of similarity in the marks, the lesser the degree of similarity of the goods which is required to support a holding of likelihood of confusion. See *In re Concordia*

¹ Ser. No. 75/162,017, filed Sept. 6, 1996, claiming first use dates of Aug. 14, 1996.

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International Forwarding Corp., 222 USPQ 355 (TTAB 1983) and the cases cited therein.

With this in mind, we look to the determinative factor in this case, i.e., the similarity or dissimilarity of the respective goods. The Examining Attorney argues that both watches and rings are considered jewelry and both would be sold in the same type of stores. She points to the third-party registrations which have been made of record as evidence not only that both watches and rings are categorized as "jewelry," but also that both items are often marketed under the same mark by a single source. In addition, she cites prior decisions of the Board involving the issue of likelihood of confusion in which a close relationship was found to exist between watches and jewelry, including rings [In re Leonard S.A., 2 USPQ 1800 (TTAB 1987)], watches and men's jewelry [Gruen Industries, Inc. v. Ray Curran & Co., 152 USPQ 778 (TTAB 1967)] and watches and rings [Clinton Diamond Corp. v. General Time Corp., 135 USPQ 272 (TTAB 1962)].

Applicant contends that in order for a relationship to exist between the goods involved, there must be a "functional" relationship, or a "logical association or

² Reg. No. 563,428, issued Aug. 26, 1952, claiming first use dates of July 23, 1951. The second renewal was filed Nov. 9,

joinder" between the goods, citing as an example the test applied by the Board in determining the relationship between various food products. Applicant argues that there is no such association or "complementary use" relationship between rings and watches and that purchasers would not reasonably believe that the source of applicant's rings is a watch manufacturer.

We find that the Examining Attorney has clearly established that a close relationship exists between applicant's rings and registrant's watches. In the first place, as she points out, while applicant's rings are described as "fine jewelry", there are no limitations as to cost or grade in the registration and, thus, the complete range of watches are encompassed thereby, including very costly watches. Next, she has shown by means of third-party registrations that several entities have adopted a single mark under which to market both rings and watches. We note with particular interest the registration issued to Bulova Corporation, the present owner of the cited registration, for the stylized letter "B" for "jewelry, namely, watches, earrings, pins, rings, pendants and bracelets." Such evidence fully rebuts applicant's argument that purchasers would not reasonably believe that

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rings and watches might emanate from the same source. See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993); In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 (TTAB 1988). There is no need for any proof of complementary use, although it is readily obvious that both jewelry items, watches and rings, are often worn at the same time.

Finally, the Examining Attorney has cited more than one prior decision in which the Board has held that watches and rings are jewelry items which might be viewed by the same purchasers in the same jewelry stores or the like and accordingly are considered to be related goods.

Thus, on the basis of the virtual identity of the marks and the close relationship of watches and rings, we find that there is a likelihood of confusion.

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

E. W. Hanak

B. A. Chapman

H. R. Wendel
Trademark Administrative Judges,
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