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AUGUST 27,99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Bellini Warenvertriebsgesellschaft mbH
v.
E. James Monson

Opposition Nos. 103,125 & 103,128
to applications Serial Nos. 75/001,125
and 74/734,226

Fernanda M. Fiordalisi of Buchnam and Archer for Bellini Warenvertriebsgesellschaft mbH.

Thomas S. Birney of Dorr Carson Sloan & Birney, P.C. for E. James Monson.

Before Simms, Seeherman and Walters, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Bellini Warenvertriebsgesellschaft mbH (opposer), a German corporation, has opposed the applications of E. James Monson to register the marks SPORTS CLOSET and SPORTSMAN'S CLOSET for sportswear clothing, namely, shirts, pants, jackets, shorts and caps.[1] Opposer asserts that it makes

[1] Application Serial No. 75/001,125, filed October 3, 1995, based upon applicant's allegation of a bona fide intention to use the mark in commerce; and application Serial No. 74/734,226, filed

and sells a variety of clothing items and personal care items such as cosmetics, perfumes and fragrances; that, prior to the filing date of applicant's applications, it has sold these goods under the mark CLOSED in this country; that it has obtained registrations for that mark for a variety of clothing items and for personal care and cosmetic products;[2] and that applicant's marks so resemble opposer's previously used and registered mark as to be likely to cause confusion, to cause mistake or to deceive. In his answer, applicant has denied the essential allegations of the notices of opposition. These cases were consolidated on motion on June 24, 1997. Opposer has submitted testimony and a notice of reliance upon the two pleaded registrations. Applicant has taken no testimony. The parties have submitted briefs but no oral hearing was requested.

Opposer took the testimony of the general manager of the exclusive importer and distributor of clothing sold under the mark CLOSED. This witness testified that opposer's CLOSED men's and women's sportswear has been sold in this country through his company by 15 retailers since early 1997. He testified that he was aware of opposer's mark since the mid-1980s. Sales have totaled over $100,000.

September 25, 1995, based upon applicant's allegation of a bona fide intention to use the mark in commerce.

[2] Registration No. 1,254,909, issued October 18, 1983, Section 8 affidavit accepted; and Registration No. 1,621,894, issued November 13, 1990, Sections 8 and 15 affidavit filed.

With respect to the pleaded registrations, this record does not support opposer's claim of ownership thereof. The registrations issued to Ball S.r.l. of Rimini, Italy, in the case of the '909 registration, and to Ball S.p.a., in the case of the '894 registration. According to the status and title copies submitted during trial, they are both now owned by Ball S.p.a., not by opposer Bellini. However, opposer's witness testified that he is the importer and distributor of CLOSED clothing manufactured by opposer Bellini. Therefore, while the record may not support opposer's ownership of the pleaded registrations, it does support opposer's prior use of the mark in this country. We note that applicant has not raised a question as to opposer's lack of ownership in his brief.

Nor does applicant contest the issue of priority. In this regard, while opposer's witness testified that he had been importing CLOSED products since January 1997, which was after the filing dates of applicant's applications, he also stated that, being in the industry, he was aware of the label since the mid-1980s, and had purchased a CLOSED pair of jeans in a retail store at that time.

Concerning the issue of likelihood of confusion, opposer argues that the marks CLOSED, on the one hand, and SPORTS CLOSET and SPORTSMAN'S CLOSET, on the other, are similar in sound, appearance and meaning. In this regard,

opposer argues that the allegedly dominant part of applicant's mark, the word CLOSET, is identical to opposer's mark except for the last letter. With respect to meaning, opposer argues that its mark CLOSED connotes something enclosed while applicant's marks suggest an enclosed structure for clothes. It is opposer's contention, therefore, that the marks have similar meanings. Opposer also argues that the goods are either identical or closely related.

Applicant, on the other hand, contends that the marks are different in sound, appearance and connotation. Applicant contends that a "closet" is a small room or a place for storing valuable things or household requisites, while the word "closed" means being shut or ended.[3]

While opposer has established its priority and that the respective goods are identical or closely related, we nevertheless believe that there is no likelihood of confusion. We agree with applicant that his marks SPORTS CLOSET and SPORTSMAN'S CLOSET are so obviously different from opposer's mark CLOSED in sound, appearance and connotation that confusion is unlikely. Accordingly, we do

[3] Applicant has set forth in his brief a listing of third-party registrations containing the word CLOSE or variations thereof for related goods. Applicant has not submitted a notice of reliance upon copies of these registrations so they are not in evidence. We do not take "administrative notice" of such registrations, as requested by applicant. See In re Hub Distributing, Inc., 218 USPQ 285 (TTAB 1983) and In re Duofold, Inc. 184 USPQ 638, 640 (TTAB 1974).

not believe that a purchaser, aware of opposer's CLOSED clothing, upon encountering applicant's SPORTS CLOSET and SPORTMAN'S CLOSET clothing, would believe that these goods come from the same source because of any alleged similarities in the marks.

Decision: The oppositions are dismissed with prejudice.

R. L. Simms

E. J. Seeherman

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board