

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JAN. 13, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sally Ballew, dba Fore Jr's Only

Serial No. 74/636,249

William M. Hobby, III of Hobby & Beusse for Sally Ballew,
dba Fore Jr's Only.

Darlene D. Bullock, Trademark Examining Attorney, Law
Office 101 (Chris Wells, Managing Attorney).

Before Seeherman, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Sally Ballew, dba Fore Jr's Only, has filed an
application to register the mark shown below

FORE
JUNIORS ONLY

for "mail order catalog services featuring children's golf equipment, clothing and related accessories."¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to her identified goods, so resembles the registered mark JRS. ONLY! owned by Judy Ann of California, a California corporation, for "ladies' and girls' clothing, namely, blouses, body suits, swimsuits, shorts, jackets, blazers, skirts, t-shirts, sweat pants and sweatshirt ensembles"² as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

Turning first to a consideration of the respective goods and services, the Examining Attorney contends that goods and services need only be related in some way to find confusion; that applicant's mail order catalog services specifically includes the sale of clothing items, and the

¹ Ser. No. 74/636,249, filed February 21, 1995. The claimed dates of first use and first use in commerce are October 20, 1994 and December 15, 1994, respectively. Applicant disclaimed the word "juniors."

² Reg. No. 1,483,524, issued April 5, 1988, Section 8 affidavit accepted, Section 15 affidavit acknowledged. The claimed dates

cited registrant's goods are various clothing items for ladies and girls. In support of this contention, the Examining Attorney attached to her final refusal copies of over 35 third-party registrations, all of which issued on the basis of use in commerce, to demonstrate "that entities who have a service mark for catalog services also tend to sell the goods under the same trademark." (Examining Attorney's Appeal Brief, p. 8.)

Third-party registrations are not evidence of commercial use of the marks shown therein, or that the public is familiar with them. Nevertheless, third-party registrations which individually cover a number of different items and which are based on use in commerce have some probative value to the extent they suggest that the listed goods and/or services emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467 (TTAB 1988).

Applicant argues that the cited registrant does not sell golf equipment; and that there are significant differences in applicant's catalog sales services and the cited registrant's clothing.

of first use and first use in commerce are July 15, 1981. The term "jrs." is disclaimed.

Applicant's argument ignores the reality that not only applicant's identification of services but also applicant's catalog (the specimens submitted in the application) clearly include girls' clothing. A fair reading of applicant's identification of services is that the words "children's" and "golf" apply to all of the specific items listed as being sold by applicant, namely "equipment, clothing and related accessories". But even so interpreting applicant's services, children's golf clothing would encompass certain items of clothing listed in the cited registration. For example, the cited registration includes, inter alia, girls' shorts and t-shirts; and it is clear from applicant's catalog that applicant sells girls' shorts (p. 10) and t-shirts (p. 8). Thus, the cited registration encompasses at least some of the goods sold by applicant through applicant's mail order catalog services.

However, even though some of the goods sold through applicant's mail order services are encompassed within the items in the cited registration, we disagree with the Examining Attorney that the channels of trade are the same. Applicant's services are "mail order catalog services", and thus, applicant's channels of trade do not include, for example, retail stores, the channel of trade in which the registrant's goods are likely to be sold. Nor can we

assume that applicant would sell the cited registrant's goods through applicant's catalog. Thus, we find the channels of trade are not the same for applicant's services and the cited registrant's goods.

Turning next to a consideration of the marks, the Examining Attorney takes the position that the marks are similar in sound because the word "JRS." in the cited registrant's mark could be pronounced as "JUNIORS", and because both marks also include the word "ONLY"; that applicant has adopted the cited registrant's entire mark and merely added one word thereto; that the marks are similar in commercial impression because both entities are targeting a particular audience of buyers, and the term "ONLY" appearing in both marks tells the potential purchaser that the goods are intended to be used solely by "juniors"³; that the words "JRS." and "JUNIORS" have been disclaimed and therefore, these terms are less significant or less dominant; that the dominant portion of applicant's mark is the words FORE and ONLY, while the dominant portion of the registrant's mark is the word ONLY!; and that the design elements in applicant's mark do not obviate the similarity between the marks.

³ The Examining Attorney submitted Webster's II New Riverside University Dictionary definition of the term "juniors" as "...2.

Applicant contends that the marks are simply not the same because applicant's mark includes the word FORE in stylized type, a design of a golf ball which is the letter "o" in the word "FORE", and a design of a golf club, which overlaps to form the letter "J" in the word "JUNIORS". Further, the words "juniors only" are on a different line and in different type from the word "fore", the golf term "fore"⁴ is emphasized in applicant's mark, and the term "juniors" is not abbreviated in applicant's mark. Applicant also points out that the terms "JRS." and "JUNIORS" have been disclaimed, thereby indicating that the word is weak because of its descriptive nature, and thus, will be easily distinguished by purchasers.

The emphasis in determining likelihood of confusion is not on a side-by-side comparison of the marks, but rather must be on the recollection of the average purchaser, who normally retains a general recollection or impression of the many trademarks encountered. See *Johann Maria Farina Gegenuber Dem Julichs-Platz v. Chesebrough-Pond, Inc.*, 470 F.2d 1385, 176 USPQ 199 (CCPA 1972); and Mucky Duck Mustard Co., supra.

designed for or including young people....4. a clothing size for girls and women with slender figures."

⁴ The American Heritage Dictionary defines "fore" as "...Golf. Used to warn those ahead that a ball is about to be driven in

We agree with applicant that these marks, when considered in their entirety, are different in appearance and connotation and create different commercial impressions. Registrant's mark indicates a size of clothing, that is, clothing for girls and/or slender, petite women. Applicant's mark, on the other hand, has a strong golf connotation, as evidenced by the word FORE, the golf ball design, and the golf club design. Although both marks include the word "juniors" or the abbreviation thereof, "junior" has a different connotation due to its different use in each instance. Accordingly, a purchaser familiar with registrant's goods sold under the registered mark would not, upon seeing applicant's mark for its mail order catalog services for children's golf equipment, clothing and related accessories, assume that applicant's services come from the same source as registrant's goods.

Based on the dissimilarity of the marks, and the separate, distinct channels of trade, we find that there is no likelihood that the purchasing public would be confused by applicant's use of FORE JUNIORS ONLY and design as a mark for mail order catalog services. See In re E. I.

their direction." The Board takes judicial notice of this definition. See TBMP §712.01.

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duPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

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

E. J. Seeherman

P. T. Hairston

B. A. Chapman
Administrative Trademark Judges,
Trademark Trial and Appeal Board