

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 9/10/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Shelby Elastics, Inc.

Serial No. 75/187,119

Jeffrey A. Andrews of Vernon Vernon Wooten Brown Andrews &
Garrett, P.A. for Shelby Elastics, Inc.

Ronald McMorrow, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Hairston, Chapman and Bucher, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Shelby Elastics, Inc. has filed an application for
registration of the mark "WEB-LOK" for "elastic fabric
containing both a horizontal and vertical lock stitch to
prevent runs or unraveling in either direction sold as an
integral component of orthopedic back support products."¹

The Trademark Examining Attorney issued a final refusal
to register based upon Section 2(d) of the Trademark Act, 15

U.S.C. §1052(d), on the ground that applicant's mark "WEB-LOK" when used on these elastic fabric components, so resembles the registered mark, "WEBLOX," as applied to, "non-woven fabrics made from textile fibers, or mixtures thereof, and such non-woven fabrics in combination with other textile fabrics, in the piece and in cut lengths or sizes, for use as substitutes for knitted, netted and woven fabrics and the like," as to be likely to cause confusion, or to cause mistake, or to deceive.²

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

The Trademark Examining Attorney contends that the marks are similar in appearance, sound and connotation, while the applicant takes the position that the marks "...are clearly distinguishable." The Trademark Examining Attorney contends that because the registration states the goods broadly, we must presume that registrant's goods could well include applicant's more specialized goods. Applicant, in turn, argues that given the distinct nature of applicant's

¹ Serial No. 75/187,119, filed October 15, 1996, which sets forth dates of first use of March 15, 1996.

² Registration No. 744,890, issued on February 5, 1963, renewed. The registration sets forth dates of first use of October 5, 1961.

goods and the insular circumstances surrounding the marketing of fabric components for orthopedic products, confusion is highly unlikely. Finally, applicant argues that the absence of any actual confusion or concerns on the part of registrant about applicant's use of this mark should also weigh in applicant's favor.

In the course of rendering this decision, we have followed the guidance of *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973), that sets forth the factors which, if relevant, should be considered in determining likelihood of confusion.

As to the marks, we agree with the Trademark Examining Attorney that these marks must be considered to be highly similar under the trilogy of sight, sound and overall appearance. If one takes the singular form of applicant's mark, "WEB-LOK," the spoken plural form would be pronounced "web-locks" or "web-lox." The presence of a hyphen in applicant's mark provides for a negligible difference in appearance, while the final consonants "K" and "X," in applicant's and registrant's marks respectively, actually produce a strong visual and aural similarity.

In turning to a consideration of the goods, it is sufficient for purposes of the instant determination that the goods are related in some manner such that they would be

likely to be encountered by the same persons under circumstances that could, because of the marks used thereon, give rise to the mistaken belief that they originate from or are in some way associated with the same source. See Hilson Research Inc. v. Society for Human Resource Management, 27 USPQ2d 1423 (TTAB 1993) [viz., the potential purchasers of Hilson's testing services might well assume that Society was involved in sponsoring or endorsing the testing services]. We agree with the Trademark Examining Attorney that in the absence of a specific limitation in the registration certificate, we must assume that registrant uses the mark on all kinds of non-woven fabrics, including those for use in the manufacture of orthopedic back-support products. See In re Elbaum, 211 USPQ 639 (TTAB 1981). Thus, we have no doubt that the goods of applicant and registrant, as identified in the application and registration, are sufficiently related in nature that their contemporaneous marketing under the same or similar marks would be likely to cause confusion as to source.

Finally, the fact that applicant has not encountered any instances of actual confusion arising from the contemporaneous use of the marks is not persuasive of a different result. We have no information concerning the nature and extent of registrant's use, and thus we cannot

tell whether there has been sufficient opportunity for confusion to occur. Furthermore, applicant's mark had only been in use for two years at the time this argument was first advanced. And, of course, there has been no opportunity herein for registrant to be heard from as to whether it has experienced any instances of actual confusion. These factors materially reduce the probative value of applicant's argument on the matter of actual confusion. Moreover, the test under Section 2(d) of the Act is likelihood of confusion, not actual confusion.

In conclusion, given the fact that these marks are substantially identical and that the goods are sufficiently related, we find a likelihood of confusion herein.

Decision: The refusal is affirmed.

P. T. Hairston

B. A. Chapman

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial
and Appeal Board