

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB 9/16/99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re S J B Enterprises, Inc.

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Serial No. 75/203,039

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David V. Radack and Kirk D. Houser of Eckert, Seamans,  
Cherin & Mellott for applicant.

George M. Lorenzo, Trademark Examining Attorney, Law Office  
109 (Ronald Sussman, Managing Attorney).

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Before Walters, Chapman and Wendel, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

S J B Enterprises, Inc. has filed a trademark  
application to register the mark LEED'S for "computer  
carrying cases sold through wholesale channels of trade,"  
in International Class 9, "writing pads and daily planners  
sold through wholesale channels of trade," in International  
Class 16, and "luggage, business cases and wallets sold

through wholesale channels of trade," in International Class 18.<sup>1</sup>

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark LEEDS, previously registered for "retail shoe and accessory<sup>2</sup> store services,"<sup>3</sup> that, when used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See, In re E. I. duPont de Nemours and*

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<sup>1</sup> Serial No. 75/203,039, filed November 22, 1996, based on an allegation of use of the mark in commerce in connection with the identified goods, alleging dates of first use and first use in commerce of January, 1991, for goods in International Class 9, and of January, 1986, for goods in International Classes 16 and 18.

<sup>2</sup> We take judicial notice of the definition in the *Random House Dictionary of the English Language*, 2<sup>nd</sup> ed., unabridged (1987), of "accessories" as "an article or set of articles of dress, as gloves, earrings, or a scarf, that adds completeness, convenience, attractiveness, etc. to one's basic outfit."

<sup>3</sup> Registration No. 719,777 issued August 8, 1961, to Edison Brothers Stores, Inc., in International Class 35. [Sections 8 and 15 declarations accepted and acknowledged, respectively. Registration renewed for a period of 20 years from August 8, 1981.]

Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the analysis of likelihood of confusion in this case, key considerations are the similarities between the marks, the similarities between the goods and services, and the channels of trade. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999).

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See, Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

In the case before us, the marks differ only to the extent that the final "S" in applicant's mark is a possessive "S." However, this distinction does not alter

the identical pronunciation of the two marks. Applicant does not argue, and we do not find, that this distinction creates a significant difference in either the appearance or the connotation of the two marks. We find that the two marks are, if not essentially identical, at least substantially similar in sight, sound, connotation and overall commercial impression.

Applicant argues that registrant's mark is weak because it is a common surname and, thus, entitled to a narrow scope of protection. In support of this argument, applicant submits with its brief a copy of an amendment filed by registrant in connection with the application that matured into the cited registration wherein registrant states that "LEED'S is a rather common surname." Because the record must be complete prior to appeal, applicant's filing of this evidence is untimely. However, since the Examining Attorney treated this evidence as being of record, we have considered it. Nonetheless, that registrant took this position in connection with its application is not conclusive regarding the issue of the strength of registrant's mark. Rather, it is a fact, and that fact is evidence that is "illuminative of shade and tone in the total picture confronting the decision-maker." *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576

F.2d 926, 198 USPQ 151, 154 (CCPA 1978). In this case, applicant has submitted no additional evidence to support its contention that registrant's mark is weak, such as third-party uses and/or registrations of LEEDS in connection with goods or services similar or related to registrant's identified services. Even if we were to conclude that LEED'S or LEEDS is a common surname, we find this fact, alone, to be insufficient to warrant the conclusion that registrant's mark is weak in connection with its identified services. Thus, we draw no conclusions regarding the strength of registrant's mark.

We turn, next, to consider the relationship between the goods and services and the channels of trade. Applicant focuses, principally, on the channels of trade and argues that there is no likelihood of confusion because the channels of trade for its goods and registrant's services are substantially different; that the class of purchasers are entirely different; and that its products are purchased in large quantities with care by sophisticated purchasers.<sup>4</sup> By way of explanation, applicant

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<sup>4</sup> Applicant contends that, as contrasted with individual consumers of shoes and accessories sold at retail who "generally purchase relatively small quantities and dollar values," purchasers of applicant's goods "generally purchase relatively large quantities and dollar values of those goods"; and that the commercial entities purchasing from applicant are careful, sophisticated purchasers. Applicant has not provided any evidence in support of this contention and there is

states that its channels of trade are limited to direct sales, or sales to distributors for resale, to corporations and businesses who then place their own logos on the products and give the products to their employees and customers. Applicant also argues that its goods are unrelated to the goods that are the subject of registrant's services.<sup>5</sup>

On the other hand, the Examining Attorney contends that, despite the "wholesale channels of trade" limitation in applicant's identification of goods, applicant's goods, as identified, encompass finished products of the type sold through retail channels of trade. The Examining Attorney contends, essentially, that applicant's and registrant's channels of trade overlap because, despite applicant's description of the limited manner in which it actually sells its goods, its identification of goods encompasses applicant's sale to wholesalers who may resell the goods to retailers for sale to consumers under applicant's mark.<sup>6</sup>

The Examining Attorney also contends that applicant's goods

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nothing in the identifications of goods or services to warrant this conclusion.

<sup>5</sup> We find applicant's cited cases in support of this contention, at pages 8-11 of its brief, to be distinguishable from the case before us on their facts.

<sup>6</sup> In particular, the Examining Attorney notes that applicant's goods are not bulk materials or ingredients that will be transformed in some way, and applicant's mark removed, before reaching the retail market.

are related to the goods sold in connection with registrant's identified retail services. In support of his position, the Examining Attorney submitted copies of third-party registrations.<sup>7</sup>

While the channels of trade for applicant's goods and registrant's services are principally different, we agree with the Examining Attorney that, in view of the nature of applicant's goods, there is likely to be some overlap in applicant's and registrant's channels of trade. However, despite the focus by applicant and the Examining Attorney on the channels of trade, we find the differences between applicant's identified goods and the goods that are the subject of registrant's services to be determinative. Clearly, applicant's goods are not the same as the goods available through registrant's retail services. There is

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<sup>7</sup> The Examining Attorney submitted copies of numerous third-party registrations wherein a single mark is registered for both wholesale and retail services. Because the services recited in these registrations are in fields that are entirely unrelated to applicant's goods or to registrant's retail field, we find this evidence unpersuasive.

The Examining Attorney also submitted nine third-party registrations, all owned by different entities, wherein a mark is registered for goods including shoes and, variously, leather goods, luggage, wallets, address books, brief cases and portfolios; and one third-party registration of a mark registered for both accessories and luggage. At least four of these registrations cover a wide range of goods, including the enumerated goods, as well as retail, mail order and/or wholesale services in connection therewith (e.g., LANDS END, J. CREW, MARK CROSS, and SALVATORE FERRAGAMO). As such, these registrations are not particularly useful in demonstrating that the specific goods identified in the registration and application herein are related.

nothing in the record to indicate that "accessories" would encompass goods of the type identified in the application. Nor does this *ex parte* record establish that the goods identified in the application and registrant's shoes and accessories are similar, related, or of such a nature that, if used and registered in connection with similar marks, purchasers would mistakenly believe that such goods emanate from the same source.

Therefore, we conclude that, despite the fact that applicant's mark is essentially identical to registrant's mark, there are sufficient differences in the channels of trade and in the goods and services that applicant's and registrant's contemporaneous use of their marks on the goods and services involved in this case is not likely to cause confusion as to the source or sponsorship of such goods and services.

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*Decision:* The refusal under Section 2(d) of the Act  
is reversed.

C. E. Walters

B. A. Chapman

H. R. Wendel  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board