

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

JUNE 29, 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 *The Psychographics Design Group, Inc.*

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Serial No. 75/212,309

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*Bart A. Lazar* of Seyfarth, Shaw, Fairweather & Geraldson  
for *The Psychographics Design Group, Inc.*

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Office 109 (*Ronald R. Sussman*, Managing Attorney)

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Before Chapman, Wendel and Bucher, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

*The Psychographics Design Group, Inc.* has filed an  
application to register the mark SUNDAY STATE OF MIND for  
"clothing, namely, t-shirts, polo shirts, crew neck shirts,  
football jerseys, pullover shirts, v-neck shirts, dress  
shirts, hooded shirts, sweatshirts, hooded sweatshirts,  
jackets, hooded jackets, anoraks, coats, dresses, t-shirt

dresses, skirts, sweaters, sweatpants, tank tops, pants, overalls, shorts and scarves."<sup>1</sup>

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of two prior registrations issued to the same entity--(1) the mark A STATE OF MIND<sup>2</sup>, and (2) the mark "A PENNSYLVANIA STATE OF MIND,"<sup>3</sup> both for "clothing, namely caps, shirts, jackets and sweaters."

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

We affirm the refusal to register as to the mark A STATE OF MIND (Reg. No. 1,762,103) only. In reaching this conclusion, we have considered all of the relevant du Pont<sup>4</sup> factors in relation to both cited registrations.

We turn first to a consideration of applicant's goods vis-a-vis the goods in both cited registrations. We find that the involved goods are essentially identical and/or

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<sup>1</sup> Application Serial No. 75/212,309, filed December 12, 1996, based on applicant's claimed dates of first use and first use in commerce of January 19, 1994.

<sup>2</sup> Reg. No. 1,762,103, issued March 30, 1993, Section 8 affidavit accepted, Section 15 affidavit acknowledged. The claimed date of first use and first use in commerce is December 1, 1992.

<sup>3</sup> Reg. No. 1,723,894, issued October 13, 1992, Section 8 affidavit accepted, Section 15 affidavit acknowledged. The claimed date of first use and first use in commerce is February 1988. The term "Pennsylvania" is disclaimed. The mark as registered includes quotation marks.

<sup>4</sup> See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

closely related products. Applicant did not argue to the contrary.

Likewise applicant did not argue, and we do not find, any differences in the channels of trade or purchasers. We must presume, given the identifications, that the goods travel in the same channels of trade, and are purchased by the same class of purchasers. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

Turning now to the cited registered mark "A PENNSYLVANIA STATE OF MIND" (Reg. No. 1,723,894), we find that the connotations and commercial impressions created by this mark and by applicant's mark SUNDAY STATE OF MIND are entirely distinct. Specifically, applicant's mark most likely would connote a day of leisure and recreation or a day at church, whereas the registrant's mark connotes something made in or in some way connected with the Commonwealth of Pennsylvania. Based on the record before us, we conclude that applicant's mark (SUNDAY STATE OF MIND) and the mark in cited Registration No. 1,723,894 ("A PENNSYLVANIA STATE OF MIND") are not sufficiently similar that consumers are likely to assume a common source when the goods are sold under these marks.

Turning next to the refusal to register based on the mark A STATE OF MIND (Reg. No. 1,762,103), we find that the marks SUNDAY STATE OF MIND and A STATE OF MIND are similar in sound and connotation. The commercial impression created by these marks is substantially similar, both relating to a thought process or state of mind. That is, both marks refer to a mental outlook, although only applicant's mark specifically refers to Sunday, connoting a day of recreation (casual clothing) or a day for church (more dressed-up attire). See *The Wella Corporation v. California Concept Corporation*, 558 F.2d 1019, 194 USPQ 419 (CCPA 1977); and *In re South Bend Toy Manufacturing Company, Inc.*, 218 USPQ 479 (TTAB 1983).

Of course, purchasers will be aware of the word SUNDAY in applicant's mark, but they may assume that SUNDAY STATE OF MIND is just a variant of registrant's A STATE OF MIND mark, which is being used to identify a new line of clothing consisting of casual wear for recreational activities on Sunday, or a line of more dressed-up clothing for a day at church on Sunday. That is, even if purchasers realize that applicant's mark is different from registrant's mark, they may believe that applicant's mark is a new line of products sold under registrant's mark. Purchasers are likely to assume that applicant's goods come

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from the same source as registrant's goods or are in some way sponsored by or associated with registrant. See *Henry Siegel Co. v. M & R International Mfg. Co.*, 4 USPQ2d 1154 (TTAB 1987); and *Piccolo Sportswear, Inc. v. Mast Industries, Inc.*, 227 USPQ 710 (TTAB 1985).

Applicant's argument that it owns a registration for the mark A MONTH OF SUNDAYS is not relevant to the issue of likelihood of confusion between applicant's applied-for mark and the cited registered marks because applicant cannot rely upon a family of marks in seeking registration of this particular mark. See *In re U.S. Plywood-Champion Papers, Inc.*, 175 USPQ 445 (TTAB 1972). See also, *Baroid Drilling Fluids Inc. v. Sun Drilling Products*, 24 USPQ2d 1048 (TTAB 1992).

Finally, any doubt on the question of likelihood of confusion must be resolved against the newcomer as the newcomer has the opportunity of avoiding confusion, and is obligated to do so. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, at 1440 (TTAB 1993).

Decision: The refusal to register under Section 2(d) is reversed as to Registration No. 1,723,894 ("A PENNSYLVANIA STATE OF MIND"), and the refusal to register

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is affirmed as to Registration No. 1,762,103 (A STATE OF MIND).

B. A. Chapman

H. R. Wendel

D. E. Bucher  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board