

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Twin Togs Creations, Inc.

Serial No. 75/237,781

William T. Hough for Twin Togs Creations, Inc.

Daniel P. Vavonese, Trademark Examining Attorney, Law
Office 109 (Ronald R. Sussman, Managing Attorney)

Before Seeherman, Hohein and Bucher, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Twin Togs Creations, Inc., a New York corporation, has
filed an application for registration of the mark
"1 2 3 KIDS" (with the word "KIDS" disclaimed) for
"outerwear clothing, namely long pants, conventional
shirts, jogging suits, outerwear sports shorts, outerwear
sports shorts-sets, sports shirts, sports pants, sweat
suits, sweat shirts, jogging shirts, and jogging bottoms."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

¹ Serial No. 75/237,781, filed January 28, 1997, alleging use
since October 15, 1996.

applicant's mark, "1 2 3 KIDS" when used on the items of outerwear listed above, so resembles the registered mark, "1 2 3 and design" as applied to "children's clothing; namely, pants, t-shirts and dresses," as to be likely to cause confusion, or to cause mistake, or to deceive. However, given that the cited registration, Reg. No. 1,736,711, issued on December 1, 1992, and no Section 8 affidavit of continued use has been filed, this cited registration has now been cancelled, and thus the passage of time has made this appeal moot. Accordingly, this appeal is dismissed, and the mark should proceed to publication for opposition.

E. J. Seeherman

G. D. Hohein

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board