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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Bernd Hummel, GmbH**

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Serial No. 75/115,589

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**Paul M. Denk** for Bernd Hummel, GmbH

**Sue Carruthers**, Trademark Examining Attorney, Law Office  
108 (**David Shallant**, Managing Attorney)

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Before **Seeherman**, **Hanak** and **Wendel**, Administrative  
Trademark Judges.

Opinion by **Hanak**, Administrative Trademark Judge:

Bernd Hummel, GmbH (applicant) seeks to register GEO  
NATUR WARE and design in the form shown below for "articles  
of clothing, namely, sports and leisure garments, namely  
shirts, pants, hats, socks, head wear, footwear, belts,  
coats" and for "suit and carry-on suitcases, sports,  
travel, and carry bags, sport bags, backpacks, handbags,

billfolds, wallets, key cases, brief cases, attaché cases." This intent-to-use application was filed on June 6, 1996.

The Examining Attorney refused registration pursuant to Section 2(d) of the Trademark Act on the basis that applicant's mark, as applied to applicant's goods, is likely to cause confusion with four previously registered marks, to be discussed in greater detail later.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). ("The fundamental inquiry mandated by Section 2(d)

goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."). Moreover, because applicant seeks to register its mark for two different classes of goods, our likelihood of confusion analysis is structured as if applicant filed two separate applications, one for its class 18 goods and another for its class 25 goods. With regard to applicant's class 25 goods (articles of clothing), it is the position of the Examining Attorney that applicant's mark is confusingly similar to the mark LIFEFORMS NATUREWEAR, previously registered for "T-shirts" (Registration No. 1,630,930), and to the mark LIFEFORMS NATUREWEAR and design (shown below) also previously registered for "T-shirts" (Registration No. 1,884,164). Both of these registrations are owned by the same registrant.

We find that applicant's mark is so dissimilar from both of the foregoing marks such that their use on even very closely related if not identical goods (shirts and T-shirts) is not likely to result in confusion. Kellogg Co. v. Pack'em Enterprises, 951 F.2d 330, 21 USPQ2d 1142, 1144 (Fed. Cir. 1991). The Examining Attorney has taken the position that the word GEO is the dominant portion of applicant's mark, and we agree. (Examining Attorney's brief page 2). The dominance of the word GEO in applicant's mark causes it to be dissimilar enough from the marks LIFEFORMS NATUREWEAR and LIFEFORMS NATUREWEAR and design such that their contemporaneous use on even identical goods is not likely to result in confusion.

However, with regard to applicant's class 25 application (articles of clothing), a different result is reached when we consider the third mark cited by the Examining Attorney, namely, the mark GEO per se previously registered for "footwear." Registration No. 1,271,912. To begin with, we note that one of applicant's class 25 goods is footwear. Thus, applicant's seeks to register its mark for the identical goods which are the subject of Registration No. 1,271,912. Our primary reviewing Court has made it clear that "when marks would appear on virtually

identical goods or services, the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Like the Examining Attorney, applicant has also acknowledged that "the dominant portion of [applicant's] mark is ... the term GEO." (Applicant's brief page 6). Given the fact that the dominant portion of applicant's mark is absolutely identical to the previously registered mark GEO, we find that their contemporaneous use on identical goods is likely to result in confusion. Moreover, it is also important to note that these goods (footwear) can be relatively inexpensive and can be purchased by ordinary consumers using minimal care. This only further increases the chances for a likelihood of confusion. Thus, we find that applicant's class 25 application for articles of clothing, including footwear, is barred from registration due to Registration No. 1,271,912.

Finally, we turn to the fourth mark cited by the Examining Attorney, namely, the mark GEO-GEAR in the form shown below, previously registered for "fanny packs and roll bags." Registration No. 1,789,406.

Fanny packs (one of registrant's goods) are extremely similar to handbags and wallets (some of applicant's class 18 goods) in that all three are used to carry such items as money, credit cards and various forms of identification. In addition, another of registrant's goods (roll bags) are extremely similar to certain of applicant's class 18 goods such as suitcases, carry bags, travel bags, and sport bags. All of these goods are used to hold larger items such as clothing and toiletries. In discussing its goods and the goods of Registration No. 1,789,406, applicant merely states that its "clothing products, of this application, it is submitted, has [sic] no relationship to the fanny packs and roll bags as set forth in the Registration No. 1,789,406." (Applicant's brief page 7). However, applicant

does not discuss any dissimilarity between its class 18 goods and the goods of Registration No. 1,789,406, namely, fanny packs and roll bags. As previously discussed, fanny packs are extremely similar to a number of applicant's class 18 goods, as are roll bags to other of applicant's class 18 goods. Given the fact that the word GEO is the dominant portion of applicant's mark and the fact that this word also forms a very important of the registered mark GEO-GEAR, we find that the contemporaneous use of these two marks on closely related class 18 goods is likely to result in confusion. Moreover, to the extent that there are doubts on this issue, said doubts must be resolved in favor of the registrant. In re Hyper Shoppes, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

In conclusion, we find that applicant's class 18 application is barred from registration by the existence of Registration No. 1, 789,406. Moreover, as previously noted, applicant's class 25 application (articles of clothing) is barred by the existence of Registration No. 1,271,912. Thus, the refusal to register is sustained in its entirety.

Two final comments are in order. First, applicant relies upon the declaration of its president who stated, in part, that "applicant has shipped thousands of pairs of

such shoes, at least during the years 1996 and 1997 bearing the GEO NATUR WARE and design mark which shoes have been marketed throughout the United States. Not a single incidence of actual confusion has arisen with respect to the marketing of these branded shoes in the United States." Applicant argues that this absence of actual confusion is evidence of no likelihood of confusion. We simply disagree. To begin with, the record is devoid of any information as to the extent of sales of GEO footwear in the United States. Registration No. 1,271,912. Moreover, we do not know if GEO footwear is sold in limited geographic areas of the United States. Likewise, the declaration of applicant's president is extremely vague as to the volume of sales of GEO NATUR WARE and design shoes in the United States. The term "thousand of pairs of such shoes" could simply indicate that applicant has sold merely 2,000 or 3,000 pairs of shoes throughout the entire United States. Such a level of sales would be so insignificant such that there has been no meaningful chance of actual confusion to have occurred.

Second, at page 8 of its brief, applicant notes that there are a number of similar marks for use on similar goods. In this regard, applicant points out that initially, the Examining Attorney made mention of a pending

application to register the mark GEO-RAGS and design for children's clothing including footwear. Applicant goes on to state that this application has matured into Registration No. 2,120,178. Applicant then questions how this registration could have issued in light of Registration No. 1,271,912 for GEO for footwear.

Suffice it to say, we are not informed as to why the Examining Attorney handling the application to register GEO-RAGS and design permitted it to be registered in light of the existing registration of GEO for footwear. While the PTO strives for uniformity in the handling of applications, such uniformity is not always achieved. In any event, this Board is certainly not bound by the actions of the Examining Attorney who handled the application to register GEO-RAGS and design for children's clothing including footwear.

Moreover, during the course of the examination process, applicant submitted a mere list of purported marks containing the word GEO. Said list did not reveal the goods or services for which the various GEO marks were registered. In any event, this Board has repeatedly stated "the submission of a list of registrations is insufficient to make them of record." In re Duofold Inc., 184 USPQ 638, 640 (TTAB 1974). At page 2 of office action number 5, the

Examining Attorney advised applicant of this Board policy and cited the Duofold case. Despite being put on notice, applicant thereafter never attempted to obtain copies of these third-party GEO registrations and properly make them of record. Accordingly, we have accorded no weight to this mere list of purported GEO registrations.

Decision: The refusal to register applicant's mark for its class 18 goods is affirmed in view of the existence of Registration No. 1,789,406. The refusal to register applicant's mark for its class 25 goods is affirmed in view of the existence of Registration No. 1,271,912.

E. J. Seeherman

E. W. Hanak

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