

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 1/13/00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Angels of Love, Inc.

Serial No. 75/217,869

Michael A. O'Neil of Gardere & Wynne, LLP for applicant.

Andrew D. Lawrence, Trademark Examining Attorney,
Law Office 108 (David Shallant, Managing Attorney)

Before Simms, Hanak and Holtzman, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Angels of Love, Inc. (applicant), a Texas corporation,
has appealed from the final refusal of the Trademark
Examining Attorney to register the mark shown below

for pins, pendants, necklaces and earrings always featuring an angel motif sold exclusively through independent sales associates.¹ The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 2,075,982, issued July 1, 1997, for the mark ANGEL D'AMOUR for jewelry, watches, precious gemstones and objects of art made from or including precious metal, namely, paperweights, key fobs, buttons, buckles, cigarette cases, cigar cases, manicure sets and vanity cases. In the registration, it is indicated that the English translation of the mark is "angel of love."

The Examining Attorney argues that, under the doctrine of foreign equivalents, the registered mark creates a similar commercial impression to that of applicant's mark. The Examining Attorney argues that the French language is familiar to an appreciable number of Americans. According to the Examining Attorney, the meaning of the two marks is the same, except that applicant's mark contains the plural form of the word "Angel." Also, the Examining Attorney argues that the word portion of applicant's mark dominates and should be afforded greater weight in the likelihood-of-

¹ Application Serial No. 75/217,869, filed December 17, 1996, based upon allegations of use since December 9, 1996. Applicant

confusion analysis. In this regard, the Examining Attorney maintains that the design element of applicant's mark merely reinforces the word portion because the halo is a symbol associated with angels and the heart design is associated with love.

With respect to the marks, applicant's attorney argues that the marks are not identical and have "very different" connotations as well as differences in sight and sound. Applicant also maintains that the design element is the dominant part of its mark (brief, 7, and Request for Reconsideration, filed May 4, 1989, 3). Also, based upon a number of registrations and applications which contain the words "ANGEL" or "ANGELS" and "LOVE," applicant's attorney argues that these words are "diluted" and weak and that consumers are accustomed to seeing these common English words in the marketplace. According to applicant, these terms are "widely used" for a variety of goods and services and they, therefore, have little significance to the average consumer.

The third-party registrations made of record include ANGE D'AMOUR and design for wedding gowns, dresses, skirts, shirts, pants, shoes, jackets, blazers and suits; ANGEL'S

has indicated that the stippling is not intended to indicate color.

LOVE for perfumes, cologne, toilet soaps, talcum powder;
LOOK LOVELY ANGEL for hair remover; and LOVE ANGELS for
clothing.

We agree with the Examining Attorney, however, that, aside from the fact that the third-party registrations and applications do not demonstrate use of those marks or public awareness thereof (Smith Brothers Manufacturing Co. v. Stone Manufacturing Co., 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973)), the respective marks are similar in connotation, when one takes into consideration the English translation of the registered mark, and are otherwise similar. In this regard, we observe that the French word "l'amour," meaning "love," is probably one of the most familiar French words known to many Americans, whether fluent in French or not.² Also, as the Examining Attorney contends, the design portion of applicant's mark tends to reinforce the literal significance thereof.³

² See, for example, In re American Safety Razor Co., 2 USPQ2d 1459 (TTAB 1987) (BUENOS DIAS for soap vs. GOOD MORNING for shave cream); In re Ithaca Industries, Inc., 230 USPQ 702 (TTAB 1986) (LUPO for underwear vs. WOLF for other items of clothing); and In re Hub Distributing, Inc., 218 USPQ 284 (TTAB 1983) (SUN vs. EL SOL).

³ However, we disagree with the Examining Attorney's argument, brief, 3, 4, that we should presume that the registrant is using a design similar to applicant's because registrant's mark is shown in typed form, and that the mark could, therefore, be displayed in any style, including with the very same design element. The Examining Attorney argues that we should, therefore, give applicant's design no trademark significance.

Concerning the goods, applicant argues that its goods are sold only through "independent sales associates"--that is, according to applicant, through family members, friends and acquaintances. According to applicant, its goods are not offered in traditional retail stores. Applicant also maintains that consumers of its goods are discriminating and sophisticated. Finally, applicant argues that there have been no instances of actual confusion "despite the lengthy concurrent use of both marks." Brief, 12.⁴

We agree with the Examining Attorney, however, who argues that registrant's and applicant's goods are, in part, identical (jewelry vs. various items of jewelry), and may be sold through similar channels of trade. In this regard, we note that there is no restriction on channels of trade in the registration and that, therefore, we must presume that registrant's goods may be sold in all normal channels of trade for those goods, including through

This argument is a misreading of the case law, which permits us to assume that a mark presented in typed letters may be used in various different, reasonable styles of presentation. See, for example, *Fossil Inc. v. Fossil Group*, 49 USPQ2d 1452, 1454 (TTAB 1998) ("However, opposer's registrations of the word FOSSIL in typed drawing form do not afford opposer rights in the word FOSSIL combined with other wording *or with designs* [emphasis added]."). We have compared the two marks as registered and as applied for, but have not assumed that registrant's mark is or will be presented with applicant's design element.

⁴ As the Examining Attorney has pointed out, some of the cases cited by applicant found no likelihood of confusion on the basis of consent agreements, and are not, therefore, on point.

"independent sales associates." In re Elbaum, 211 USPQ 639 (TTAB 1981). Also, there is no support in this record that consumers of the respective goods are sophisticated and discriminating. Indeed, the Examining Attorney has made of record evidence, consisting of photographs and catalog excerpts, demonstrating that jewelry may be low-priced. These goods may be purchased without much care.

Finally, with respect to the issue of the lack of actual confusion, applicant has submitted no evidence tending to show that registrant's and applicant's goods have, in fact, been sold in the same stores, so that there may have been an adequate opportunity for confusion to have arisen.

We conclude, therefore, that purchasers and potential purchasers, aware of registrant's ANGEL D'AMOUR jewelry and other goods, who encounter applicant's ANGELS OF LOVE (and design) jewelry featuring an angel motif, are likely to attribute these goods to the same source.

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Decision: The refusal of registration is affirmed.

R. L. Simms

E. W. Hanak

T. E. Holtzman
Administrative Trademark
Judges, Trademark Trial
and Appeal Board