

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      JAN. 7, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Timestar, Inc.

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Serial No. 75/269,719

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Neill A. Levy, Esq. for Timestar, Inc.

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

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Before Simms, Chapman and Rogers, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

Timestar, Inc. has filed an application to register  
the mark GIOVANNI for "watches."<sup>1</sup>

Registration has been finally refused under Section  
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the  
ground that applicant's mark, when used on its identified

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<sup>1</sup> Application Serial No. 75/269,719, filed April 7, 1997, based  
on applicant's alleged bona fide intent to use the mark in  
commerce.

goods, so resembles the registered mark GIOVANNI for "costume jewelry and findings,"<sup>2</sup> as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested.

We affirm the refusal to register. In reaching this conclusion, we have followed the guidance of the Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

The involved marks are identical. This fact "weighs heavily against applicant." *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). Indeed, the fact that an applicant has selected the identical mark of a registrant "weighs [so] heavily against the applicant that applicant's proposed use of the mark on "goods...[which] are not competitive or intrinsically related [to registrant's goods]...can [still] lead to the assumption that there is a common source." *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688-1689 (Fed. Cir. 1993). "The greater the similarity in the marks, the

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<sup>2</sup> Registration No. 702,559, issued August 9, 1960, Section 8 affidavit accepted, renewed. ["Findings" are components of finished jewelry products, e.g., catches, clasps or wires.]

lesser the similarity required in the goods or services of the parties to support a finding of likelihood of confusion." 3 J. McCarthy, McCarthy on Trademarks and Unfair Competition, §23:20.1 (4th ed. 1999).

We turn to a consideration of the cited registrant's goods and applicant's goods. Applicant's position is that its "watches" and the cited registrant's "costume jewelry and findings" are not related goods or even complementary goods; rather, they are sold through different channels of trade to different purchasers.

As evidence thereof, applicant submitted the declaration of applicant's president, Moshe Ben Nissan, in which he avers, inter alia, that he has 13 years experience in the wholesale watch business; that applicant is a manufacturer and wholesaler of watches; that watches cannot be classified as jewelry (including findings); that he disputes the Examining Attorney's contention that watches and jewelry are related goods; that in his observation of the retail market, watches and jewelry historically were sold together in jewelry stores "but those times have passed" and watches are not associated with 'real' jewelry or costume jewelry; and that "watches and jewelry have drifted so far apart in the mind of the consuming public that they are no longer associated with each other."

The Examining Attorney argues that the parties' goods are closely related and travel in the same channels of trade; and that applicant did not submit any substantive evidence to support the otherwise unsubstantiated statements of applicant's president.

In support of his position as to the relatedness of the respective goods, the Examining Attorney submitted several third-party registrations, each of which issued on the basis of use in commerce, to demonstrate the close relationship between watches and costume jewelry, by showing that a single entity has adopted a single mark for both of those goods.

While third-party registrations are not evidence of commercial use of the marks shown therein, or that the public is familiar with them, nonetheless, third-party registrations which individually cover a number of different items and which are based on use in commerce have some probative value to the extent they suggest that the listed goods emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, footnote 6 (TTAB 1988).

Moreover, it is well settled that goods need not be identical or even competitive in order to support a finding

of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of the goods or services. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

We are not persuaded by applicant's president's declaration that, based on his observation of the retail market for several years, watches and costume jewelry are not associated or related goods in the minds of the consuming public.<sup>3</sup> To the contrary, the record before us establishes that the respective goods of the parties are related. See *In re Leonard S.A.*, 2 USPQ2d 1800 (TTAB 1987) (watches and jewelry found to be related, but the refusal was reversed based on the consent agreement between the applicant and the cited registrant); *Monocraft, Inc. v. Leading Jewelers Guild*, 173 USPQ 506 (TTAB 1972) (watches

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<sup>3</sup> Applicant's declaration is self-serving, consisting of only his otherwise unsubstantiated statement.

and costume jewelry are closely related); Gruen Industries, Inc. v. Ray Curran & Co., 152 USPQ 778 (TTAB 1967) (men's jewelry and watches closely related); and Clinton Diamond Corporation v. General Time Corporation, 135 USPQ 272 (TTAB 1962) (clocks and watches closely related to finger rings).

Applicant has included no restriction to trade channels or purchasers in its identification of goods. Thus, the Board must consider that the parties' respective goods could be offered and sold to the same classes of purchasers through all normal channels of trade. See Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); In re Smith and Mehaffey, 31 USPQ2d 1531 (TTAB 1994); and In re Elbaum, 211 USPQ 639 (TTAB 1981). Moreover, even applicant concedes that "watches and costume jewelry may be sold in the same store." (Applicant's brief, page 6.)

Even assuming that the purchasers and users of the goods in question in the instant case are somewhat discriminating purchasers, this does not mean that such purchasers and users are immune from confusion as to the origin of the respective goods, especially when sold under the identical mark. See Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir.

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1990); Aries Systems Corp. v. World Book Inc., 23 USPQ2d 1742, footnote 17 (TTAB 1992); In re Pellerin Milnor Corporation, 221 USPQ 558 (TTAB 1984); and Aerojet-General Corporation v. American Standard, Inc., 171 USPQ 439 (TTAB 1971).

Based on the identity of the marks, the relatedness of the parties' respective goods, and the similarity of the trade channels and purchasers, we find that there is far more than a mere possibility of confusion; there is a likelihood that the purchasing public would be confused if and when applicant uses GIOVANNI as a mark for watches.

Decision: The refusal to register under Section 2(d) is affirmed.

R. L. Simms

B. A. Chapman

G. F. Rogers  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board