

1/10/01

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 25  
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Federated Department Stores, Inc.

v.

Wonduck America, Inc.

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Opposition No. 110,230  
to Application No. 75/303,514  
filed on June 5, 1997

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Daniel Ebenstein and Beth Kotran of Amster, Rothstein &  
Ebenstein for opposer.

Steven D. Kim, Esq. for applicant.

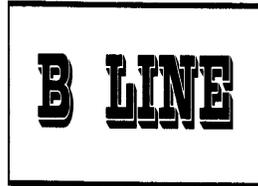
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Before Cissel, Walters and Wendel, Administrative Trademark  
Judges.

Opinion by Walters, Administrative Trademark Judge:

Federated Department Stores, Inc. filed its opposition  
to the application of Wonduck America, Inc. to register the  
mark B LINE in the stylized form shown below for "wearing  
apparel, namely, jackets, pants, skirts, and wearing

accessories, namely gloves, scarves" in International Class 25.<sup>1</sup>



As grounds for opposition, opposer asserts that applicant's mark, when applied to applicant's goods, so resembles opposer's previously used mark B-LINE for women's hosiery<sup>2</sup> as to be likely to cause confusion under Section 2(d) of the Trademark Act.

Applicant, in its answer, denied the salient allegations of the Notice of Opposition.<sup>3</sup>

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<sup>1</sup> Application Serial No. 75/303,514, filed June 5, 1997, based upon an allegation of a bona fide intention to use the mark in commerce in connection with the identified goods.

<sup>2</sup> While opposer pleaded numerous registered marks and included, with its Notice of Opposition, photocopies of these registrations, it did not submit certified copies of these registrations or otherwise establish the existence of these registrations through testimony. Thus, the pleaded registrations are not considered to be of record in this case and we have not considered them in making our decision.

<sup>3</sup> Applicant asserted as an affirmative defense that opposer has abandoned its B-LINE mark. Applicant presented no evidence regarding this allegation and did not otherwise pursue this defense, therefore we consider it to have been waived. Further, the evidence establishes that opposer has substantially and continuously used its B-LINE mark since its first use.

*The Record*

The record consists of the pleadings; the file of the involved application; the testimony deposition by opposer of Francine Klein, opposer's senior vice president, general merchandising manager, women's accessories, shoes and intimate apparel, and of Stephanie Zernik, opposer's operating vice president, divisional merchandise manager, men's sports furnishing, both with accompanying exhibits; and the testimony deposition by applicant of Sang Hyo Han, applicant's president and owner, with accompanying exhibits. Only opposer filed a brief on the case. An oral hearing was not requested.

*The Parties*

The department store Bloomingdale's is a division of opposer. Bloomingdale's consists of 23 stores in various locations around the United States, including the New York City metropolitan area. Bloomingdale's has a substantial private label business including B-LINE, which is its private brand of women's hosiery. This product is sold in all of, and only in, the Bloomingdale's stores. The evidence establishes that Bloomingdale's has used the mark B-LINE on women's hosiery continuously since at least 1975, when opposer's witness, Ms. Klein, began her tenure at Bloomingdale's.

Bloomingdale's advertises its B-LINE hosiery widely through direct mail, catalogs, newspapers and at least one television ad. The general public purchases Bloomingdale's B-LINE hosiery, although its advertising generally aims at a slightly up-scale purchaser. Bloomingdale's sales of its B-LINE hosiery totaled \$118,600 in 1996, and \$29,400 in 1997. Opposer's witness, Ms. Zernik, stated that competing brands of hosiery include DKNY, Calvin Klein, and other retailers' private brands. Ms. Zernik also testified that Bloomingdale's has another hosiery line identified by the trademark B-LUXE; that there is a section of, at least, its New York store known as B-WAY; and that Bloomingdale's uses the letter B as a preface to a number of its marks.<sup>4</sup>

Applicant's business, since June 1986, is the importing and wholesaling of men's apparel. This application is based upon a bona fide intention to use the B LINE mark in commerce on the identified goods. However, applicant's president testified that applicant has used the mark since January 1998 on men's leather jackets sold to small retailers in the New York metropolitan area.

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<sup>4</sup> There is no further evidence in the record regarding other marks that may be owned by opposer. Because we have no evidence about the nature of the purported marks, the goods upon which the marks may have been used, dates of use, or nature and extent of use, this testimony is of little value.

*Analysis*

Although there are no certified copies of any of opposer's pleaded registrations in the record, opposer's testimony adequately establishes its priority of use of the mark B-LINE on women's hosiery. Thus, there remains no issue with respect to priority.

Our determination of likelihood of confusion under Section 2(d) must be based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he 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." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). See also *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Considering, first, the marks, opposer's evidence of advertising in newspapers and on hosiery packaging shows its use of the mark B-LINE in relatively normal print with no integrated design element, such that the commercial impression of the mark is merely the word B-LINE. Applicant's mark is very similar thereto. The lack of an

dash between the "B" and "LINE" in applicant's mark is of minimal consequence. The rectangle around the wording is merely a carrier for the word; and the print used is non-distinctive. Thus, the overall commercial impression of applicant's mark is the word B LINE. We find that the parties' marks have the same sound and meaning and nearly the same appearance. The commercial impressions of the parties' marks are substantially similar, if not identical.

It is well established that when the marks at issue are the same or nearly so, the goods in question do not have to be identical to find that confusion is likely. As we stated in *In re Concordia International Forwarding Corp.*, 222 USPQ 352, 356 (TTAB 1983), "... the greater the degree of similarity in the marks, the lesser the degree of similarity that is required of the products or services on which they are being used in order to support a holding of likelihood of confusion." It is sufficient that the goods are related in some manner and that their character or the circumstances surrounding their marketing are such that they are likely to be encountered by the same people in situations that would give rise to the mistaken belief that the producer was the same. *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

Applicant's wearing apparel and accessories, as broadly identified in the application, encompass items for men,

women and children. Applicant's goods are hosiery for women. The evidence establishes that manufacturers, such as DKNY and Calvin Klein, who make women's apparel and accessories, including the items identified in the application, also offer women's hosiery under the same marks. It is likely that consumers have been exposed to apparel and accessories from the same source and offered under the same mark. Thus, we conclude that the goods of the parties are sufficiently related that, when identified by substantially similar marks, confusion as to source or sponsorship is likely.

Despite applicant's testimony regarding the fact that it sells its leather jackets under the mark only to small retailers, both opposer's and applicant's identifications of goods are broadly worded, without any limitations as to channels of trade or classes of purchasers. We must presume that the goods of applicant and opposer are sold in all of the normal channels of trade to all of the usual purchasers for goods of the types identified. See *Canadian Imperial Bank v. Wells Fargo*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). In other words, we conclude that the channels of trade and class of purchasers of the parties' products are the same - *i.e.*, both parties' items of apparel are likely to be sold to general consumers through, at least, both department stores and small retail establishments.

Therefore, we conclude that in view of the substantial similarity, if not identity, in the commercial impressions of applicant's mark, B LINE in stylized form, and registrant's mark, B-LINE, their contemporaneous use on the goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

*Decision:* The opposition is sustained.