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**THIS DISPOSITION
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Paper No. 16
HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Montgomery Ward & Co., Inc.

v.

KingKraft, Inc.

Opposition No. 113,818
to application Serial No. 75/388,238
filed on November 12, 1997

Jeffery A. Handelman and Scott J. Slavick of Brinks Hofer
Gilson & Lione for Montgomery Ward & Co., Inc.

Peter M. King for KingKraft, Inc.

Before Simms, Chapman and Wendel, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

KingKraft Inc. filed an application to register the
mark SHIP 'N' SHORE for a "carryall bag."¹

Montgomery Ward & Co, Inc. has filed an opposition to
registration of the mark on the ground of priority and
likelihood of confusion under Section 2(d) of the Trademark
Act. Opposer alleges that opposer has used the mark SHIP 'N'

¹ Serial No. 75/388,238, filed November 12, 1997, based on an
allegation of a bona fide intention to use the mark in commerce.

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SHORE in connection with its retail store services as well as for women's apparel prior to the filing date of applicant's application; that opposer is the owner of registrations for SHIP 'N SHORE for retail store services in the field of clothing² and for various items of women's apparel³; that opposer's mark SHIP 'N SHORE has achieved widespread recognition in the United States; that opposer's mark and applicant's mark SHIP 'N' SHORE are visually and "aurally" identical; and that applicant's mark, when used in connection with its goods, is likely to cause confusion on the part of the purchasing public.

Applicant, in its answer, has admitted opposer's priority of use of its mark as well as the identical nature of the two marks visually and "aurally." Applicant has denied the remainder of the allegations.

The Record

The record consists of the file of the involved application; the testimony of the parties which by stipulation was submitted in affidavit form and consists of opposer's affidavit, with accompanying exhibits, of Kurt Ziegler and applicant's affidavit, with accompanying

² Registration No. 1,803,952, issued November 9, 1993, claiming first use dates of March 12, 1993. This registration was cancelled December 23, 2000 for failure to file a Section 8 affidavit.

³ Registration No. 1,779,703, issued June 29, 1993, claiming first use dates of February 8, 1993; Section 8 & 15 affidavits accepted and acknowledged, respectively.

exhibits, of Ronald King; the status and title copies of opposer's pleaded registrations and applicant's responses to certain interrogatories and requests for admission, made of record by means of opposer's notice of reliance; and copies of a portion of a patent owned by applicant for its bag and applicant's registration for the mark STRADDLE BAG, together with opposer's responses to certain interrogatories and requests for admission, made of record by means of applicant's notice of reliance. Only opposer filed a brief and no oral hearing was requested.

Opposer was founded in 1872 and is a major marketer of general merchandise through retail stores.⁴ As part of its sale of retail clothing opposer has sold a wide variety of apparel items and related goods under its SHIP 'N SHORE mark since 1993. Opposer's registration covers use of the mark in connection with women's apparel, specifically "shorts, pants, slacks, jumpsuits, culottes, skirts, cardigans, shirts, sweaters, knit tops, woven shirts and shells, blouses, T-shirts, vests, jumpers, dresses, blazers, tunics, jackets and halters." Mr. Ziegler testified that the SHIP 'N SHORE mark has also been used on handbags (Exhibit 4). Opposer advertises its products by means of signage, coupons, and print publications. Advertising expenditures

⁴ We note that this opinion has been written in accordance with the evidence of record and does not necessarily reflect the present day status of opposer.

for opposer's goods and retail store services related to the mark SHIP 'N SHORE for the period from January 1998 to December 1999 were in excess of \$2,350,000 and its sales figures for these products and services were \$47,000,000 in 1998 and \$45,200,000 in 1999.

Applicant was founded in 1997 and is primarily involved in the marketing and sale of its patented convertible carryall bag.⁵ Applicant, since 1997, has used the mark SHIP 'N' SHORE⁶ for one of the three models which make up its STRADDLE BAG line of goods. Applicant has used its mark in magazines, newspapers, mailings and on its web site to advertise and inform consumers of its product.

The Opposition

Priority is not an issue here in view of opposer's submission of a certified status and title copy of its pleaded Registration No. 1,779,703 for the mark SHIP 'N SHORE for various items of women's apparel. See King Candy Co., Inc, v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). (We note again that opposer's other

⁵ As described in the abstract of applicant's patent, the bag is a lightweight, machine-washable, convertible organizer tote bag with three carrying portions, namely, a central U-shaped compartment and two side storage panels. The bag converts from its tote bag configuration into a seat cover for chairs, chaises and the like, providing easy accessibility to the items stored in the side pockets.

⁶ We note that in its affidavit applicant refers to its mark as SHIP 'N SHORE, rather than SHIP 'N' SHORE, as presented in the application. On the exhibits of record, the mark actually used is "Ship-n-Shore."

pleaded registration has been cancelled since the filing of this opposition and hence that registration has been given no consideration). In addition, Mr. Ziegler testified that opposer has sold products under the SHIP 'N SHORE mark continuously since 1993, a date well prior to applicant's filing date of its intent-to-use application, namely, November 12, 1997. Finally, applicant has admitted opposer's priority of use in its answer.

Thus, we turn to the issue of likelihood of confusion, making our determination on the basis of those of the *du Pont*⁷ factors which are relevant in view of the evidence of record. Two key considerations in any such analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods or services with which the marks are being used. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999).

Insofar as the respective marks are concerned, applicant has admitted that opposer's SHIP 'N SHORE mark and its SHIP 'N' SHORE mark are visually and "aurally" identical. Clearly, the presence of an additional

⁷ *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

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apostrophe in applicant's mark, as presented in the application, has little or no effect on the overall commercial impressions created by the marks. For purposes of determining likelihood of confusion, the marks are virtually identical. Although applicant has noted in its affidavit that its SHIP 'N' SHORE mark is used as a subordinate mark to its STRADDLE BAG or KINGKRAFT marks, the mark which applicant seeks to register is SHIP 'N' SHORE in itself, and this is the mark which we must take under consideration in making our determination of likelihood of confusion.

Before considering the respective goods, we would note that this high degree of similarity of the marks brings into play the recognized standard that the greater the degree of similarity in the marks, the lesser the degree of similarity that is required between the goods and/or services on which the marks are being used to support a holding of likelihood of confusion. If the marks are the same or almost so, as is the case here, it is only necessary that there be a viable relationship between the goods and/or services to support a holding of likelihood of confusion. See *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

Here opposer's registration covers use of the mark SHIP 'N SHORE on various items of women's apparel, many of which could readily be described as sportswear. Opposer has

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introduced testimony that opposer has also specifically used the mark on handbags. Applicant's "carryall bag" is without limitation in the application as to specific purpose or design of the bag. Thus, applicant's carryall bags would encompass items similar to the handbags of opposer. Even if construed as being different in styling and purpose from the handbags sold by opposer, applicant's carryall bags would still fall within the category of sportswear accessories. Although perhaps sold in a different department from sportswear attire, the bags might well be purchased in the same retail outlets by the same customers on a single shopping trip for use in connection with the same sports activities. Cf. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991)(sufficient relationship found to exist between women's shoes and women's pants, blouses, shorts and jackets which might well be purchased on a single shopping trip for use together). Regardless of the particular design of applicant's bags, we believe a sufficient relationship exists between the goods that purchasers would be likely to be confused as to source upon encountering the respective goods bearing the virtually identical SHIP 'N SHORE (SHIP 'N' SHORE) marks.

Furthermore, since there are no limitations in the identification of goods in either the application or the pleaded registration as to the channels of trade, we must

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assume that the goods of both would travel in all the normal channels of trade and be sold to all the usual purchasers for goods of this nature. See *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Accordingly, as argued by opposer, the goods may well be encountered by the same purchasers in the same retail outlets and purchased at the same time. In addition, we would agree with opposer that these are relatively inexpensive items which would be purchased by ordinary consumers without the exercise of any degree of extra care.

Opposer has also raised the factor of the strength of its mark, arguing that its SHIP 'N SHORE mark has achieved the status of a strong, well-known mark as a result of its distinctive nature and its extensive use and promotion. Thus, opposer argues, its mark is entitled to a broad scope of protection.

Although opposer has not broken down its advertising and sales figures into those applicable only to its products (the only ones to be taken under consideration), we find this evidence adequate to show that opposer has strongly promoted its mark and has had substantial sales of its products under the mark in recent years. Although clearly insufficient to establish that opposer's mark has attained any high degree of fame, we find the evidence of record, taken together with the distinctive nature of the mark,

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fully adequate to demonstrate that opposer's mark is entitled to the scope of protection accorded to a strong mark.

Accordingly, upon balancing all of the relevant *du Pont* factors and particularly upon considering the virtual identity of the marks and the strength of opposer's mark, we find a likelihood of confusion.

Decision: The opposition is sustained and registration is refused to applicant.