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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Power Source, Inc.

Serial No. 75/738,726

Michael S. Culver of Oliff & Berridge, PLC for American Power Source, Inc.

Alicia Collins, Trademark Examining Attorney, Law Office 115 (Tomas Vlcek, Managing Attorney).

Before Seeherman, Walters and Chapman, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

American Power Source, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register the mark DRI-DOC for goods subsequently identified as:

fabric for use in the further manufacture of clothing, namely, uniforms, jackets, pants, jogging suits and vests, all of the foregoing sold to government for use in the military (Class 24); and

fabrics sold as a component of completed clothing, namely, uniforms,

jackets, pants, jogging suits and vests, all of the foregoing sold to government for use in the military (Class 25).¹

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark DRY DOCK BY SERBIN and design, as shown below, and previously registered for "men's and women's all-weather coats, raincoats and jackets,"² as to be likely, if used on applicant's identified goods, to cause confusion or mistake or to deceive.

DRY DOCK

by  Serbin

Applicant and the Examining Attorney have filed appeal briefs;³ an oral hearing was not requested.

¹ Application Serial No. 75/738,726, filed June 28, 1999, based on a bona fide intention to use the mark in commerce for both classes.

² Registration No. 885,089, issued January 27, 1970; Section 8 affidavit accepted; Section 15 affidavit received; renewed.

³ With its appeal brief applicant submitted newspaper articles relating to government purchasing. The Examining Attorney has objected to these articles as being untimely under Trademark Rule 2.142(d). We agree, and these articles have not been considered. Applicant also submitted a copy of a dictionary definition of "dry dock." The Examining Attorney has specifically considered this evidence, and therefore it has been treated as of record.

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In this case, we find that the differences in the trade channels, as well as the sophistication of the purchasers combined with the differences in the goods and marks, avoid a likelihood of confusion. Accordingly, we reverse the refusal of registration.

As specified in the identification, the sales of applicant's goods are "to the government for use in the military." Because of the restriction in applicant's channels of trade, the general public who would be exposed to registrant's clothing items will not be aware of applicant's mark and goods. As a result, the evidence submitted by the Examining Attorney which shows the relationship between fabric and clothing in general, including the co-branding of clothing with the fabric with which it is made, does not prove a likelihood of confusion in these circumstances.

The only overlap in the trade channels for applicant's and the registrant's goods is sales to the government for use in the military. (The registrant's identification of goods is not restricted, and therefore we must assume that

registrant's clothing may be sold to the government for use in the military, too.) However, the government employees who purchase fabric or clothing for the military must be deemed to be sophisticated and careful purchasers. It is appropriate to take judicial notice that government purchases for the military would be made in quantity, and would be subject to various restrictions. Thus, while a member of the general public might purchase a few yards of inexpensive fabric on impulse and without deliberation, that would not occur in the case of applicant's fabric sold to the government for use in the military.

Given the complexity of government purchasing, and the care taken with such purchasing, we find that the differences in the marks and goods, although not sufficient to avoid confusion if the goods were directed to the general public, are sufficient to avoid confusion when applicant's and the registrant's goods are sold in the restricted channels of trade specified in applicant's application.

Decision: The refusal of registration is reversed.