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Paper No. 15
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Q-Sport, LLC

Serial No. 75/797,810

Kurt Koenig of Koenig & Associates for Q-Sport, LLC

Robert C. Clark, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Hanak, Chapman and Holtzman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Q-Sport, LLC has appealed from the final refusal of the
Trademark Examining Attorney to register the mark QRUZING for
"clothing in the nature of sports and leisure clothing, namely
pants, t-shirts, jerseys, sweatshirts, sweat pants, polo shirts,
shorts, jackets, socks, sweatbands, and warm-up suits."¹

¹ Application Serial No. 75/797,810, filed September 13, 1999 based on
an allegation of a bona fide intention to use the mark in commerce.

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Registration has been refused under Section 2(d) of the Trademark Act on the ground that applicant's mark so resembles the following registered mark for "clothing, namely, skirts, shorts, mini skirts, pants, tops, blouses, shirts, vests, long dresses, short dresses, gowns, and rompers" as to be likely to cause confusion:²



When the refusal was made final, applicant appealed. Briefs have been filed. An oral hearing was requested but subsequently withdrawn.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services.

Turning first to a consideration of the goods, we note that two of the articles of clothing identified in the application, pants and shorts, are identical to those in the cited

² Registration No. 2,013,284 issued November 5, 1996.

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registration. Applicant's clothing also includes polo shirts and t-shirts which are clearly encompassed by the broadly identified "shirts" in the cited registration and must therefore be considered legally identical to those goods.

Applicant attempts to distinguish the respective goods as well as the channels of trade and customers for those goods by arguing that applicant provides athletic wear while registrant provides "women['s] and children's casualwear"; that unlike registrant's clothing, applicant's clothing is designed to be worn while participating in the sports of "Spinning" or "cycling"; that applicant's clothing is sold in conjunction with its sports equipment and related training products; that its clothing is sold only through authorized locations and its website; and that the purchasers of applicant's goods are "extremely sophisticated" gym owners, personal trainers, fitness experts and cycling enthusiasts.

The question of likelihood of confusion is determined on the basis of the identification of goods set forth in the application and registration, without limitations or restrictions as to the actual nature of the goods or trade channels or classes of purchasers which are not reflected therein. See *J & J Snack Foods Corp. v. McDonalds' Corp.*, 932 F.2d 1460, 1464, 18 USPQ2d 1889, 1892 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787

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(Fed. Cir. 1990); and *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983).

Registrant's clothing is not limited to women's and children's casual wear and applicant's clothing is not limited to athletic or active wear. In fact, it seems disingenuous for applicant to argue any such limitation to its own goods when those goods are specifically described as "sports *and* leisure clothing" (emphasis added). In any event, in the absence of any specific restrictions in the application or registration, it must be presumed that both applicant's and registrant's clothing would be used for the same purposes; that applicant's clothing would reach all classes of customers including registrant's customers; and that applicant's clothing is sold through all normal channels of trade, including the usual retail outlets for clothing.

Thus, we turn to a consideration of the marks. In this regard, the Examining Attorney argues that the marks are similar in sound, appearance and commercial impression; that the word portion of registrant's mark is the dominant portion of registrant's composite mark because of the size and placement of the design of the human figure; that the word JUST modifies CRUISING in registrant's mark and does not detract from the word CRUISING; that QRUZING and CRUISING are phonetic equivalents which convey the same meaning; and that CRUISING is a strong mark

since it is an arbitrary word in relation to applicant's clothing.

Applicant points out that QRUZING is the phonetic equivalent of only one part of the word portion of registrant's mark. Applicant argues that the marks as a whole are different in appearance and create different commercial impressions by virtue of the unusual spelling of applicant's mark, and the design features of registrant's mark.

Applicant's mark QRUZING and the word CRUISING in registrant's mark, when spoken, are similar in sound. In addition, the connotation of QRUZING, once spoken, is essentially the same as the word CRUISING.³ However, it is well settled that marks must be considered in their entireties, and when viewed in this manner, we find that the marks, as a whole, are dissimilar in appearance and commercial impression. Registrant's mark is not the word "CRUISING" alone. Instead, that word is part of the phrase JUST CRUISING and a composite consisting of that phrase in stylized script and the design of a kneeling female figure, all enclosed within a rectangular border.

³ There is no evidence in this record that purchasers of applicant's clothing would perceive QRUZING as a word "related to cycling," as applicant claims, or that it has any meaning other than the meaning associated with the word CRUISING in registrant's mark.

Moreover, applicant's mark is not merely the phonetic equivalent of "cruising." While the difference is a misspelling of that word, the misspelling in this case is significant and must be considered in determining the overall commercial impression the mark conveys. The spelling is so unique in this case that it not only adds to the visual differences in the marks but it is likely to make a significant impression on the purchaser apart from the connotation of the spoken word.⁴

In addition, we disagree with the Examining Attorney that the word "cruising" is arbitrary in relation to the identified goods. As used in connection with everyday articles of clothing the term is in fact suggestive of the laid back or casual nature of that clothing.

In view of the foregoing, notwithstanding the identity of the goods in this case, we find that the differences in the respective marks are sufficient to make confusion unlikely.

Decision: The refusal to register is reversed.

⁴ We would, however, point out that applicant's evidence and arguments regarding its alleged "family" of marks are not only unpersuasive but irrelevant to the issues herein. To begin with, the mere existence of a number of applications (or even registrations) containing a particular term is insufficient to establish a family of marks. It must be shown that the marks containing the family feature have been used and promoted together in such a manner as to create public recognition and that the family feature is distinctive, i.e., not descriptive, highly suggestive, or commonly used in the trade. See *Marion Laboratories Inc. v. Biochemical/Diagnostics Inc.*, 6 USPQ2d 1215 (TTAB 1988). Moreover, applicant's assertion of a family of marks, even if proven, would have no bearing on whether the marks in this case are likely to cause confusion.

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