

THIS DISPOSITION IS  
NOT CITABLE AS  
PRECEDENT OF THE TTAB

Mailed: September 26, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Fino Classic Inc.

---

Serial No. 76619365

---

Myron Amer, P.C. for Fino Classic Inc.

Attiya Malik, Trademark Examining Attorney, Law Office 112  
(Janice O'Lear, Managing Attorney).

---

Before Hohein, Holtzman and Cataldo, Administrative Trademark  
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, Fino Classic Inc., has filed an application to register the mark FINO CLOTHING, in standard character form on the Principal Register, for goods ultimately identified as "T-shirts and denim jeans for males and females" in Class 25.<sup>1</sup> The word CLOTHING is disclaimed.

---

<sup>1</sup> Serial No. 76619365, filed November 4, 2004, based on an allegation of a bona fide intention to use the mark in commerce. The application contains the following statement: "The derivation of the mark is from the Italian language and would be FINO or FINA according to the gender of an object to which it is applied and have a translation in English of 'fine.'"

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the registered mark F.I.N.O., in standard character form on the Principal Register, for "men's, women's, and children's clothing, namely, sweatshirts, shirts, jeans, jackets, coats, sweatpants, slacks, suits, hats, head bands, visors, caps, dresses, shoes, boots, wristbands, socks, t-shirts, belts, undergarments, neckties, dress shirts, collared shirts, rugby shirts, knit shirts, shorts, skirts, sandals, and jerseys" in Class 25,<sup>2</sup> as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Both applicant and the examining attorney have filed briefs.

Our determination under Section 2(d) is 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 any likelihood of confusion analysis, however, two key considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the

---

<sup>2</sup> Registration No. 2887411; issued September 21, 2004. The examining attorney also initially refused registration under Section 2(d) based on Registration No. 2650950 for the mark FINE for clothing. That refusal was subsequently withdrawn.

Serial No. 76619365

goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

The goods in the application and the cited registration are, in part, identical. Applicant's goods, t-shirts and jeans, are fully encompassed within the goods identified in the registration. Registrant's goods also include additional items of casual apparel that are closely related to applicant's t-shirts and jeans, such as sweatshirts, jackets and belts.

Because the goods are identical and/or closely related and there are no restrictions as to their channels of trade or classes of purchasers, we must assume that the goods are, or will be, sold in all the normal channels of trade to all the usual purchasers for such goods, and that the channels of trade and the purchasers for applicant's and registrant's goods would be the same. *Interstate Brands Corp. v. McKee Foods Corp.*, 53 USPQ2d 1910 (TTAB 2000). Further, it is well settled that purchasers of casual, low cost ordinary consumer items are held to a lesser standard of purchasing care and are more likely to be confused as to the source of the goods. See *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984).

It is clear, therefore, that if these identical and closely related goods are offered under the same or similar marks, there would be a likelihood of confusion.

Thus, we turn to the marks, keeping in mind that when marks would appear on identical goods, as they do in part here, the degree of similarity between the marks necessary to support a finding of likely confusion declines. *Century 21 Real Estate v. Century Life*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

In determining the similarity or dissimilarity of marks, we must consider the marks in their entireties in terms of sound, appearance, meaning and commercial impression. See *du Pont*, supra. See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005).

Applicant contends that the marks F.I.N.O. and FINO CLOTHING differ in sound, appearance and meaning.<sup>3</sup> Applicant argues that its mark is two words while registrant's mark is one word; and that applicant's mark includes the word CLOTHING and lacks the periods or dots between the letters. Applicant further argues that its T-shirts and jeans "are, as known from common experience, an outfit...and separate and apart from the wide range of other clothing items listed in the F.I.N.O. Registration." Reply Brief, p. 2. Applicant concludes that "the word CLOTHING, as an 'outfit' would have a connotation in

---

<sup>3</sup> The printout of a private trademark search report submitted for the first time with applicant's reply brief is untimely and has not been considered. See Trademark Rule 2.142(d) and TBMP §1207.01 (2d rev. 2004). In any event, this evidence would be entitled to no probative value. A private search report is not credible evidence of the third-party uses or registrations listed in the report. See *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1232 (TTAB 1992).

applicant's two-word mark that does not exist for the single word F.I.N.O." Id.

While marks must be compared in their entireties, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). When registrant's mark F.I.N.O. and applicant's mark FINO CLOTHING are compared in their entireties, giving appropriate weight to the features thereof, we find that the marks are very similar in sound, appearance, meaning and commercial impression, and that the similarities in the marks outweigh their differences.

The marks create essentially the same overall commercial impressions. The strongest impression of applicant's mark is conveyed by the term FINO. The disclaimed word CLOTHING, while not ignored, is a generic term having no source-indicating effect, and it contributes little or nothing to the overall impression of the mark. See In re National Data Corp., supra at 751 ("That a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark"). It is reasonable to assume that registrant's mark F.I.N.O. will be perceived as the pronounceable word "FINO"

rather than just a series of letters separated by periods or dots. See, e.g., *The B.V.D. Licensing Corp. v. Body Action Design Inc.* 846 F.2d 727, 730, 6 USPQ2d 1719. (Fed. Cir. 1988) (purchasers will react to B•A•D as the word "BAD"). There is nothing to indicate that F.I.N.O. would be recognized or perceived by consumers as an acronym standing for some other words.

As to sound, the presence of dots or periods between the letters of the word F.I.N.O. in registrant's mark does not guarantee that the mark will be pronounced as separate letters. It is well settled that there is no correct pronunciation of a trademark. See *In re Belgrade Shoe*, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969) and *Interlego AG v. Abrams/Gentile Entertainment Inc.*, 63 USPQ2d 1862 (TTAB 2002). See also *In re Microsoft Corp.*, 68 USPQ2d 1195 (TTAB 2003) (it is not possible to control how consumers will vocalize marks). Registrant's mark could reasonably be pronounced either as initials or as a word, and if pronounced as a word, F.I.N.O. would sound identical to FINO when the marks are spoken.

The marks are similar in appearance. FINO and F.I.N.O. consist of the same letters in the same order. Keeping in mind that the comparison of the marks is not made on a side-by-side basis and that recall of purchasers is often hazy and imperfect, the visual differences between the two marks, i.e., the word

CLOTHING in applicant's mark and the periods or dots between the letters in registrant's mark, are not so significant that they are likely to be remembered by purchasers when seeing these marks at different times on identical goods. Purchasers who are familiar with registrant's mark F.I.N.O., even if they remember the mark as having periods or dots, are likely to assume, upon later seeing FINO CLOTHING on the identical items of clothing, that such mark is simply a slight variation of registrant's mark.

The marks FINO CLOTHING and F.I.N.O. have essentially the same connotation. Purchasers who are familiar with the Italian language will translate the word FINO as "fine" and will ascribe that same meaning to F.I.N.O. Those purchasers who are not familiar with Italian would assume FINO, and likewise F.I.N.O., are coined or invented terms with no known meaning. In either case, the meanings of both marks would be the same. We disagree that the generic word CLOTHING somehow imparts the meaning of an "outfit" to applicant's mark rather than separate items of clothing, as applicant contends. Moreover, we fail to see how any such difference in meaning, even if it existed, would be sufficient to distinguish the marks.<sup>4</sup>

---

<sup>4</sup> Applicant appears to argue that because F.I.N.O. and the previously cited mark FINE coexist on the register, applicant's mark should be entitled to register as well. This argument is not well taken. There has been no determination that F.I.N.O. and FINE are confusingly similar marks, and in fact there are far more differences between those marks than there are between the marks at issue herein.

Serial No. 76619365

In view of the similarity of the marks, and because the goods (in part) as well as the trade channels and purchasers for the goods are identical, we find that confusion is likely.

**Decision:** The refusal to register under Section 2(d) of the Trademark Act is affirmed.