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Mailed: January 30, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re David & Goliath, Inc.

Serial No. 78356644

J. Todd Timmerman of Shumaker, Loop & Kendrick, LLP for
David & Goliath, Inc.

Won T. Oh, Trademark Examining Attorney, Law Office 114 (K.
Margaret Le, Managing Attorney).

Before Seeherman, Holtzman and Kuhlke, Administrative
Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

David & Goliath, Inc. has filed an application to
register the mark CHICKS RULE (in standard character form)
for goods identified as "baseball caps, boxer briefs, boxer
shorts, briefs, pajamas, panties, shirts, slippers, socks,
thongs, t-shirts, undergarments, underpants, undershirts,
underwear" in International Class 25.¹

¹ Application Serial No. 78356644, filed January 23, 2004,
alleging a bona fide intent to use the mark in commerce.

Serial No. 78356644

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used on its identified goods, so resembles the registered mark GIRLS RULE (in standard character form) for "women's wearing apparel, namely, bathing suits; bathrobes; blouses; caps; dresses; halter tops; hats; jackets; jeans; jumpers; jumpsuits; leggings; mini-skirts; overalls; pajamas; pants; shirts; casual shirts; shorts; gym shorts; sweat shorts; skirts; ski suits; sleep wear; snowsuits; sport shirts; sweaters; t-shirts; vests; and footwear, namely, shoes" in International Class 25,² as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

Our determination of the issue of likelihood of confusion 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). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201

² Registration No. 2448570, issued May 8, 2001.

Serial No. 78356644

(Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We turn first to a consideration of the goods identified in the application and the cited registration. The identified goods of applicant and those of the cited registrant include identical items (e.g., pajamas, caps, shirts, t-shirts), and include otherwise related clothing items (e.g., slippers and socks). Applicant does not argue otherwise. Further, with regard, at least, to the identical goods, we must presume that they will be sold in the same channels of trade and will be bought by the same classes of purchasers, while the related goods will be sold in some of the same channels of trade, and will be bought by some of the same purchasers. See *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); and *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994). In view of the above, the du Pont factors of the similarity of the goods and the channels of trade favor

Serial No. 78356644

a finding of likelihood of confusion as to the cited registration.

Turning to a consideration of the marks, it is well settled that marks must be considered in their entirety, not dissected or split into component parts and each part compared with other parts. This is so because it is the entire mark which is perceived by the purchasing public and, therefore, it is the entire mark that must be compared to any other mark. It is the impression created by the involved marks, each considered as a whole, that is important. See Kangol Ltd. V. KangaROOS U.S.A. Inc., 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992). Finally, “[w]hen marks would appear on virtually identical goods or services, the degree of similarity [between the marks] necessary to support a conclusion of likely confusion declines.” Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert denied, 506 U.S. 1034 (1992).

We find that applicant’s mark is highly similar to the mark in the cited registration. The marks GIRLS RULE and CHICKS RULE both consist of two-word phrases that have the

same connotation in each mark. Applicant submitted the following dictionary definition for the word CHICK:³

- Chick 1: a domestic chicken; especially one newly hatched;
- 2: Child;
- 3: *slang* a young woman.

Merriam-Webster Online Dictionary (2005).

Applicant argues that the meaning of a newly hatched chicken creates a double entendre, distinguishing it from the mark in the cited registration. However, viewed in the context of applicant's clothing, the slang meaning, young girl, would be apparent to the consumer. We fail to see how CHICKS used in connection with the identified goods (e.g., panties, pajamas and thongs) would bring to mind newly hatched chickens.

Applicant further argues that in cases where "the marks at issue are highly suggestive, differences in sound and appearance may sufficiently distinguish the marks [such] that despite a similarity in meaning, they are not confusingly similar." Br. p. 7. While this is a correct statement of the law, the facts of this case do not present such a circumstance. Unlike the situations in the cases applicant has cited, RULE is an arbitrary term for

³ Although the dictionary definition was first attached to applicant's brief, the examining attorney did not object to its submission and used it in support of his argument. Therefore, we deem this definition to have been stipulated into the record.

Serial No. 78356644

clothing. See e.g., Sure-Fit Prods. Co. v. Saltzson Drapery Co., 117 USPQ 295 (CCPA 1958) (SURE-FIT not confusingly similar to RITE-FIT used in connection with slip covers); Howard Johnson Co. v. The Ground Pat'I Inc., 214 USPQ 214 (TTAB 1982) (THE GROUND PAT'I not confusingly similar to THE GROUND ROUND used in connection with restaurant services); Roux Labs, Inc. v. Kaler, 214 USPQ 134 (TTAB 1982) (HYPER-OXIDE not confusingly similar to SUPEROXIDE used for hair coloring preparations); and In re Haddock, 181 USPQ 796 (TTAB 1974) (MINI-BASS not confusingly similar to LIL' BASS used in connection with fishing lures). Applicant's attempt to characterize the word RULE as weak because it is "laudatory, descriptive, and unprotectible" inasmuch as it "merely indicates that females, and in particular females wearing the clothing on which the mark appears, are superior in some sense to others," is not persuasive. Far from being laudatory, GIRLS RULE and CHICKS RULE consist of a colloquial phrase that, while it may be laudatory of females, is not laudatory of clothing.

Moreover, although the words CHICKS and GIRLS are different, the marks in their entirety have some similarities in appearance and pronunciation in terms of their overall formation. Therefore, we do not believe that

Serial No. 78356644

this difference in the two words creates marks with an overall different commercial impression. Thus, the factor of the similarity of the marks also favors a finding of likelihood of confusion.

In conclusion, we find that because the marks are similar, the goods are the same and/or closely related, and the channels of trade are the same or overlapping, confusion is likely between applicant's mark and the cited registration.

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