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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Massi

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Serial No. 78431260

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Roger N. Behle, Jr. of Behle Law Corporation for Amanda Massi.

Timothy J. Finnegan, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

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Before Quinn, Hairston and Walsh, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Amanda Massi has filed an application to register the mark MIELE for goods and services ultimately identified as "clothing, namely, jackets, sweaters, vests, sweat shirts, sweat suits, jogging suits, shirts, blouses, t-shirts, pants, jeans, shorts, skirts, skorts, dresses, hats, and footwear, namely, shoes, pumps, sandals, sneakers, and boots" in International Class 25; and "retail clothing

boutiques" in International Class 35.<sup>1</sup> The application includes an English translation of MIELE as "honey."

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if applied to the identified goods and services, would so resemble the mark CARLOS MIELE, which is registered for "clothing, namely, sweaters, cardigans, shirts, t-shirts, blouses, jackets, blazers, pullovers, coats, suits, pant suits, dresses, cocktail dresses, beaded tops, sequin tops, halter tops, tank tops, tailleurs, chemises, jumpers, skirts, mini skirts, pants, jeans, pantsuits, shorts, lingerie, underwear, bikinis, ties, neckwear, belts, gloves, socks, stockings, pantyhose, knee highs, leggings, suspenders, scarves, bodysuits, jogging suits, sweat suits, swimwear, bathing trunks, beachwear, sleepwear, bathrobes, pajamas, loungewear, infant wear, rainwear, wedding gowns, evening gowns; footwear, namely, athletic shoes, pumps, sandals, sneakers, boots, shoes; headwear, namely, hats, caps,"<sup>2</sup> as to be likely to cause confusion or mistake or to deceive.

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<sup>1</sup> Serial No. 78431260, filed on June 7, 2004, which is based on an allegation of a bona fide intention to use the mark in commerce.

<sup>2</sup> Registration No. 2,760,974, issued April 15, 2003. The registration includes the statement that "The name 'CARLOS MIELE' identifies a living individual whose consent is of record."

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

Before turning to the merits of the case, we must discuss two evidentiary matters. Applicant states that an excerpt from an Italian-American dictionary is attached to her 7/12/05 response to the examining attorney's first Office action. However, we are unable to locate this excerpt in the electronic records of the file of this case. Nonetheless, the Board will take judicial notice that in Cassell's Italian Dictionary (1967) the word "miele" is defined as "honey."<sup>3</sup>

With her appeal brief, applicant submitted an Internet printout from the website <http://www.nonalinaskitchen.com> which consists of a glossary of commonly used ingredients in Italian cuisine. The printout contains a listing for "miele." The examining attorney has objected to the printout as untimely submitted. The examining attorney's objection is sustained and we have given no consideration

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<sup>3</sup> The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

to this printout in reaching our decision herein.<sup>4</sup> See Trademark Rule 2.142(d).

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. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (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).

Turning first to a consideration of the goods and services, it is clear that applicant's items of clothing are identical in part (e.g., sweaters, t-shirts, jackets, dresses, pumps, sandals, sneakers, and boots) and are otherwise closely related to the items in registrant's

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<sup>4</sup> We should add that even if we had considered the printout, the result in this case would be the same. The information in the printout is simply cumulative of the dictionary definition and applicant's other evidence.

clothing line. Applicant's retail clothing boutiques are also related to the registrant's clothing. Indeed, applicant acknowledges that she and registrant are both in the business of retail clothing. (Brief at p. 3). Both applicant and registrant's wearing apparel would be sold to the same classes of purchasers, namely, ordinary consumers, through the same channels of trade, namely, clothing stores, department stores and mass merchandisers.

Likewise, applicant's retail clothing boutiques would be frequented by ordinary consumers. Under the circumstances, if applicant's goods and services and registrant's goods are offered for sale under the same or similar marks, confusion as to their source or sponsorship is likely to occur.

Considering then the marks, applicant contends that the marks are dissimilar because MIELE is the Italian word for "honey," whereas CARLOS MIELE is clearly a person's name. Applicant maintains that the marks are also distinguishable because her mark is a single word and the cited mark is two words. Applicant also argues that registrant's mark is weak because it is primarily merely a surname, and therefore is entitled to only a limited scope of protection.

As evidence of the meaning of "miele," applicant submitted two Internet printouts. The first printout is an advertisement for a handbag and reads in pertinent part:

Authentic PRADA Handbag

Prada BR 1845 Leather Miele Purse (Honey Tan)  
This gorgeous PRADA handbag features alluring detail. From its mouth dropping leather in Miele (honey tan) color...

The second printout is for a recipe entitled "Miele Biscotti (Honey Biscotti)."

The examining attorney, on the other hand, argues that the dominant part of each mark is the term MIELE; and that applicant cannot avoid a likelihood of confusion simply by deleting the word CARLOS. As to the connotations of the marks, in particular, the examining attorney argues that MIELE can mean "honey" and act as a surname as well, and therefore applicant's mark MIELE may suggest a person's surname and registrant's mark CARLOS MIELE may suggest a person's full name.

With respect to the marks, we must determine whether applicant's mark and registrant's mark, when compared in their entireties, are similar or dissimilar in terms of sound, appearance, connotation and commercial impression. Although the marks must be considered in their entireties, it is well-settled that one feature of a mark may be more

significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Furthermore, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their commercial impression that confusion as to the source of the goods and services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

We find that the marks are similar in terms of appearance and sound, differing only by the word CARLOS. This additional word in registrant's mark does not distinguish the marks visually or aurally. In terms of connotation and commercial impression, we also find that the marks are similar. Obviously, the cited mark CARLOS MIELE is a person's name. With respect to applicant's mark MIELE, while Italian certainly is not an obscure language in the United States, we nonetheless question how many U.S. consumers would know that MIELE means "honey" in Italian.

In this regard, we note that in the Internet printouts submitted by applicant, the uses of "Miele" therein are followed by translations, i.e., "MIELE Purse (HONEY TAN)" and "Miele Biscotti (Honey Biscotti)." This indicates that the authors of these materials felt it necessary to provide a translation of "miele" for the U.S. public. We believe that the primary significance of MIELE to clothing purchasers in the U.S. would be that of a surname. It is common practice for clothing manufacturers to identify their clothing by surnames. Thus, purchasers seeing MIELE on applicant's clothing or retail clothing boutiques would likely view it as a surname. In short, we find that both marks connote or suggest a person's name.

Thus, when the marks are considered in their entirety, we find that they are similar in appearance, sound, connotation and commercial impression. In a somewhat similar case, our primary reviewing court upheld a refusal to register the mark JOSE GASPARD GOLD for tequila in view of the registered mark GASPARD'S ALE for beer and ale. In re Chatham International Incorporated, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004). The Court held that "[w]ith respect to JOSE, the Board correctly observed that the term simply reinforces the impression that GASPARD is an individual's name. Thus, in accord with considerable case

law, the JOSE term does not alter the commercial impression of the mark." Chatham, 71 USPQ2d at 1946. See also *Nina Ricci S.A.R.L. v. E.T.F. Enterprises Inc.*, 889 F.2d 1070, 12 USPQ2d 1901 (Fed. Cir. 1989) [VITTORIO RICCI and NINA RICCI are confusingly similar].

Finally, applicant argues that the cited mark CARLOS MIELE is primarily merely a surname and therefore a weak mark that is entitled to only a limited scope of protection. Apart from the fact that the mark CARLOS MIELE is not primarily merely a surname, but rather a full name, there is no evidence of record establishing that the cited mark is weak. Therefore, the cited mark is entitled to the normal scope of protection, including protection against registration of applicant's confusingly similar mark for identical and closely related goods and services.

We conclude that purchasers, who are familiar with registrant's CARLOS MIELE mark for its various items of clothing, would be likely to believe, upon encountering applicant's MIELE mark for its articles of clothing and retail clothing boutiques, that such goods and services emanate from, or are sponsored by or associated with the same source.

To the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must

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be resolved in favor of the prior registrant and against applicant. See *In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

**Decision:** The refusal to register is affirmed as to the goods in class 25 and the services in class 35.