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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gelati International, Inc.

Serial No. 75/179,289

Ezra Sutton of Ezra Sutton, P.A. for Gelati International,
Inc.

Amos T. Matthews, Trademark Examining Attorney, Law Office
108 (Dave Shallant, Managing Attorney)

Before Hanak, Walters and Holtzman, Administrative
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Gelati International, Inc. (applicant) seeks to register U.S. SPORTS GEAR for "men's, ladies', and children's clothing; namely, underwear, sleepwear, and lingerie." The intent-to-use application was filed on October 9, 1996.

The Examining Attorney has refused registration on two grounds. First, citing Section 2(d) of the Trademark Act,

the Examining Attorney contends that applicant's mark, as applied to the applicant's goods, is likely to cause confusion with the following two marks owned by the same entity: US SPORTS registered for "footwear having an upper portion made of canvas or other man made material, such as sneakers and and the like" (Registration No. 1,081,814); and US SPORTS registered for "footwear and clothing, namely sweatshirts" (Registration No. 1,590,979). Second, citing Section 2(e)(2) of the Trademark Act, the Examining Attorney contends that applicant's mark is primarily geographically descriptive of applicant's goods.

When refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

We will consider first the refusal pursuant to Section 2(d) of the Trademark Act. In any likelihood of confusion analysis, two key considerations are the similarity of the goods and the similarity of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29(CCPA 1976).

Considering first the goods, we note that the Examining Attorney has made of record absolutely no evidence. In particular, the Examining Attorney has made

of record no evidence demonstrating that the same companies manufacture or market, on the one hand, underwear, sleepwear and lingerie and, on the other hand, footwear and sweatshirts. The Examining Attorney has certainly not demonstrated that companies manufacture and market under the same trademarks underwear, sleepwear, lingerie, footwear and sweatshirts.

This Board in the past has held that, at least with regard to underwear and footwear, these two items of apparel are "distinctly different" and that they "are not complementary or companion items." In re British Bulldog, Ltd., 224 USPQ 854, 856 (TTAB 1984).

Hence, we find that the Examining Attorney has simply failed to show that applicant's goods and registrant's goods are in anyway related other than that they are items that fall within that extremely broad category known as apparel. To be clear, the Examining Attorney has argued that applicant's goods and registrant's goods could all be purchased in department stores. (Examining Attorney's brief page 5). We will take judicial notice that this is the case despite the fact the Examining Attorney has not made of record evidence desmontrating it to be the case. However, it has long been held that a "wide variety of products" are sold in large stores such as department

stores and supermarkets. Federated Foods, 192 USPQ at 29. The mere fact that applicant's goods and registrant's goods could both be found in such large stores does not establish that the goods are related.

Given the fact the only relationship between applicant's goods and registrant's goods is that they all are items within that broad category of goods known as apparel, we hold that the marks would have to be identical or extremely similar in order for there to exist a likelihood of confusion. Put quite simply, we find that the presence of the word GEAR in applicant's mark is sufficient to distinguish it from registrant's mark. We hasten to add, however, that on a different record where the evidence established a closer relationship between applicant's goods and registrant's goods, this Board may well come to a different result.

Turning next to the refusal pursuant to Section 2(e)(2) of the Trademark Act, we reiterate that the Examining Attorney has made of record no evidence. We certainly do not disagree with the Examining Attorney when he argues that U.S. stands for the United States, and that the United States is, obviously, a well known geographic location. However, we find that rather than viewing applicant's mark as indicating where applicant's goods

originate from, consumers could just as easily view the U.S. SPORTS portion of applicant's mark as a unitary phrase referring to particular sports associated with the United States, such as baseball and football. Again, we hasten to add that on a different record containing evidence of consumer perception, this Board may well reach a different resolute.

Decision: The refusal to register is reversed.

E. W. Hanak

C. E. Walters

T. E. Holtzman
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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