

THIS DISPOSITION IS NOT CITABLE AS
PRECEDENT OF THE TTAB

OCT 29, 97

Paper No. 19
PTH

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **No Fear, Inc.**

Serial Nos. 74/574,876 and 74/574,878

Kit M. Stetina of Stetina Brunda & Buyan for **No Fear, Inc.**

Henry S. Zak, Senior Trademark Examining Attorney, Law
Office 108 (**David Shallant**, Managing Attorney).

Before **Sams**, **Hairston** and **Walters**, Administrative Trademark
Judges.

Opinion by **Hairston**, Administrative Trademark Judge:

On September 19, 1994 No Fear, Inc. filed applications to register NO DOUBT and NO CLUE in typed capital letters for wearing apparel, namely t-shirts, shirts, shorts, pants, sweat shirts, sweat pants, hats, visors, shoes, sandals and belts.¹ In each case, registration was finally refused under Sections 1, 2, and 45 of the Trademark Act on the ground that the matter sought to be registered, as used on

¹ Application Serial Nos. 74/574,876 and 74/574,878 respectively. Although each application was based on a bona fide intention to use the mark in commerce, applicant

Ser No. 74/574,876 and 74/574,878

the goods, is ornamental and does not function as a trademark to indicate the source or origin of the goods.

Applicant appealed from the refusals in both applications. Because the issues involved in each case are identical, we are rendering our decision as to both applications in a single opinion.

It is the Senior Trademark Examining Attorney's position that NO DOUBT and NO CLUE are common expressions, which when used on wearing apparel, are part of the aesthetic ornamentation of the apparel and do not function as marks. According to the Examining Attorney, in the absence of evidence that the terms have acquired distinctiveness as indicators of source or a showing that the terms are indicators of the secondary source or sponsorship of the apparel, they are not registrable. Among the cases relied on by the Examining Attorney in support of his position are *In re Dimitri's Inc.*, 9 USPQ2d 1666, 1668 (TTAB 1988) [The term SUMO, which always appeared in connection with stylized representations of sumo wrestlers, "is not likely to be perceived as anything other than part of the thematic whole of the ornamentation of applicant's T-shirts and hats"]; *In re Villeroy & Boch S.A.R.L.*, 5 USPQ2d 1451, 1454 (TTAB 1987) [Floral design pattern for tableware "is not an inherently distinctive mark and has not been

subsequently amended each application to allege a date of first use and a date of first use in commerce of December 1995.

Ser No. 74/574,876 and 74/574,878

shown to be other than another decorative pattern without trademark significance"]; and *In re Astro-Gods, Inc.*, 223 USPQ 621, 624 (TTAB 1984) [The designation ASTRO-GODS and design "is not likely to be perceived as anything other than part of the thematic ornamentation of applicant's shirts"].

Applicant, however, argues that:

It is difficult to draw an analogy between the present record and [the above decisions] in that words standing alone are typically not considered to possess an aesthetic, ornamental appeal, as is more often the case when accompanied by an associated design element. Rather than being viewed aesthetically, words (without an accompanying design element) are typically viewed as source indicators.

(Brief, p. 8)

Further, applicant argues that NO DOUBT and NO CLUE would be perceived by prospective purchasers as source indicators because of the manner in which they appear on applicant's apparel.

At the outset, we should point out that words, without an accompanying design element, may indeed be ornamental in nature. See e.g., *In re Pro-Line Corp.*, 28 USPQ2d 1141, 1144 (TTAB 1993) [Consumers are likely to perceive the slogan BLACKER THE COLLEGE SWEETER THE KNOWLEDGE on applicant's shirts "as primarily ornamental and not as a source indicator"]. Not every word or phrase which appears on a product functions as a trademark. See *Pro-Line, supra*.

Where, as here, the alleged marks serve as part of the aesthetic ornamentation of the goods, the size, location,

Ser No. 74/574,876 and 74/574,878

dominance and significance of the alleged marks as applied to the goods are all factors which figure prominently in the determination of whether they also serve as indications of source. See *Pro-Line* and *Astro-Gods*, *supra*.

In the present case, NO DOUBT and NO CLUE are displayed in small stylized letters in the upper left portion of shirts. They are unobtrusive and are located in the area where trademarks, especially logos, commonly appear. Thus, notwithstanding that NO DOUBT and NO CLUE are common expressions or slogans, we find that when used in the above manner, they are likely to be perceived as source indicators. We should point out that had we been presented with a different record (e.g., NO DOUBT and NO CLUE emblazoned in large letters across the center of shirts), we could well have reached a different result.

Decision: The refusal to register in each application is reversed.

J. D. Sams

P. T. Hairston

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

Ser No. 74/574,876 and 74/574,878

Ser No. 74/574,876 and 74/574,878