Paper No.10
RLS/bg

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB AUG. 6, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Armouth International Inc.

Serial No. 74/717,647

Aaron Feinberg for Armouth International Inc.

Andrew Roppel, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney)

Before Simms, Seeherman and Walters, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Armouth International Inc. (applicant), a New York corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark shown below

for clothing: namely, men's underwear.[1] The Examining Attorney has refused registration on the basis of two registrations held by the same entity. The first registration is Registration No. 351,978, issued November 16, 1937 (third renewal, for ten years from November 16, 1997) for the mark shown below

for wearing apparel for men, women and children—namely, hats, coats, raincoats, suits, dresses, leather and fabric gloves, leather slippers, scarves, mufflers, neckties and sweaters. The second registration is Registration Number 1,936,532, issued November 21, 1995, for the mark VAGABOND for clothing, namely, suits, dresses, jackets, skirts, overcoats, trousers, shorts, sweaters, cardigans, overalls, shirts, scarves, gloves and jeanswear, namely, pants, shirts and jackets made of denim; footwear; and headwear. It is the Examining Attorney's position that applicant's mark so resembles these registered marks as to be likely to

[1] Application Serial Number 74/717,647, filed August 16, 1995, based upon applicant's allegation of use in commerce since at least as early as July 15, 1995. In the original application, applicant sought registration for the mark WORLD VAGABOND without any design element, for men's pants and jeans as well as men's

cause confusion. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

The Examining Attorney argues that the literal portion of applicant's mark is dominant and more significant because it will be used by consumers to call for applicant's goods. In addition, the Examining Attorney argues that the VAGABOND portion of applicant's mark is more significant because the term "WORLD" modifies this word and because, from a computer printout of the number of occurrences that the word "WORLD" appears in registrations, this term is not a strong source indicator. It is the position of the Examining Attorney that this part of applicant's mark suggests an international aspect to applicant's goods and that the addition of the term "WORLD" (and the design of the globe) is not sufficient to avoid likelihood of confusion.

With respect to the goods, the Examining Attorney points out that there is no limitation in either the application or the cited registrations on the channels of trade. Accordingly, the Examining Attorney presumes that the goods are sold in all of the normal channels of trade

---

underwear. Applicant subsequently amended the drawing of the mark to include the design of the globe.

for the listed goods and are available to all potential purchasers. The Examining Attorney indicates that such channels of trade include retail clothing stores and department stores. The Examining Attorney has also made of record computer printouts of third-party registrations showing the same mark registered to the same entity for both underwear and outerwear products such as those listed in the cited registrations. It is also the Examining Attorney's position that the registered mark is famous because the older of the cited registrations indicates that the registered mark was first used in 1912, more than eighty years ago. According to the Examining Attorney, the length of use of this mark is sufficient to consider this mark famous.[2]

Applicant, on the other hand, argues that the Examining Attorney has improperly dissected applicant's mark. Applicant argues that the term VAGABOND in its mark is not more dominant than the word WORLD. Rather, applicant argues that its mark is unitary, as well as being

[2] On this point, we disagree. The mere fact that a mark has been in use for a considerable period of time is not sufficient, in and of itself, to demonstrate fame. That is because, even assuming no interruption in use over the years, we cannot presume that the use of any registered mark has been of such a nature and extent that it is now well known or famous among the relevant purchasers. It is possible, for example, that the mark's use has been limited both in the level of sales and extent of advertising as well as the geographic extent of use.

of distinct appearance. With respect to the goods, applicant's attorney argued in its first response to the Examining Attorney's refusal that entities that sell suits, trousers, hats or dresses do not also sell underwear, and vice versa. Without support, applicant argues that there exist numerous entities that sell outerwear or underwear only and not both. Applicant also notes that the registrant has filed Section 8 and 9 affidavits and that registrant "did not request any broadening of the identification of the goods to include underwear." Brief, 8.[3]

Upon careful consideration of this record and the arguments, we agree with the Examining Attorney that confusion is likely. It is our opinion that purchasers and potential purchasers, aware of registrant's VAGABOND and VAGABOND (stylized) marks in connection with a wide variety of items of clothing, who then encounter applicant's WORLD VAGABOND and design mark in connection with underwear, are likely to mistakenly believe that these goods come from the same source or are sponsored or endorsed by the same entity. In this regard, we note that the registered mark VAGABOND appears to be an arbitrary mark with respect to

[3] Applicant is advised that, once a mark has been registered, the listed goods (or services) may not be enlarged by the registrant.

items of clothing. Also, even if consumers realize that applicant's mark is slightly different from the registered marks, applicant's mark suggests an international aspect, and would not necessarily be seen as identifying a different source. That is to say, applicant's mark may well be seen as merely a variation of the registered marks. We must also realize that the average purchaser of clothing may retain only a general impression of a mark, and that one feature may be regarded as more significant in indicating origin. See In re National Data Corp., 754 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). The third-party registrations introduced by the Examining Attorney also suggest that consumers may be aware that such goods as dresses, jackets, trousers, scarves and gloves as well as underwear come from the same entity. See In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). The cases cited on page 6 of the Examining Attorney's brief are illustrations of cases where the Board has held confusion to exist in cases involving goods similar to those involved in this appeal. The Examining Attorney, on page 7 of his brief, has also distinguished cases cited by applicant involving a common element which is either descriptive or highly suggestive of the goods.

Decision: The refusal of registration is affirmed.

R. L. Simms

E. J. Seeherman

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