

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

JUNE 19, 1998

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Tricots Canada U.S. Inc.**

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Serial No. 75/094,455  
Serial No. 75/094,456

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**Stewart L. Gitler of Hoffman, Wasson & Gitler for Tricots  
Canada U.S. Inc.**

**Katherine Stoides**, Trademark Examining Attorney, Law Office  
**109** (Deborah S. Cohn, Managing Attorney)

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Before Simms, Seeherman and Hairston, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Tricots Canada U.S. Inc. has applied to register  
BLIZZARD and design<sup>1</sup> and BLIZZARD FLEECE and design,<sup>2</sup> with  
the word "Fleece" disclaimed, for "textile fabrics for use  
in manufacture of clothing." The marks are depicted below.

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<sup>1</sup> Application Serial No. 75/094,456, filed April 26, 1996, based  
on an asserted bona fide intention to use the mark in commerce.

<sup>2</sup> Application Serial No. 75/094,455, filed April 26, 1996, based  
on an asserted bona fide intention to use the mark in commerce.



Registration has been refused in both cases pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's marks so resemble the mark BLIZZARD SOX ("Sox" disclaimed), previously registered for thermal socks, that, if used on applicant's identified goods, they are likely to cause confusion or mistake or to deceive.

Applicant has appealed. Briefs have been filed by applicant and the Examining Attorney, but an oral hearing was not requested. Because both cases involve similar facts and issues, we decide both appeals in this opinion.

Turning first to the goods, we note that the identification, on its face, could indicate that applicant's fabric is sold to businesses which manufacture clothing. However, the identification is broad enough to encompass fabric which is sold at retail to ordinary consumers who make their own clothing and, indeed, applicant has stated that the consumers of its fabric "largely are individuals who fashion articles of clothing at home." Brief, p. 6. Thus, in determining whether confusion is likely, we have treated applicant' goods as consumer products rather than products sold to the trade.

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We acknowledge applicant's point that the applicant's and the registrant's goods are different, applicant's goods being raw textile materials while the registrant's are finished goods. However, the question is not whether consumers will confuse rolls of fabric with thermal socks, but whether they will believe that they emanate from the same source. It is well established that

it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer.

**In re International Telephone & Telegraph Corp.**, 197 USPQ 910, 911 (TTAB 1978).

Thus, we must consider whether applicant's textile fabrics and the registrant's thermal socks are sufficiently related that consumers are likely to believe they would come from the same source if they were sold under similar marks.

The Board has frequently held that confusion in trade is likely to result from the contemporaneous use of the same or similar marks on fabrics and items of apparel, where, inter alia, "the garments are or could be made from the

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piece goods." See **Warnaco Inc. v. Adventure Knits, Inc.**, 210 USPQ 307, 315 (TTAB 1981), and cases cited therein. Here, applicant has identified its goods as "textile fabrics" without limitation as to type. Thus, these fabrics must be presumed to include fabric which can be made into thermal socks. Moreover, one of the applied-for marks is BLIZZARD FLEECE. The word FLEECE has been disclaimed, thus indicating that the fabric is fleece, which material can certainly be used in thermal socks.

Applicant has not discussed the various cases cited by the Examining Attorney which stand for the principle that fabrics and clothing are related goods, and that the use of the same or similar marks on them is likely to cause confusion. Instead, applicant has relied on **Oxford Industries, Inc. v JBJ Fabrics, Inc.**, 6 USPQ2d 1756 (SDNY 1988), in which the Court found no trademark infringement, in part due to the fact that the plaintiff's garments were sold to retail apparel outlets and to the ultimate apparel consumer, while the defendant's fabric was sold principally to garment manufacturers who, in making the finished garments, would remove the selvage portion of the fabric which bore defendant's mark, such that the purchasers of the garments would never see the mark.

The facts of the present case clearly differ from those in Oxford. As discussed above, not only is applicant's

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identification of goods broad enough to include sales of its fabric to the general public, but applicant has acknowledged that individuals who do their own sewing are the primary customers of its fabric. Thus, both applicant's fabric and the registrant's thermal socks would be sold to the same class of consumers, and they are the general public, rather than the sophisticated manufacturers who were the purchasers of the defendant's goods in the Oxford case.

We recognize that applicant's fabric and the registrant's thermal socks would normally be sold in different retail stores. However, the purchasers of both products could be the same; a consumer might well go to a fabric store to purchase, for example, fleece fabric to make a warm vest, and go to a clothing store to purchase thermal socks to be worn with that vest. We are not persuaded by applicant's argument that the consumers of fabric and the consumers of thermal socks are different. The fact that people may sew their own clothing out of purchased fabric does not mean that they would never purchase finished garments. Moreover, thermal socks are a specialized type of clothing; applicant has provided no evidence that home sewers would normally make thermal socks.

Accordingly, we find that applicant's "textile fabrics for use in the manufacture of clothing" to be related to

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"thermal socks" such that, if the same or similar marks were used on both, confusion is likely to result.

This brings us to a consideration of the marks. Applicant has discussed in great detail the various differences in the marks, and we acknowledge that the word BLIZZARD in applicant's marks appears in a slightly stylized typestyle, with lines preceding the "B" which, when used in connection with the word, suggest a blizzard wind or driven snow. One of applicant's marks also includes the generic word FLEECE, while the cited mark includes the generic word SOX.

These differences, however, are not sufficient to distinguish applicant's marks from the cited mark. The dominant element of both applicant's marks and the registrant's mark is the word BLIZZARD. Consumers are not likely to note or remember the slight stylization of the word BLIZZARD in applicant's marks, or the lines design element. Moreover, the cited mark is depicted as a typed drawing, which means that the protection accorded to it would encompass the typestyle in which BLIZZARD is shown in applicant's marks. As for the design element in applicant's marks, the lines merely reinforce the connotation of the word BLIZZARD. More importantly, because applicant's goods would be referred to, respectively, as BLIZZARD and BLIZZARD FLEECE, it is the words and not the typestyle or design

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element that consumers will remember. Therefore, in the context of the marketplace, where consumers would not have an opportunity to compare applicant's or the registrant's marks on a side-by-side basis because the goods would be sold in different stores, the stylization and the design in applicant's marks are not sufficient to distinguish applicant's marks from the registrant's. See **Dassler KG v. Roller Derby Skate Corp.**, 206 USPQ 255 (TTAB 1980).

With respect to the inclusion of the generic words SOX in the cited mark, and the generic word FLEECE in one of applicant's marks, while consumers might well note that these words are different in the different marks, they will not ascribe these differences to a difference in source of the goods. Rather, they will simply assume that a single source has chosen to use its mark BLIZZARD with the generic word SOX when the mark is used for thermal socks, and with the generic word FLEECE when the mark is used for fabric. Similarly, vis-à-vis BLIZZARD and design and BLIZZARD SOX, consumers will assume that the fabric and thermal socks come from the same source, and that source has simply added the generic term SOX when the mark is used in connection with thermal socks.

Although we have discussed the various elements that comprise applicant's and the registrant's marks, we have, in reaching our determination of likelihood of confusion,

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compared the marks in the entireties. It is well established that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. **In re National Data Corp.**, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applicant has also asserted that the cited mark is weak, and is not entitled to a wide scope of protection. In support of this position, applicant points to two third-party registrations, both owned by the same registrant, for BLIZZARD BOMBER and LIL'BLIZZARD BOMBER, both for hats. These registrations had originally been cited against applicant's application, but were withdrawn as a result of applicant's response, in which applicant argued the distinctiveness of BOMBER, the alliterative effect of the words, and the likelihood that the marks would not be shortened to BLIZZARD. For the reasons articulated by applicant, we would agree that these marks convey a different commercial impression from BLIZZARD SOX, and we cannot find that the presence on the Register of only these two registrations owned by a single third-party shows that BLIZZARD SOX is not a strong mark.



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We should note that, although applicant has not raised this point, BLIZZARD has a suggestive significance when used in connection with thermal socks. This does not mean, however, that the cited mark is not entitled to protection against applicant's use of BLIZZARD and design or BLIZZARD FLEECE and design for textile fabrics for use in the manufacture of clothing, particularly since applicant's marks convey the same suggestive significance.

Finally, it is well established that, to the extent that there is any doubt on the issue of likelihood of confusion, such doubt must be resolved against the newcomer and in favor of the prior user or registrant. **In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes**, 487 F.2d 918, 179 USPQ 729 (CCPA 1973). In this case applicant, who filed its application based on an intention to use the mark, rather than use, is clearly the newcomer.

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Decision: The refusal of registration with respect to both applications is affirmed.

R. L. Simms

E. J. Seeherman

P. T. Hairston  
Administrative Trademark Judges  
Trademark Trial and Appeal Board