

THIS DISPOSITION IS NOT
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APRIL 27, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re QVC, Inc.

Serial No. 74/688,038

Manny D. Pokotilow of Caesar, Rivise, Bernstein, Cohen &
Pokotilow, Ltd. for QVC, Inc.

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

Before Simms, Seeherman and Hairston, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

QVC, Inc. has filed an application to register the
mark SPORT SAVVY (SPORT has been disclaimed) for goods
which were subsequently identified as "women's clothing;
namely, suits, jackets, t-shirts, shorts and vests sold

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through home shopping services through the use of
television."¹

¹ Application Serial No. 74/688,038 filed June 14, 1995, claiming first use and first use in commerce on April 15, 1995.

The Examining Attorney has finally refused registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the basis of two registrations owned by the same entity: Registration No. 827,202 for the mark

for men's and boys' sweaters, jackets, sport shirts, dress shirts, sweatshirts, slacks, trousers, belts, neckwear, and hosiery;² and Registration No. 913,818 for the mark

for women's and girls' dresses, shifts, skirts, sweaters, shirts, pants and shorts.³

Applicant has appealed. Briefs have been filed, but no oral hearing was requested.

In urging reversal of the refusal to register, applicant maintains that the inclusion of the word SPORT in its mark obviates any likelihood of confusion. Also, applicant argues that the cited mark is weak and is

² Issued April 11, 1967, renewed.

³ Issued June 8, 1971, renewed.

therefore entitled to a limited scope of protection.

Further, applicant argues that the respective goods are sold in different channels of trade and, therefore, confusion is not likely.

While we have carefully considered applicant's arguments, we nonetheless agree with the Examining Attorney that confusion is likely. With respect to applicant's mark SPORT SAVVY and the cited SAVVY marks, applicant is correct that the respective marks must be compared in their entirety. Nevertheless, 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 entirety." In re National Data corp., 752 F.3d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, "that a particular feature is descriptive ... with respect to the involved goods ... is one commonly accepted rationale for giving less weight to a portion of a mark ..." 224 USPQ at 751.

Here, we agree with the Examining Attorney that, in view of the descriptive significance of the word "SPORT" (as confirmed by applicant's disclaimer thereof), the more

prominent or distinguishing element of applicant's mark, when considered as a whole, is the word "SAVVY." We note that although applicant has argued that the inclusion of the word SPORT in its mark obviates any likelihood of confusion, it has not indicated how the commercial impression or connotation of SPORT SAVVY differs from SAVVY such that purchasers would see these marks as indicating clothing from different sources. We find, therefore, that when the marks SAVVY and SPORT SAVVY are considered in their entirety, they convey similar commercial impressions.

Turning then to the goods, we note that certain of the goods are identical (women's shorts) and others are sufficiently related (women's suits, jackets, t-shirts and vests, on the one hand, and women's dresses, shirts, skirts, sweaters, shirts and pants, and men's sweaters, jackets, sport shirts, dress shirts, slacks, and trousers, on the other hand) such that, when sold under similar marks, confusion is likely to occur among purchasers. See, e.g.: Kaufman Knitting Co. v. Oberman Mfg. Co., 125 USPQ 196 (TTAB 1960) [Women's shirts, blouses and sportswear, including slacks, and men's trousers and slacks are goods of such nature that their sale under the same or similar marks would be likely to result in confusion]. Moreover,

as the Examining Attorney points out, there are no restrictions in either of the cited registrations with respect to channels of trade. Thus, we must assume that the clothing in the cited registrations travels in all normal channels of trade for such goods, and that could include home shopping services through the use of television, the trade channels for applicant's goods. Also, both applicant's and registrant's clothing would be purchased by the same class of customers, namely ordinary consumers. Even if we were to assume that applicant's and registrant's clothing were sold in different channels of trade, the same consumers who are exposed to applicant's clothing through television home shopping could encounter registrant's clothing in retail stores, and vice-versa. As a result, consumers would come in contact with both applicant's and registrant's clothing. Thus, we find that purchasers familiar with registrant's women's and men's clothing sold under the cited SAVVY marks are likely to believe, upon encountering applicant's women's clothing sold under the mark SPORT SAVVY, that the goods emanate from or are sponsored by the same source. In particular, purchasers may well believe that SPORT SAVVY is a new line of "sport" clothing from the makers of SAVVY clothing.

In reaching our decision, we have not overlooked applicant's argument that SAVVY is a weak mark and therefore entitled to a narrow scope of protection. In support of its position, applicant submitted the results of a search of the Dun & Bradstreet database for company/business names that contain the words SPORT and/or SAVVY, along with the declaration of Yet Mui, president of TM Investigations Group, Inc., a company which investigates the use of trademarks. According to Mr. Mui, he investigated the trade name use of SAVVY by several companies listed in the Dun & Bradstreet report, and at least nine retail clothing stores were doing business under trade names which included the word SAVVY. There is, of course, a difference between retail clothing stores and clothing per se. Moreover, applicant has provided no information with respect to the purchasing public's level of exposure to these uses. Stated differently, there is no information concerning these clothing stores' customer base, sales, or advertising which would indicate that consumers are so familiar with SAVVY marks for retail clothing stores or for clothing per se, that they would assume that SAVVY and SPORT SAVVY when used for identical and closely related articles of clothing indicate separate sources for such goods. To the extent that applicant is

relying on these third-party uses to show the suggestive significance of the word SAVVY with respect to the involved goods, we would point out that even weak marks are entitled to protection against the registration by a subsequent user of a substantially similar mark for identical and closely related goods.

Finally, to the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must be resolved in favor of the prior registrant. In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

Decision: The refusal to register is affirmed with respect to both cited registrations.

R. L. Simms

E. J. Seeherman

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial and
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