Commissioner of Patents and Trademarks
Patent and Trademark Office (P.T.O.)

RE: TRADEMARK REGISTRATION OF DILLARD DEPARTMENT STORES, INC.
93-254
March 1, 1994
***1** Petition Filed: July 21, 1993

For: COPPER KEY CLOTHING COMPANY
Registration No. 1,627,302
Issued: December 11, 1990

Robert M. Anderson

Acting Assistant Commissioner for Trademarks

On Petition

Dillard Department Stores, Inc. has petitioned the Commissioner, pursuant to 37 C.F.R. § 2.146, to reverse the decision of the Applications Examiner and to grant its request under Section 7(e) of the Trademark Act to amend the mark in the above-identified registration. Trademark Rules 2.146 and 2.176 provide appropriate authority for the requested review.

FACTS

The mark COPPER KEY CLOTHING COMPANY, in the typed drawing format, issued on December 11, 1990, for "clothing, namely sweaters, blouses, sweat pants and jackets," in Class 25. On November 23, 1992, petitioner filed a request under Section 7 of the Trademark Act, to delete the words "CLOTHING COMPANY" from the mark. A new drawing, the registration certificate, and a specimen were submitted with the request.

In a letter dated February 24, 1993, the Applications Examiner in the Post Registration Division refused to accept the proposed amendment because she believed "the deletion of the disclaimed words 'Clothing Company' is a significant change in the commercial impression of the registered mark."

On March 26, 1993, petitioner filed a request for reconsideration to the Applications Examiner, arguing that the wording "CLOTHING COMPANY" is descriptive and non-unique wording such that its deletion from the mark "has no significant effect on the commercial impression of the mark" and would not constitute a material alteration.

In a letter dated June 8, 1993, the Applications Examiner continued her refusal and petitioner was advised to file a petition to the Commissioner. This petition followed. [FN1]

DECISION

Trademark Rule 2.146(a)(3) permits the Commissioner to invoke supervisory authority in appropriate circumstances. However, the Commissioner will reverse the action of an Applications Examiner only where there has been a clear error or abuse of discretion. In re Richards-Wilcox Manufacturing Co., 181 USPQ 735 (Comm'r Pats.1974); Ex parte Peerless Confection Company, 142 USPQ 278 (Comm'r Pats.1964). For the reasons given below, the present circumstances do not demonstrate clear error by the Applications Examiner.

Section 7(e) of the Trademark Act, 15 U.S.C. § 1057(e), authorizes the Commissioner, for good cause, to permit a registration to be amended provided the amendment does not alter materially the character of the mark. Deletion of material from a registered trademark is only permitted if such material is not an integral part of the mark and its elimination will not materially alter the character or commercial impression of the mark. Ex Parte Petersen & Pegau Baking Co., 100 USPQ 20 (Comm'r Pats.1953); Ex Parte The Hanna Paint Mfg. Co., 103 USPQ 217 (Comm'r Pats.1954).

***2** Given the nature of the proposed change, the Applications Examiner reasonably concluded that the commercial impression of the amended mark was materially different than that of the mark as originally registered. See Trademark Manual of Examining Procedure (TMEP) § 1607.02(a). The deletion of the wording "CLOTHING COMPANY" would invariably alter the visual and aural impression of the alliterative mark "COPPER KEY CLOTHING COMPANY," and thus materially affects the overall commercial impression of the mark.

Accordingly, the petition is denied. The registration file will be returned to the Post Registration Section for further processing. The registration certificate is returned herewith.

FN1. The petition was perfected by the filing fee required under 37 C.F.R. § 2.6(k) on September 10, 1993.

33 U.S.P.Q.2d 1058

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