

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
February 23, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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H-D U.S.A., LLC

v.

Schmidiger

—
Opposition No. 91223860

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Linda K. McLeod and David M. Kelly of Kelly IP, LLP
for H-D U.S.A., LLC.

Jürg Schmidiger, *pro se*.

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Before Kuczma, Masiello, and Heasley, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Jürg Schmidiger (“Applicant”) filed an application¹ for extension of protection to the United States of his International Registration of the mark shown below

Harlie Charper

—
¹ Application Serial No. No. 79160951 was filed on January 7, 2015 under Trademark Act Section 66(a), 15 U.S.C. § 1141f(a), based on International Registration No. 1236951 dated January 7, 2015, with a priority filing date of August 8, 2014. The mark consists of the wording HARLIE CHARPER in stylized, cursive script. Color is not claimed as a feature of the mark. The application includes a statement that HARLIE CHARPER does not identify a living individual.

for the following goods:

Footwear; Woven articles of clothing, namely, suits for men and women, pantsuits, track suits, dress suits, suits, business suits, three-piece suits, blazers, jackets, smoking jackets, tuxedos, shirts, shirts for suits, dress shirts, formal shirts, casual shirts, short-sleeve shirts, long-sleeve shirts, golf shirts, Hawaiian shirts, Hawaiian shirts with front button closure, open-necked shirts, tank tops for sports, short-sleeve sports shirts, moisture-wicking sports shirts, polo shirts, bowling shirts, neckties, ascots, bolo ties, mufflers, bandanas, neckerchiefs, underwear, underwear for men, long underwear, boy shorts, thermal underwear, sweat-absorbent underclothing; water-resistant clothing, namely, jackets; wind-resistant jackets, dress socks for men, athletic footwear, footwear for sports, sports shoes, shoes for playing drums; Clothing for sports, namely, track suits, sports jackets, fishing jackets, wet suits for surfing, wet suits for surface water sports, bathing suits, bathing suits for women, bathing suits for men, fitted swimming costumes with bra cups, tank tops for sports, short-sleeve sports shirts, moisture-wicking sports shirts, bowling shirts, polo shirts, rain slickers; Headgear, namely, hats, caps, hoods, beanies; Footwear, namely, athletic footwear, footwear for sports, sports shoes, motorcycle boots, footwear for men and women, pumps; Leather or imitation leather clothing, namely, suits of leather, motorcycle jackets, motorcyclists pants, belts, shoes, boots, motorcycle boots, footwear for men and women, pumps; Motorists clothing, namely, motorcycle boots, rain suits for motorcyclists, motorcycle jackets; high-strength synthetic fiber woven clothing, namely, motorcyclists pants and jackets, water-resistant jackets, tear-cut and heat proof motorcyclists jackets, tear-cut and heat proof motorcyclists pants, tear-cut and heat proof motorcyclists shirts, in International Class 25.

H-D U.S.A., LLC (“Opposer”) has opposed registration of the mark on the ground that it so resembles Opposer’s earlier used and registered marks HARLEY and HARLEY-DAVIDSON (in standard character and stylized forms) as to be likely to cause confusion, mistake or deception under Section 2(d) of the Trademark Act,

15 U.S.C. § 1052(d); and on the ground that Applicant's mark is likely to cause dilution of the distinctive quality of Opposer's marks under Section 43(c), 15 U.S.C. § 1125(c). Applicant, in his answer, admitted many of Opposer's allegations, including the following:²

- That Applicant "thinks the trademark HARLEY-DAVIDSON is a world wide well known trademark and the company is having good commercial success";
- That "Opposer owns the trademarks as listed in the Opposer's Notice of Opposition";
- That "Opposer owns and has owned the trademarks HARLEY and HARLEY-DAVIDSON prior to the Applicants Harlie Charper trademark application."
- That "for the pronunciation in American English it is may true that there is an affinity in between the two HARLEY and Harlie";
- That Applicant "has the intention to produce motorcycle clothing not because of a 'bad faith intent' for the company Harley Davidson and their business. But he (Applicant) has ideas for new innovative motorcycle clothing as he is a motorcyclist himself and can comprehend their needs";
- That "the company Harley Davidson has good success in business since decades";
- That "the HARLEY-DAVIDSON trademark has become famous long before the Applicant has filed his application."

Applicant denied other salient allegations of the notice of opposition. In particular, Applicant denied "that Opposer has gained high profile under the specific HARLEY trademark itself";³ Applicant asserted that he "has never seen any products labelled with the trademark HARLEY nor such advertising so far";⁴ and maintains that the difference between his mark and Opposer's marks "is so obvious that the

² Answer ¶¶ 13, 18, 24, 25, 27, 30, and 32, 8 TTABVUE 3-6.

³ *Id.* ¶ 13, 8 TTABVUE 3.

⁴ *Id.* ¶ 30, 8 TTABVUE 6.

mental capacity of someone who would seriously confound those different marks maybe should be doubted.”⁵

Opposer filed a substantial amount of trial evidence and a brief on the case. Applicant has neither presented evidence nor filed a brief.

A. The record.

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the application file for the opposed mark. Opposer has filed the testimony declaration of Joanne M. Bischmann, Vice President, Communications for Harley-Davidson, Inc., and President of Harley-Davidson Foundation, Inc. (31 TTABVUE (confidential); public version at 30 TTABVUE) with exhibits thereto (32-77 TTABVUE). Opposer has also filed seven notices of reliance on the following evidence:

- Status and title information, from the online records of the USPTO, regarding 26 U.S. registrations owned by Opposer (14 TTABVUE).
- Opposer’s Annual Reports on Form 10-K for 2011-2016 (15 TTABVUE).
- Applicant’s responses to select requests for admission (16 TTABVUE).
- Decisions relating to Opposer’s enforcement of its trademark rights (18 TTABVUE).
- Applicant’s responses to select interrogatories (19 TTABVUE).
- Excerpts from published books referring to Opposer (20-29 TTABVUE).
- Press notices referring to Opposer (78 TTABVUE).

B. Standing.

Standing is a threshold issue that must be proven by a plaintiff in every *inter partes* case. See *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015). The plaintiff

⁵ *Id.*, Amplifying Denials ¶ 1, 8 TTABVUE 7.

must show that it has a real interest in the proceeding beyond that of a mere intermeddler and that it has a reasonable basis for its belief of damage resulting from registration of the subject mark. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

Opposer has pleaded and proven⁶ that it owns the following 13 subsisting U.S. registrations covering the clothing-related goods listed below (among other goods):

Reg. No.	Mark	Clothing-related Goods
1406876	HARLEY	clothing; namely-- tee shirts for men, women and children; knit tops for women and girls; and children's shirts
1683455	HARLEY	shirts, tank tops, boots, and sweatshirts
1708362	HARLEY	embroidered patches for clothing
0507163	HARLEY-DAVIDSON	motorcycle shirts, sweaters, breeches, neckties, coveralls, rain coats and hats, jackets, helmets, caps, and boots
1234404	HARLEY-DAVIDSON	Clothing-Namely, Jackets, Pants, Shirts, T-Shirts, Vests, Jeans, Riding Suits, Bandannas, Rain Suits, Shorts, Nightgowns, Halters, Underwear, Tank Tops, Sweatshirts, Night Shirts, Socks, Gloves, Hats, Caps and Boots Sunglasses and Protective Helmets for Motorcyclists
1450348	HARLEY-DAVIDSON	sweat pants, sweaters, suspenders, scarves, bandanas, leather clothing, namely, jackets, vests, gloves, jeans, chaps, tops, boots, shorts, caps, belts, and parts of footwear, namely boot tips

⁶ 14 TTABVUE. Opposer also demonstrated its ownership of 13 other subsisting registrations, which are of record.

Reg. No.	Mark	Clothing-related Goods
3393840	HARLEY-DAVIDSON	House mark for a full line of clothing, footwear and headwear
3558739	HARLEY-DAVIDSON	Leather and imitations of leather, and goods made of these materials, namely, dog leashes, dog collars, dog clothing
1793137	HARLEY OWNERS GROUP	clothing, namely, shirts, sweatshirts, t-shirts, caps, hats, jacket, vests, bandanas, belt buckles and ornamental patches
3490890	HARLEY-DAVIDSON	House mark for a line of motorcycles, structural parts for motorcycles and related motorcycle accessories, namely ... <i>(etc.)</i>
1571032		clothing, namely, jeans, t-shirts and jackets
3447304		a full line of clothing
1710643		shirts, sweatshirts, t-shirts, caps, embroidered patches

Opposer has also demonstrated that over a period of years it has used the marks HARLEY and HARLEY-DAVIDSON on and in connection with a range of apparel.⁷ Thus, Opposer has shown that it has a real interest in this proceeding and a reasonable basis for its belief that it will be damaged by registration of Applicant's

⁷ See, e.g., *Bischmann* dec. ¶¶ 25, 27-28, 31 TTABVUE 16-17; and 57-61 TTABVUE (clothing catalogues).

mark, and has established its standing to oppose registration of Applicant's mark. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Ritchie v. Simpson*, 50 USPQ2d at 1025-6; and *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

C. Opposer's claim under Section 2(d).

Opposer opposes registration of Applicant's mark under Trademark Act § 2(d), on the ground that Applicant's mark "so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by [Opposer] and not abandoned, as to be likely, when used on or in connection with the goods of [Applicant], to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). In view of Opposer's ownership of valid and subsisting registrations of its pleaded marks, priority is not at issue with respect to the marks and the goods identified in the registrations. *King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

Our determination of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.* 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In our analysis, below, we have considered all factors with respect to which there is evidence of record.

D. The fame of Opposer's marks.

We will first address Opposer's contention that its marks HARLEY-DAVIDSON and HARLEY "are among the most famous marks in the U.S."⁸ Fame, if it exists, plays a dominant role in the likelihood of confusion analysis because famous marks enjoy a broad scope of protection. A famous mark has extensive public recognition and renown. *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992). For purposes of analysis of likelihood of confusion, fame is not an "all-or-nothing factor"; rather, it "varies along a spectrum from very strong to very weak." *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (internal quotations omitted). Fame is "determined from the viewpoint of consumers of like products," and not from the viewpoint of the general public. *Id.* at 1735. Because of the extreme deference that we accord a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting that its mark is famous to clearly prove it. *Leading Jewelers Guild Inc. v. LJOW Holdings LLC*, 82 USPQ2d 1901, 1904 (TTAB 2007). As we have noted above, Applicant has conceded that "the HARLEY-

⁸ Opposer's brief at 38, 80 TTABVUE 45.

DAVIDSON trademark has become famous long before the Applicant has filed his application.”⁹ Applicant has made no such concession regarding the mark HARLEY.

To demonstrate the fame of its marks, Opposer has submitted testimony that Opposer commenced manufacturing motorcycles in 1903 under the brand HARLEY-DAVIDSON and is now the largest manufacturer of motorcycles in the United States.¹⁰ “For decades, [Opposer] has been referred to by ... the shortened name Harley”¹¹ According to Opposer’s witness, Opposer has used its marks for motorcycles and apparel of various types from the dates set forth below:¹²

Mark	Goods	Date
HARLEY-DAVIDSON	Motorcycles.	1903
HARLEY	Motorcycles.	1903
HARLEY-DAVIDSON	T-shirts, jackets, pants, jeans, rain coats, rain suits, hats, sweatshirts, gloves, helmets, belts, and boots.	1914-15
HARLEY-DAVIDSON	Sweat pants, suspenders, scarves, bandanas, leather clothing, boots, caps, and belts.	1947
HARLEY	Clothing.	1981
	Jeans, jackets, t-shirts.	1988

⁹ Answer ¶ 32, 8 TTABVUE 6.

¹⁰ Bischmann dec. ¶ 12, 31 TTABVUE 4-5.

¹¹ *Id.* at ¶ 20, 31 TTABVUE 6.

¹² *Id.* ¶¶ 22, 24-25, 28, 30-31, 31 TTABVUE 7-17.

Mark	Goods	Date
HARLEY OWNERS GROUP	Clothing and hats.	1984
HOG LADIES OF HARLEY	Clothing and caps.	1987

For the purpose of demonstrating the fame of its marks, Opposer has disclosed (confidentially) financial data relating to its revenues from motorcycle sales and from licensing revenues for t-shirts, other apparel, footwear, eyewear, and juvenile apparel.¹³ Apparel revenues are substantial, although revenues from motorcycles are much greater. Opposer’s marketing of apparel heavily emphasizes an association between the apparel and Opposer’s core product, motorcycles, *i.e.*, promoting the apparel as motorcycle accessories or as particularly suitable for use in motorcycling.

Opposer has also submitted substantial evidence regarding its marketing and promotional activities across all product categories, including its advertising through print, television, radio, direct mail, signs, billboards, and digital media, product placement on television and in films, and sponsorship of sporting events, motorcycle rallies, and other events.¹⁴ The evidence includes figures for advertising expenditures between 2006 and 2016, inclusive.¹⁵ Opposer has conducted advertising campaigns specifically dedicated to its clothing products, including print catalogues for its

¹³ *Id.* ¶¶ 84-86, 31 TTABVUE 44-46, and Exhibit 55, 73 TTABVUE 55.

¹⁴ *Id.* ¶¶ 42-79, 31 TTABVUE 27-42.

¹⁵ 73 TTABVUE 4. The figures include a breakout of costs for Opposer’s “Motorclothes Catalogue.”

“Motorclothes,” and Opposer has provided voluminous examples of such catalogues issued between 2002 and 2017.¹⁶

Opposer has also provided information regarding unsolicited/unearned media attention that it has received.¹⁷ Opposer has made of record hundreds of pages of press coverage relating to itself, its goods, and its marks. HARLEY-DAVIDSON has been referred to as “an iconic American brand”;¹⁸ a “famous name,”¹⁹ “famous brand,”²⁰ and “famous trademark.”²¹ The design form of Opposer’s mark has been referred to as a “famous logo.”²² The press notices also show recognition of HARLEY as Opposer’s brand, *e.g.* “Harley motorcycles,”²³ “Harley bike,”²⁴ “Harley hogs,”²⁵ “Harley engine,”²⁶ “Harley apparel,”²⁷ “Harley dealers,” “Harley leathers.”²⁸ Opposer’s motorcycles are often referred to as “Harleys.”²⁹ Opposer itself is often

¹⁶ 53-61 TTABVUE.

¹⁷ *Bischmann* dec. ¶ 80-81, 31 TTABVUE 43, and Exhibit 54, 73 TTABVUE 6-53.

¹⁸ 78 TTABVUE 34; *see also* 78 TTABVUE 25, 44, 58.

¹⁹ *See* 78 TTABVUE 83, 117, 317, 340, 347, 386, 389, 398, 570.

²⁰ *See* 78 TTABVUE 88, 110, 144, 156, 225, 343, 367, 370, 379, 382.

²¹ *See* 78 TTABVUE 372, 375.

²² *See* 78 TTABVUE 65, 73, 170, 321.

²³ 78 TTABVUE 318.

²⁴ 78 TTABVUE 37.

²⁵ 78 TTABVUE 76, 380, 471, 491, 498, 560.

²⁶ 78 TTABVUE 216.

²⁷ 78 TTABVUE 382.

²⁸ 78 TTABVUE 453.

²⁹ 78 TTABVUE 67, 94- 96, 347, 435, 445, 590, 594.

referred to as “Harley.”³⁰ The press coverage, which issued over a period spanning many decades, demonstrate an extremely high degree of recognition of both HARLEY-DAVIDSON and HARLEY as trademarks and trade names associated with Opposer, as well as the writers’ expectation that readers will be familiar with these marks and names and have an interest in reading about them. We find the evidence of record sufficient to persuade us that Opposer’s marks HARLEY-DAVIDSON and HARLEY enjoy a high degree of fame in the United States market. The fame of Opposer’s marks enhances the likelihood that customers would perceive a trademark similar to HARLEY or HARLEY-DAVIDSON as being associated with Opposer.

E. The goods.

We turn next to the similarity or dissimilarity of the goods at issue, as identified in the Applicant’s application and Opposer’s pleaded registrations. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-1162 (Fed. Cir. 2014); *Octocom Syst. Inc. v. Houston Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Comparing first Applicant’s goods to the goods for which Opposer has registered its HARLEY mark in standard character form, we see that the application and one or more of the pleaded registrations cover “shirts,” “tank tops,” and “boots”; that Applicant’s “shirts” are identified with sufficient breadth to include within their scope Opposer’s more narrowly identified “tee shirts” and “children’s shirts”; and that Opposer’s boots are identified with sufficient breadth to include within their scope

³⁰ 78 TTABVue 28, 31, 40, 51, 394, 472, 486, 501.

Applicant's more narrowly identified "motorcycle boots." Therefore, Applicant's goods are, in part, identical or legally identical to goods for which Opposer has registered its mark HARLEY.

Comparing next Applicant's goods to the goods for which Opposer has registered its HARLEY-DAVIDSON mark in standard character form, we see that the application and one or more of the pleaded registrations cover "neckties," "hats," "caps," "jackets," "boots," "shirts," and "underwear"; that Opposer's "rain coats" are essentially identical to Applicant's "rain slickers"; and that Opposer's "shorts," "tank tops," "socks," "pants," "boots," and "rain suits" are identified with sufficient breadth to include within their scope Applicant's more narrowly identified "boy shorts," "tank tops for sports," "dress socks for men," "motorcyclists pants," "motorcycle boots," and "rain suits for motorcyclists." Therefore, Applicant's goods are, in part, identical or legally identical to goods for which Opposer has registered its mark HARLEY-DAVIDSON.

We need not consider whether each of Applicant's identified goods is related to Opposer's goods; for purposes of a *du Pont* analysis, it is sufficient if likelihood of confusion is found with respect to any of Applicant's goods in a given International Class. See *Tuxedo Monopoly, Inc. v. General Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Apple Comput. v. TVNET.Net, Inc.*, 90 USPQ2d 1393, 1397 (TTAB 2007). In sum, we find that the *du Pont* factor of the similarity or dissimilarity of the goods favors a finding of likelihood of confusion.

F. Trade channels; customers.

The parties' goods are, in part, identical or legally identical. With respect to those identical goods, we must presume that the channels of trade and classes of customers are the same. *See American Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994). *See also In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012). The customers for clothing items include ordinary consumers who have no particular sophistication and who would exercise only an ordinary degree of care in selecting the goods; and we must base our analysis "on the least sophisticated potential purchasers." *Stone Lion Capital v. Lion Capital*, 110 USPQ2d at 1163 (internal quotation marks omitted). The *du Pont* factors relating to trade channels and customers favor a finding of likelihood of confusion.

G. The marks.

Next we consider the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). "The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1748, quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks omitted). While we consider each mark in its entirety, 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 that our ultimate conclusion rests upon a comparison of the marks in their entireties. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). “Indeed, this type of analysis appears to be unavoidable.” *Id.*

We will first compare Applicant’s mark to Opposer’s mark HARLEY, in standard characters. The initial component of Applicant’s mark is HARLIE, in stylized form, which is essentially identical in sound to the entirety of Opposer’s mark. HARLIE is also, in part, visually similar to HARLEY inasmuch as both terms share the letters HARL and E, in the same order. The stylized lettering of Applicant’s mark and the additional term CHARPER are points of difference in appearance as compared to Opposer’s mark. We generally give less weight to the stylization of a mark than to its wording, because the wording would be used by consumers to request the goods. *In re Dakin’s Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999). *See also Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987); *Giant Food, Inc. v. Nation’s Food Serv., Inc.*, 710 F.2d 1565, 218 USPQ 390, 395 (Fed. Cir. 1983). Moreover, Opposer’s mark is registered in standard character form, such that it is not limited to any particular form of display, and could be displayed in stylized letters that resemble those of Applicant’s mark. *See Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983); *see also In re i.am.symbolic*, 123 USPQ2d at 1748. Indeed, the record shows that Opposer has sometimes displayed its marks in exuberant script styles that somewhat resemble the cursive script of Applicant’s mark:



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Things Are Different On A Harley.

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In terms of the meanings of the marks, HARLEY is likely to be perceived as a proper name, either a given name or a surname. HARLIE, too, because of its pronunciation, is likely to be perceived as a proper name, although evidence of such a significance is lacking in the record. CHARPER, the second term in Applicant's mark, is an unusual term: there is no evidence that this term has any meaning, but viewed in the context of the mark as a whole, HARLIE CHARPER is likely to be perceived as a personal name. Overall, the CHARPER element of Applicant's mark

³¹ 58 TTABVUE 72, 88.

³² 59 TTABVUE 69, 83.

³³ 75 TTABVUE 106.

is a point of difference with respect to the appearance, sound, and meanings of the two marks.

The overall commercial impressions created by the two marks are similar in part with respect to appearance, sound, and meaning. To the extent of these similarities, the *du Pont* factor of the similarity or dissimilarity of the marks favors a finding of likelihood of confusion.

Turning to a comparison of Applicant's mark with Opposer's other standard character mark, HARLEY-DAVIDSON, we note again the similarities in appearance, sound, and meaning between the marks' initial components HARLIE and HARLEY, while also noting the distinction created by the stylized lettering of Applicants' mark. The respective, second components of the marks, CHARPER (in stylized letters) and -DAVIDSON are quite different in appearance and sound. In terms of meaning or connotation, both CHARPER and -DAVIDSON are likely to be perceived as personal names. The two marks, considered in their entireties, both give the overall impression of a combination of two personal names; moreover, the two marks commence with phonetically identical names, HARLIE and HARLEY. Although the marks have notable differences and are similar only in part, to the extent of their similarities the *du Pont* factor of the similarity or dissimilarity of the marks favors a finding of likelihood of confusion.

H. Balancing the factors.

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, and all relevant *du Pont* factors. The parties' goods are, in part, identical or legally identical. These goods would be offered to the same

classes of customers through the same channels of trade. The customers are ordinary consumers who would exercise only ordinary care in selecting the goods, and there is no evidence suggesting that any particular conditions of sale would affect the likelihood of confusion. The marks are partly similar in appearance, sound, and meaning. In commercial impression, the marks all suggest personal names or the combination of personal names, beginning with HARLEY or HARLIE. Giving due regard to the differences between the marks, we nonetheless bear in mind that when identical goods are at issue, the degree of similarity of the marks that is necessary to find a likelihood of confusion is not as great as where the goods are disparate. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). Moreover, we have found HARLEY and HARLEY-DAVIDSON to be famous, at least with respect to apparel related to motorcycles or motorcycling. A famous mark “casts a long shadow which competitors must avoid.” *Bose v. QSC*, 63 USPQ2d at 1305. *See also Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 22 USPQ2d at 1456 (“[T]he Lanham Act’s tolerance for similarity between competing marks varies inversely with the fame of the prior mark.”). Famous marks are given a broad scope of protection “because of the tendency of the consuming public to associate a relatively unknown mark with one to which they have long been exposed if the mark bears any resemblance thereto.” *R. J. Reynolds Tobacco Co. v. R. Seeling & Hille*, 201 USPQ 856, 860 (TTAB 1978). We find that the similarity between the designations HARLEY and HARLIE outweighs the differences between the marks

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and renders confusion likely. Accordingly, we **SUSTAIN** the opposition on the basis of Opposer's claim under Section 2(d).

Inasmuch as we have determined that registration of Applicant's mark should be refused on grounds of likelihood of confusion, we need not and do not reach Opposer's claim of dilution.

Decision: The opposition is **SUSTAINED** on Opposer's claim of likelihood of confusion under Section 2(d).