

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Sweats Fashions, Inc. v. Pannill Knitting Company, Inc.

833 F.2d 1560 (Fed. Cir. 1987) · No. No. 87-1229 · Decided November 13, 1987

SUMMARY

The United States Court of Appeals for the Federal Circuit affirmed the Trademark Trial and Appeal Board's grant of summary judgment dismissing an opposition to registration of ULTRA SWEATS. The court held that “sweats” was generic or highly descriptive for sweatshirts and sweatpants, that there was no likelihood of confusion with the opposer's marks, and that the fraud allegations did not present a genuine issue of material fact.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Nies, Circuit Judge; Friedman, Circuit Judge; Miller, Senior Circuit Judge
JURISDICTION	Federal
DECIDED	November 13, 1987
DOCKET	No. 87-1229
DISPOSITION	affirmed
PROCEDURAL POSTURE	Sweats Fashions appealed from the Trademark Trial and Appeal Board's grant of summary judgment for Pannill and dismissal of an opposition to registration of the mark ULTRA SWEATS.
STANDARD OF REVIEW	Summary judgment is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The nonmoving party must present specific countervailing evidence rather than rely on conclusory allegations or denials. Likelihood of confusion is an issue of law that may be resolved on summary judgment when the material facts are undisputed.
PRECEDENTIAL VALUE	published precedential Federal Circuit opinion
PARTIES	Sweats Fashions, Inc. v. Pannill Knitting Company, Inc.

TOPICS

trademark infringement

summary judgment

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QUESTIONS PRESENTED

1. Whether summary judgment was proper on Sweats Fashions' likelihood-of-confusion opposition.
2. Whether the common term SWEATS, being generic or highly descriptive for sweatshirts and sweatpants, could support a likelihood-of-confusion claim absent proof of secondary meaning or appropriation of the protected display of the term.
3. Whether summary judgment was proper on the fraud claims based on alleged misrepresentations during prosecution and Pannill's knowledge of Sweats Fashions' marks.
4. Whether Sweats Fashions was entitled to additional discovery before summary judgment despite failing to invoke Rule 56(f).

HOLDINGS

1. Summary judgment is proper where the movant supports its motion with evidence establishing entitlement to judgment and the nonmovant fails to present specific evidence creating a genuine dispute over a material fact; conclusory pleadings, denials, or attorney assertions are insufficient.
2. Likelihood of confusion is an issue of law, and the TTAB may resolve it on summary judgment when the record presents no genuine dispute over material facts.
3. There was no likelihood of confusion under section 2(d) because SWEATS was generic or highly descriptive for sweatshirts and sweatpants, Sweats Fashions had not shown secondary meaning in SWEATS per se, and Pannill's mark did not encroach on the particular display style protected by Sweats Fashions' registration.
4. Summary judgment was proper because the record established no genuine dispute concerning wrongful intent or materiality; the misidentification of serial and registration numbers was explained as inadvertent, the underlying third-party-registration proposition was true, and the alleged errors did not materially affect allowance of the application.
5. Knowledge of a prior similar mark, without more, does not establish bad faith, and the fraud claim based on Pannill's knowledge failed because ULTRA SWEATS was registrable.

KEY QUOTATIONS

“A dispute is genuine only if, on the entirety of the record, a reasonable jury could resolve a factual matter in favor of the non-movant.” (¶ 12)

“The uniform precedent of this court is that the issue of likelihood of confusion is one of law.” (¶ 51)

“However, an inference of “bad faith” requires something more than mere knowledge of a prior similar mark.” (¶ 53)

FACTUAL BACKGROUND

Sweats Fashions owned registrations and claimed prior use of marks incorporating the word SWEATS for active sportswear and related goods. Pannill sought to register ULTRA SWEATS for sweatshirts and sweatpants, while disclaiming exclusive rights to SWEATS apart from the mark. The record included trade usage, third-party registrations with SWEATS disclaimed, and evidence that Pannill's attorney had made inadvertent identification errors during prosecution. The evidence supporting the descriptive or generic nature of SWEATS for sweatshirts and sweatpants was not materially contradicted.

PROCEDURAL HISTORY

Pannill applied to register ULTRA SWEATS for sweatshirts and sweatpants. After the PTO examiner initially refused registration under section 2(d) of the Lanham Act, Pannill entered a disclaimer of SWEATS and submitted evidence concerning the descriptive or generic nature of the term; the refusal was withdrawn and the mark was published for opposition. Sweats Fashions opposed on likelihood-of-confusion and fraud grounds. Following discovery, the TTAB granted Pannill summary judgment on all counts and dismissed the opposition; the Federal Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)
- Barmag Barmer Maschinenfabrik AG v. Murata Machinery, Ltd., 731 F.2d 831, 835-36 (Fed. Cir. 1984)
- Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 626-27 (Fed. Cir. 1984)
- In re National Data Corp., 753 F.2d 1056, 1059-60 (Fed. Cir. 1985)
- Bongrain International (American) Corp. v. Delice de France, Inc., 811 F.2d 1479, 1485 (Fed. Cir. 1987)
- In re Bed & Breakfast Registry, 791 F.2d 157, 158 (Fed. Cir. 1986)
- Kimberly-Clark Corp. v. H. Douglas Enterprises, Ltd., 774 F.2d 1144, 1146 (Fed. Cir. 1985)
- Specialty Brands, Inc. v. Coffee Bean Distributors, Inc., 748 F.2d 669, 671 (Fed. Cir. 1984)
- Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 1569 (Fed. Cir. 1983)
- In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1361 (C.C.P.A. 1973)
- Otto Roth & Co. v. Universal Foods Corp., 640 F.2d 1317, 1322 (C.C.P.A. 1981)
- In re Carolyn's Candies, Inc., 206 U.S.P.Q. 356, 361 (T.T.A.B. 1980)
- United States Steel Corp. v. Vasco Metals Corp., 394 F.2d 1009, 1011-12 (C.C.P.A. 1968)
- First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 290 (1968)
- Hebert v. Wicklund, 744 F.2d 218, 222 (1st Cir. 1984)
- Wallace v. Brownell Pontiac-GMC Co., 703 F.2d 525, 527 (11th Cir. 1983)

- Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 917 (C.C.P.A. 1976)

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