

UNITED STATES - TTAB Unseats PEACH BUNS Owner's Opposition to PEACH CLAIRE Mark

In *GA Peach Buns, Inc. v. Voucia Corporation*, Opposition No. 91174032 (January 21, 2010) [not precedential], the Trademark Trial and Appeal Board ("TTAB") dismissed an opposition, holding that the mark PEACH CLAIRE for lingerie is not likely to be confused with the registered mark PEACH BUNS for women's clothing, including swimwear.

Applicant Voucia Corporation ("Applicant") filed an application to register PEACH CLAIRE for "lingerie." GA Peach Buns, Inc. ("Opposer") owns a registration for PEACH BUNS for use with "clothing, namely, swimwear, wraps, tops, coverups, skirts, shorts, dresses." The Opposer filed an opposition against the application, alleging that the Applicant's mark PEACH CLAIRE is confusingly similar to the Opposer's mark PEACH BUNS.

The TTAB, in its likelihood of confusion analysis, stated that both parties' goods are sold in the same wholesale markets and retail channels and potentially to the same consumers. However, after analyzing some of the other likelihood of confusion factors, the TTAB ultimately decided against the Opposer.

First, the TTAB did not find that consumers would exercise a high degree of care in purchasing the relevant items. Second, and significantly for trademark owners, the TTAB stated there is no "per se rule that all clothing items are related." The TTAB would not take "judicial notice that outerwear and undergarments are related items of clothing for the purpose of determining likelihood of confusion."

The Opposer submitted evidence consisting of a Victoria's Secret catalog offering swimwear and undergarments for sale under the same trademark. The TTAB was not persuaded, holding that such evidence was not sufficient to show that swimwear typically comes from the same company that sells undergarments or that a consumer would expect both types of clothing to come from the same source.

Moreover, the TTAB was not persuaded that the mark PEACH BUNS is a strong, recognizable mark. In fact, the TTAB stated the mark is rather suggestive and therefore has a more limited scope of protection than an arbitrary mark. Finally, the TTAB noted that because the relevant goods are not closely related, a greater degree of similarity between the marks would be required to support a finding of a likelihood of confusion. The TTAB concluded that the overall differences in the marks in terms of their meaning and commercial impression outweighed any similarities between the marks.

Bottom line: the TTAB held that in light of the differences in the marks and the relevant goods and taking into consideration the suggestive nature of the Opposer's mark, confusion was unlikely to occur.

Contributor: Lisa A. Iverson, Neal & McDevitt, Northfield, Illinois, USA; Verifier: Miriam D. Trudell, Sheridan Ross P.C., Denver, Colorado, USA.

Reproduced with permission from INTA Bulletin Vol. 65, No. 8 (April 15, 2010),
© 2010 International Trademark Association.