

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
June 9, 2004
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kraftmaid Cabinetry, Inc.

Serial No. 75857510

Edgar A. Zarins of Masco Corporation for Kraftmaid
Cabinetry, Inc.

David T. Taylor, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Quinn, Walters and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Kraftmaid Cabinetry, Inc. seeks registration on the
Principal Register of the mark TRADITIONS for goods
identified, as amended, as "cabinets, namely, kitchen and
bathroom cabinets," in International Class 20.¹

This case is now before the Board on appeal from the
final refusal of the Trademark Examining Attorney to
register this mark based upon Section 2(d) of the Trademark

¹ Application Serial No. 75857510 was filed on November 24,
1999 based upon applicant's allegation of a *bona fide* intention
to use the mark in commerce.

Act, 15 U.S.C. §1052(d). The cited registration is for the identical mark, TRADITIONS, registered for "upholstered furniture," also in International Class 20.² The Trademark Examining Attorney has taken the position that applicant's mark, when used in connection with the identified goods, is likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have fully briefed the case. Applicant did not request an oral hearing before the Board.

We reverse the refusal to register.

Our determination under Section 2(d) is based upon an analysis of all of the facts in evidence that are relevant to the factors bearing upon the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relationship of the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Certainly, as we turn first to the du Pont factor focusing on the similarity of the marks, there is no

² Registration No. 1920915 issued on September 19, 1995; section 8 affidavit accepted and section 15 affidavit acknowledged.

dispute but that the marks are identical. In this context, the Trademark Examining Attorney points out that the Board has stated in the past that "[i]f the marks are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a likelihood of confusion." In re Concordia International Forwarding Corp., 222 USPQ 355, 356 (TTAB 1983).

However, as to the number and nature of similar marks in use on similar goods, the Trademark Examining Attorney's final refusal continued to refuse applicant's mark based upon three different registered mark owned by three different registrants. In addition to the one registration discussed above, these included THE NEW TRADITION for "furniture" and "upholstery fabrics"³ and BRASS TRADITIONS for "cabinet hardware made of metal, namely, pulls, knobs and back plates."⁴ While these do not establish that the cited mark is weak for furniture, it does support a conclusion that the word "traditions," drawing on its

³ Registration No. 2081174 issued on July 22, 1997 (since cancelled - on April 24, 2004 - for registrant's failure to file its section 8 affidavit).

⁴ Registration No. 1644738 issued on May 14, 1991; section 8 affidavit accepted and section 15 affidavit acknowledged, renewed. The Trademark Examining Attorney expressly dropped this registration as a citation at the time of his appeal brief.

ordinary dictionary meaning, may be suggestive of a style of furniture having some history or handed-down characteristics.

In arguing for registrability, applicant contends as follows:

Applicant is the manufacturer and distributor of kitchen and bath cabinets of the type which would be fixedly secured to a wall during construction and remodeling. These goods are sold through dealer centers specializing in kitchen and bath remodeling. Because of the specialized nature of the products and the skilled trades involved in their installation, cabinetry distributors do not branch out beyond the distribution, sale and installation of cabinetry.

Furthermore, despite the USPTO's outdated description of goods, household furniture and wooden cabinetry do not travel in the same channels of trade. Each are sold through specialized channels. And furniture cabinets, i.e., entertainment systems and the like, are not the same as kitchen and bath cabinets. Furniture requires no more than delivery and placement without any specialized skills. The arrangement, ordering and installation of kitchen and bath cabinets require the skills of a carpenter. For these reasons, the goods do not travel in the same channels of trade and consumers would purchase each category of goods through vastly different stores.

... [T]he selection and installation of fixed and expensive products such as cabinets would carry the consumer through careful consideration and the support of highly skilled specialists.

(Applicant's appeal brief, pp. 2-3)

However, the Trademark Examining Attorney disagrees with applicant's position and argues, in response, that the goods are related:

In the instant case, the applicant's goods are identified as "cabinets, namely, kitchen and bathroom cabinets". The registrant's goods are identified as "upholstered furniture". The fact that the relevant goods are each included in the genus of goods identified as "furniture" creates the viable relationship necessary to support a finding of a likelihood of confusion when the marks associated therewith are identical.⁵ Additionally, as indicated in the examiner's Final Refusal, numerous manufacturers and distributors offer both goods in the same channels of trade. For instance, Pave Street, Inc. offers a full line of "furniture" and "kitchen and bathroom cabinets" under the mark PAVE STREET WOODWORKS (Registration No. 2567482). Thomasville Furniture Industries features both "kitchen cabinets and furniture cabinets" under the mark THOMASVILLE CABINETRY (Registration No. 2555117). Atlantic Wood & Cabinet Works offers "kitchen cabinets, desks and entertainment centers" under the word mark COOK & COOK EXQUISITE CUSTOM CABINETRY (Registration No. 2660607).

The applicant argues that household furniture and wooden cabinetry do not travel in the same channels of trade due to the specialized nature of cabinetry. The applicant also states that its goods are sold only through specialized dealer centers. Contrary to this assertion, the

⁵ In fact, we have no *per se* rule holding that there is always a likelihood of confusion among quite different furniture items contained in International Class 20 when the respective goods bear highly similar, or even identical, marks.

identification of goods does not limit the channels of trade in any manner. It is therefore presumed that applicant's goods move in all normal channels of trade and that they are available to all potential customers. TMEP Section 1207.01(a)(iii). Attached to the examining attorney's Final Refusal are fourteen (14) third party registrations demonstrating that manufactures [sic] and/or distributors of furniture are commonly engaged in the manufacture and/or distribution of kitchen and bathroom cabinetry as well. This evidence clearly contradicts Applicant's assertion that cabinetry and furniture are found in vastly different stores.

As stated above, to find a likelihood of confusion the goods and services of the parties need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchaser under circumstances that could give rise to the mistaken belief that the goods and services come from a common source. Here, the same consumers will seek the goods of the parties in the same channels of trade. These consumers are likely to encounter the goods under the same marketing conditions, thereby giving rise to the belief that goods originate from a common source.

(Trademark Examining Attorney's appeal brief, pp. 5 - 6).

Although the Trademark Examining Attorney contends that these third-party registrations demonstrate that furniture manufacturers "are commonly engaged in the manufacture and/or distribution of kitchen and bathroom cabinetry as well," a closer examination of the fourteen registrations on which this conclusion is based makes that

proposition questionable. In fact, the vast majority of the third-party registrations do not demonstrate that the same manufacturer makes, or the same merchant sells, upholstered furniture and kitchen cabinets / bathroom cabinets to common purchasers.

Specifically, of the fourteen registrations, three are registrations based upon Section 44 of the Act - not on use in commerce in (or with) the United States, and hence they have very limited probative value. See In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 n. 6 (TTAB 1988).

Another five are service mark registrations - two registrations for a variety of installation services, two for retail store services featuring a broad array of hard goods (not upholstered furniture) and one involving kitchen design services. In another group of five of the registrations, the word "furniture" occurs within a listing of International Class 20 goods, but the word is used solely to define the cabinetry that follows (e.g., "furniture namely kitchen cabinets...", "furniture cabinets, namely bathroom cabinets," "kitchen cabinets and furniture cabinets"). That leaves for our consideration a single registration owned by a company in the Virgin Islands for the mark PAVE' STREET WOODWORKS, that does include within

the identification of goods, *inter alia*, living room furniture, furniture parts and cabinets of all kinds.

In the face of applicant's claims that, like other merchants and manufacturers of built-in cabinetry, its goods "are sold through dealer centers specializing in kitchen and bath remodeling," we are hesitant to accept a contrary view of the marketplace for these goods based solely upon this most limited evidence proffered by the Trademark Examining Attorney. That is not to say that we are grafting onto the identification of goods a limitation on the channels of trade. Rather, we are concluding that in the event that a past customer of registrant's upholstered furniture were to encounter a promotion for applicant's kitchen or bathroom cabinets, there is nothing in this record supporting the conclusion that such prospective consumers would form the mistaken impression that applicant's named goods originated with, or had the imprimatur of, registrant. As to channels of trade, there is clearly nothing in the record to suggest that upholstered furniture, on the one hand, and kitchen or bathroom cabinets, on the other hand, share the same channels of trade. We are not free to speculate on this point. On this record, we simply cannot be sure either way

inasmuch as the Trademark Examining Attorney has presented no evidence at all as to channels of trade for these respective goods.

In conclusion, while the marks herein are identical, there is insufficient evidence in this record to support the conclusion that kitchen and bathroom cabinets are sufficiently related to upholstered furniture to support a finding of a likelihood of confusion.

Decision: The refusal to register based upon Section 2(d) of the Trademark Act is hereby reversed.