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Mailed:
May 18, 2006
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dean's, Inc.

Serial No. 76002394

Timothy H. Hiebert of Samuels & Hiebert LLC for Dean's, Inc.

Jennifer M.B. Krisp, Trademark Examining Attorney, Law
Office 112 (Janice O'Lear, Managing Attorney).

Before Hohein, Bucher and Rogers, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Dean's, Inc. seeks registration on the Supplemental
Register of the mark **AMERICAN-CRAFT.COM** for services
recited in the application, as amended, as follows:

"wholesale distributorship services in the field of hobby supplies and arts and crafts supplies; and order fulfillment services for others in the field of hobby supplies and arts and crafts supplies, namely, receiving and processing orders of others and arranging for the delivery of the goods of others" in International Class 35.¹

¹ Application Serial No. 76002394 was filed on the Principal Register on March 16, 2000 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. On November 27, 2000, applicant submitted an Amendment to Allege Use (AAU) and amended the application to seek registration on the Supplemental Register. The AAU was supported by specimens consisting of screen

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register applicant's mark based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the identified services, so resembles the mark **AMERICANCRAFTSONLINE**, which is registered on the Supplemental Register for "computerized online retail services for arts and crafts goods" in International Class 35,² as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney submitted briefs. Applicant did not request an oral hearing. We affirm the refusal to register.

Applicant argues that the marks are different in sound, appearance and commercial significance; that registrant's and applicant's recited services would be rendered to different classes of customers, and that "applicant's potential customers who wish to make wholesale purchases or engage an order fulfillment service ... are typically

prints of a website having contact information in applicant's home state of Hawaii, but detailing a business that ships products from warehouses in Japan. The AAU alleged first use anywhere and first use in commerce at least as early as May 4, 2000.

² Registration No. 2626802 issued to American Crafts Online, Inc. (now Sugarloaf Mountain Works, Inc.) on the Supplemental Register on September 24, 2002, having claims of first use anywhere and first use in commerce at least as early as February 1999.

sophisticated business persons"; and that the cited mark is merely descriptive and therefore should be accorded a narrow scope of protection.

By contrast, the Trademark Examining Attorney contends that members of the purchasing public will seek out the services of registrant and/or applicant by using two identical terms, namely "American" and "Craft(s)." She points out that in spite of any visual or aural differences, both marks create the same commercial impression. The Trademark Examining Attorney also argues that both registrant and applicant offer arts and crafts products online; that the recited services are not rendered to different classes of customers and do not travel in distinct channels of trade; and that applicant's own web pages contradict applicant's claims that it typically operates at the wholesale level.

Our determination under Section 2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

We turn first to the du Pont factor focusing on the similarity of the marks in their entirety. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

Applicant argues that the marks are dissimilar in their entireties as to appearance, sound, connotation, and commercial impression. The Trademark Examining Attorney contends that applicant's mark is highly similar to the registered mark in appearance and overall commercial impression.

As to appearance, applicant points out that its mark "contains three visually separate components, separated by a hyphen and a period" while "the registered mark is presented as a single long word, not interrupted by any punctuation." Applicant's mark has the word CRAFT (singular) while registrant's mark has the plural form of the word, CRAFTS. Moreover, applicant argues that the final components, .COM and ONLINE, have no visual similarity.

By contrast, the Trademark Examining Attorney contends that the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison inasmuch as prospective purchasers in the marketplace do not typically have the opportunity for a close character-by-character comparison of service marks in this manner. She points out that the dominant visual element of both marks is the word AMERICAN followed by the word CRAFT(S).

As to both appearance and sound, there are differences between these marks. Although applicant argues that the

three components of its mark are "separated by a hyphen and a period," we actually view these components as joined or connected by the hyphen and the period, or dot. Hence, the visual difference with registrant's string of words is much more nuanced than argued by applicant. The terms "online" and "dot com" sound different. Nonetheless, as pointed out by the Trademark Examining Attorney, consumers do not have the luxury of studying marks in a side-by-side manner.

Moreover, in this case, we find that it is more critical that as to connotation and commercial impression, the two marks are quite similar. Both marks have the connotation of an online establishment where one can order "American crafts." We agree with the Trademark Examining Attorney that "[t]he purchasing public has become so highly accustomed to encountering both '.COM' and 'ONLINE' to signify [the presence of an online business] that they are nearly interchangeable, and thus, in a commercial impression sense, indistinguishable."

Accordingly, we find that this du Pont factor weighs in favor of the Office's position.

We turn then to the similarity or dissimilarity of the services as recited in the application and cited registration. The Trademark Examining Attorney argues that the respective services are highly similar in spite of the fact that registrant uses the term "retail" and applicant

uses the term "wholesale distributorship" and "order fulfillment services for others." She argues that the evidence of third-party registrations shows that the same mark is used in related retail and wholesale services, and despite the recitation of services seeming to be restricted to wholesale and order fulfillment services for others, that applicant's own website shows that applicant directs its products to individual craft-persons.

Focusing on the recitations of services before us, we must assume that there may well be common purchasers, but that it seems they would be retailers, not the end users of the arts and crafts. This is so because small retailers may buy from wholesalers or from other retailers. These purchasers will be aware of with whom they are dealing, and will not easily assume common source or sponsorship. Hence, we find that while these services are somewhat related, they are not as "highly similar" as argued by the Trademark Examining Attorney. Accordingly, we find that this du Pont factor favors ever so slightly the Office's position.

As to the du Pont factor focusing on the number and nature of similar marks in use on similar goods and services, we agree with applicant that given the frequency with which these words, in various combinations, appear in third-party registrations for similar services, the cited mark must be given a narrow scope of protection. As a

further illustration of the merely descriptive nature of the words "American crafts," applicant has submitted for the record copies of a number of websites reflecting the extremely common nature of those words used as a reference to crafts made in America. Hence, the use of the word "American" immediately before the word "Craft(s)" creates a highly descriptive, if not generic, combination entitled to no protection when used alone for goods or services correctly denominated as "American crafts." While prospective purchasers would tend to look to other portions of the composite marks to find distinguishing matter, those other portions of the involved marks imbue the respective marks with precisely the same commercial impression, i.e., American craft supplies available via the Internet.

As to the fame of the cited mark, there is, of course, no information in this *ex parte* record as to registrant's level of sales under the cited mark, or its volume of advertising expenditures. Hence, fame is simply not a factor in this case.

In conclusion, inasmuch as these two marks are quite similar as to connotation and commercial impression, and they are each used in connection with services that are somewhat related, we find a likelihood of confusion. To the extent that the issue of the likelihood of confusion is

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close, we are obligated to resolve doubts in favor of the registrant and prior user. *In re Hyper Shoppes*, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Decision: The Section 2(d) refusal is hereby affirmed.