

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Estridge Group, Inc.

Serial No. 76/133,102

Daniel L. Boots for The Estridge Group, Inc.

Priscilla Milton, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Hanak, Chapman and Holtzman, Administrative
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge.

The Estridge Group, Inc. (applicant) seeks to register in typed drawing form HOMELIFE for "residential building construction, namely, construction of single family homes, townhouses and multi-family apartments." The application was filed on September 21, 2000 with a claimed first use date of February 6, 2000.

Citing Section 2(d) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's mark, as applied to applicant's services, is likely to cause confusion with five marks previously registered to the same entity for either "real estate

brokerage and real estate investment brokerage services" or "real estate brokerage and management services." However, in our likelihood of confusion analysis, we will focus on only one of the five cited registrations, namely, Registration No. 1,499,886. This registration is for the identical mark HOMELIFE depicted in typed drawing form. The services are "real estate brokerage and management services." The other four cited registrations have additional wording besides HOMELIFE or they depict the word HOMELIFE with design elements.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.").

Considering first applicant's mark and the mark of cited Registration No. 1,499,886, they are identical. Both

are for the mark HOMELIFE depicted in typed drawing form. Thus, the first Dupont "factor weighs heavily against applicant" because applicant's mark is identical to the mark of cited Registration No. 1,499,886. In re Martin's Famous Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Turning to a consideration of applicant's services and the services of Registration No. 1,499,886, we note that because the marks are identical, their contemporaneous use can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically related." In re Shell Oil Co., 922 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). However, in this case we find that applicant's residential building construction services, on the one hand, and, on the other hand, real estate brokerage and management services (the services of Registration No. 1,499,886) are clearly related.

In this regard, the Examining Attorney has made of record 25 third-party registrations which cover both, on the one hand, residential building construction services and, on the other hand, real estate brokerage and/or management services. While it is true that such third-party registrations do not prove that the marks registered

are in actual use, they nevertheless "have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source." In re Mucky Duck Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), aff'd as not citable precedent 88-1444 (Fed. Cir. November 14, 1988).

Moreover, we think it obvious that ordinary individuals seeking to purchase a new home could engage the services of a real estate broker in locating new homes that are under construction or have been constructed by builders. If a HOMELIFE real estate broker were to take a prospective home buyer to a HOMELIFE single-family home or townhouse, it would be quite reasonable for the prospective home buyer to assume that the real estate broker and home builder were in some manner related.

One final comment is in order. At page 6 of its brief, applicant argues, without evidentiary support, that "the purchase of a newly constructed home is a very important decision. A reasonably prudent consumer would be very discerning in his or her due-diligence investigation of such a matter." While applicant has offered no evidentiary support, we do not disagree with its assertions. In other words, we agree that the prospective purchaser of a new home would be very discerning and would

be inclined to notice slight differences in marks which would be overlooked if such marks were used on more mundane items such as candy bars. However, the problem with applicant's argument is that in this case the marks in question are absolutely identical. A prospective home purchaser can be extremely discerning and yet would be unable to distinguish between absolutely identical marks.

Decision: The refusal to register is affirmed.