

**THIS OPINION IS NOT A  
PRECEDENT OF THE T.T.A.B.**

Mailed:  
August 10, 2007

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Natura Innovation Ltd.

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Serial No. 76646840

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Charles E. Baxley of Hart, Baxley, Daniels & Holton for  
Natura Innovation Ltd.

Benji Paradewelai, Trademark Examining Attorney, Law Office  
101 (Ronald R. Sussman, Managing Attorney).

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Before Hohein, Hairston, Bergsman, Administrative Trademark  
Judges.

Opinion by Bergsman, Administrative Trademark Judge:

On September 15, 2005, Natura Innovation Ltd. filed a  
use-based application (Serial No. 76646840) to register the  
mark NATURA, in standard character format, for the  
following description of goods as amended, in Class 8:

Hand operated tools, namely knives,  
butcher knives, chef knives, hand-  
operated gardening knives, hunting  
knives, paring knives, palette knives,  
pocket knives, pruning knives, sport  
knives and folding knives; knife  
sheaths; hand tools, namely shovels,  
hoes, rakes, bamboo rakes; spades,  
gardening tools, namely pruning  
pincers, plucking pincers and sickles;

hand tools, namely hammers, hand-held saws, hacksaws; saw blades for hand-held saws, saw handles and saw stems; hand-held scissors, namely flower scissors, tree scissors and scissor blades; pruning scissors; hand tool for transplantation, namely gardening trowels; handheld handpumping sprayers for spraying water, plant nutrients, liquid herbicides and insecticides, for home/gardens; hand-held displacement pumping sprayers attachable to a garden hose for spraying liquid plant nutrients, herbicides, pesticides and insecticides; all of the aforementioned goods targeted for distribution via hardware and gardening channels.

Applicant claimed April 15, 2005 as the date of first use anywhere and first use in commerce. The English translation of the word "natura" is "nature."

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), because applicant's mark so resembles the mark NATURA LIVING, in standard character format (formerly referred to as a typed drawing), for the goods set forth below as to be likely to cause confusion:<sup>1</sup>

Hand soap, in Class 3;

Shelf paper, letter trays, file trays, and message centers composed of stationery and a desk organizer, in Class 16;

Cosmetic cases sold empty, in Class 18;

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<sup>1</sup> Registration No. 2857017, issued June 22, 2004.

Chair pads, plate racks, drawer dividers, drawer organizers, non-metal vegetable bins, tumblers, window blinds, wood furniture, storage cabinets, storage drawers, non-metal hat racks, coat racks, mirrors, cushions, pedestals, magazine stands, magazine racks, picture frames, plant stands, non-metal containers for storage and transportation of goods, furniture, namely, office furniture, lawn furniture, outdoor furniture, tables, wood modular storage units, shelves, wall units, storage cabinets, wood gift boxes, jewelry boxes not of metal, non-metal bins and wooden and ivory sculptures, and wood carvings, in Class 20;

Dish drying racks, metal dish pans, dishes, wicker baskets, straw baskets, rattan baskets, wooden baskets, serving trays not of precious metal, mixing bowls, tissue dispenser covers, cutlery trays, dish drainers, waste baskets, buckets, pails, laundry baskets, cutting and carving boards, stone sculptures, tumblers, toilet brushes, planters, flower pot holders, serving platters, towel holders, bowls, plastic coasters, drinking glasses, ice buckets, beverage glassware, flower pots, indoor and outdoor all purpose portable nonmetal containers, dust bins, bathroom glass holder not of precious metal, toothbrush holder, soap dishes, soap dispensers, soap holders, kitchen utensils, namely, spoons, forks, serving tongs, ladles, and spatulas, in Class 21;

Textile place mats, in Class 24; and,

Textile floor mats and pads for indoor use, in Class 27.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. For the reasons set forth below, we affirm the refusal.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Co.*, 544 F.2d 1098, 192 UPSQ 24 (CCPA 1976); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

At the outset, we consider the similarities and dissimilarities of the marks in terms of appearance, sound, meaning and commercial impression. NATURA and NATURA LIVING clearly are not identical: applicant's mark does not include the word "living." Nevertheless, the marks are very similar in appearance and sound because they share the word "natura." This fact carries great weight in our analysis because consumers will be inclined to focus their attention on the word "natura" in registrant's mark NATURA

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LIVING because it is the first word of the mark. *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed in the mind of a purchaser and remembered"). See also *Palm Bay Imports Inc. v. Vueve Clicquot Ponsardin*, 396 F.3d 1369, 73 UPSQ2d 1689, 1692 (Fed. Cir. 2005) ("Vueve" is the most prominent part of the mark VUEVE CLICQUOT because "vueve" is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 UPSQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers must first notice the identical lead word).

The meaning and commercial impression of the marks are also similar, if not identical, given that the shared word "natura" calls to mind the English word "natural." In fact, during the prosecution of its application, applicant stated that the English translation of "natura" is "natural." "Natural" means "existing in or formed by nature (opposed to artificial)." *Dictionary.com* (V 1.1) based on the Random House Unabridged Dictionary (2006).<sup>2</sup>

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<sup>2</sup> The Board may take judicial notice of dictionary definitions. *B.V.D. Licensing Corp. v. Body Action Design, Inc.*, 846 F.2d 727, 6 USPQ2d 1719, 1721 (Fed. Cir. 1988).

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Natural living implies living in accordance with nature, or natural. Thus, the meaning and commercial impression engendered by the two marks are similar.

Finally, we note that in its Appeal Brief, applicant did not contend that the marks were not similar.

Accordingly, the similarity of the marks favors a finding of likelihood of confusion.

With respect to the similarity or dissimilarity and nature of the goods, it is well settled that it is not necessary that the goods of the applicant and registrant be similar or even competitive to support a finding of likelihood of confusion. Likelihood of confusion may be found if the goods are related in some manner and/or if the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under conditions that could give rise to the mistaken belief that they emanate from the same source. *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); *Seaguard Corp. v. Seaward International, Inc.*, 223 USPQ 48, 51 (TTAB 1984). Moreover, likelihood of confusion may be found if there is likelihood of confusion involving *any item* that comes within the identification of goods in the involved application and the cited registration. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d

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1335, 209 USPQ 986, 988 (CCPA 1981); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006).

The cited mark NATURA LIVING is registered for, *inter alia*, kitchen utensils, namely, spoons, forks, serving tongs, ladles, and spatulas. Applicant is seeking to register NATURA for, among other things, kitchen knives, namely, butcher knives, chef knives, and paring knives. Applicant's kitchen knives are kitchen utensils, and as such, the products are clearly related to spoons, forks, serving tongs, ladles, and spatulas.

The website from *Crate & Barrel*, attached to the March 27, 2006 Office Action, is evidence that at least one retailer advertises the sale of place settings and chef knives, and that therefore these products presumably move in the same channels of trade.

Applicant nonetheless contends, to the contrary, that the marks at issue are not likely to cause confusion because the products of the applicant and the registrant move in different channels of trade. In that regard, applicant has specifically restricted its description of goods to "distribution via hardware and gardening channels." Applicant's argument is not persuasive, and its restriction to the channels of trade is not effective in avoiding likelihood of confusion because applicant's

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butcher knives, chef knives, and paring knives are closely related to registrant's spoons, forks, serving tongs, ladles, and spatulas. Butcher knives, chef knives, and paring knives are kitchen utensils, and restricting the channels of trade to hardware and gardening channels does not change the nature of those goods. Consumers familiar with registrant's spoons, forks, serving tongs, ladles, and spatulas sold under NATURA LIVING trademark, upon encountering applicant's NATURA butcher knives, chef knives, and paring knives, will mistakenly believe that these products emanate from a single source.

In view of the foregoing, we find that applicant's mark NATURA for butcher knives, chef knives, and paring knives, so resembles the previously registered mark NATURA LIVING for spoons, forks, serving tongs, ladles, and spatulas, as to be likely to cause confusion.

Decision: The refusal to register is affirmed.