

**THIS OPINION  
IS NOT A PRECEDENT  
OF THE TTAB**

Mailed: September 4, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Liberty Hardware Mfg. Corp.

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Serial No. 77075805

Edgar A. Zarins of Masco Corporation for Liberty Hardware Mfg. Corp.

Marcie R. Frum Milone, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

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Before Quinn, Walsh and Taylor, Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Liberty Hardware Mfg. Corp. has filed an application to register on the Principal Register the mark WEST SIDE (in standard character format) for "pulls and knobs for cabinetry made primarily of metal" in International Class 6.<sup>1</sup>

Registration has been finally refused on the ground of likelihood of confusion, mistake or deception under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), with the mark WESTSIDE

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<sup>1</sup> Serial No. 77075805, filed January 4, 2007, and alleging a bona fide intention to use the mark in commerce.

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DOOR & MOULDING (in typed form<sup>2</sup> and the subject of Registration No. 2824794) for "retail store services featuring doors, windows, skylights, moulding and hardware" in International Class 35.<sup>3</sup>

When the refusal was made final, applicant appealed. Both applicant and the examining attorney filed briefs. For the reasons discussed below, we affirm the refusal to register.

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

We consider first the goods and services based on a comparison of the identifications in the application and the

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<sup>2</sup> The former reference to what is now referred to as standard character form.

<sup>3</sup> Registration No. 2824794, issued March 23, 2004.

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cited registration. See Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992); and In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1690 at n. 4 (Fed. Cir. 1993). As is often stated, the goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which would give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991), and the cases cited therein.

Applicant's goods are pulls and knobs for cabinetry made primarily of metal and the recited services are retail store services featuring doors, windows, skylights, moulding and hardware. Applicant maintains that its goods and registrant's services are sufficiently distinct to avoid confusion, are not competitive with each other, and are not considered part of the same trade channels. Applicant particularly argues that:

Applicant's goods are decorative knobs and pulls used to accessorize kitchen and bath cabinets. These are relatively inexpensive pieces and

easily installed by the do-it-yourself consumer. Typically, the pieces are purchased purely for their aesthetic appeal to the consumer without consideration to some perceived association with unrelated products. The consumer is simply looking for a way to dress up their kitchen and bath cabinets.

... It is apparent from the mark itself and the description of the services that the registration [sic] sells products associated with openings of a home, namely doors, windows and skylights. As would be typical, such doors, windows and skylights require moulding and hardware to operate properly. There is no question that the "moulding and hardware" referred to in the identification is for doors, windows and skylights. ... The referenced hardware is door hardware and the Examining Attorney has unjustifiably expanded the identification to include all hardware of all knobs even though the evidence does not support such an expansive reading. ... Door hardware is functional and purchased by consumers for a desired function. There would be no correlation by consumers between such functional door hardware and decorative knobs and pulls for cabinetry.

(Brief, unnumbered p. 1). To support its position, applicant submitted web pages from the registrant's website purportedly to show that registrant's mark "is about doors and more doors."

(*Id.*)

The examining attorney conversely contends that since the registrant's services are identified broadly, it must be presumed that the registration encompasses retail store services featuring all kinds of doors, windows, skylights, mouldings and hardware, including the type of hardware found in applicant's identification, namely pulls and knobs for cabinetry made

primarily of metal. She further contends that it must also be assumed that registrant's services move in all normal channels of trade for such services and that they are available to all potential customers.

To support her position, the examining attorney in her brief requested the Board to take judicial notice of the following definitions of the term "hardware":

2. tools and implements: tools and implements, usually of metal, e.g., hinges, screws, and hammers;<sup>4</sup>

3. tools, implements, and other items used in the home and in activities such as gardening;<sup>5</sup>  
and

Noun: 1. Metal goods and utensils such and locks, tools and cutlery.<sup>6</sup>

The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format.<sup>7</sup>

See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789 (TTAB 2002).

See also *University of Notre Dame du Lac v. J. C. Gourmet Food*

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<sup>4</sup> Encarta World English Dictionary [North American Edition] (2007) found at <http://encarta.msn.com>.

<sup>5</sup> Compact Oxford English Dictionary found at [www.askoxford.com/concise\\_oed/hardware?view=uk](http://www.askoxford.com/concise_oed/hardware?view=uk).

<sup>6</sup> The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000) found at [www.bartleby.com](http://www.bartleby.com).

<sup>7</sup> The examining attorney also sought to make of record a definition from "Contractor Glossary of Terms" compiled by Contractor School Online<sup>®</sup>. However, inasmuch as it appears that the "Contractor Glossary of Terms" is solely an online publication, we will not further consider the definition taken therefrom.

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Imports Co., Inc., 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

The examining attorney also made of record with her final Office action copies of third-party registrations [Registration Nos. 2543769, 3257909, 2690268, 2904210, 3054749, and 3054746]<sup>8</sup> to show that applicant's type of knobs and drawer pulls for cabinets are often identified as hardware. For example, the identification of goods in Registration No. 2904210 reads "[m]etal hardware, namely cabinet knobs and drawer pulls." The examining attorney also submitted third-party registrations showing that applicant's types of knobs and drawer pulls for cabinets and registrant's type of retail services emanate from the same source. These third-party registrations may serve to suggest that the types of goods and services involved herein are related. See *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) (Although third-party registrations are "not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may nonetheless have some probative value to the extent that they

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<sup>8</sup> Additional registrations [Registration Nos. 3231827, 3150066, 2707818, 3072535, 3107496, 3052039, 3136454, 3234229 and 3078668] submitted by the examining attorney have little to no probative value because they either cover door pulls and knobs or, while the identified goods included knobs and pulls for cabinets and furniture, such goods are not categorized as hardware.

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may serve to suggest that such goods and/or services are of a type which may emanate from a single source"). See also *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993).

These registrations include:

Registration No. 2543769 for, *inter alia*, "decorative metal house numbers and metal hardware, namely knobs [and] pulls ... for furniture, doors and cabinets" and "retail store services... featuring decorative metal house numbers and metal hardware, namely knobs [and] pulls ... for furniture, doors and cabinets"; and

Registration No. 2986790 for, *inter alia*, "metal hardware, namely, metal knobs, hinges, and bathroom pulls" and "retail store services featuring general merchandise."<sup>9</sup>

Last, and as further support of the relatedness of the goods and services, the examining attorney made of record copies of web pages from registrant's website as well those of Baldwin and Schlage, manufacturers whose products are sold via registrant's retail services. The web pages show that both Baldwin's and Schlage's product lines feature hardware including cabinet knobs.

Based on the evidence of record, we find that applicant's knobs and pulls for cabinets are clearly included within the term "hardware" which is set forth in registrant's registration, which recites its services as retail store services featuring,

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<sup>9</sup> We note that general merchandise would include the metal hardware, namely knobs, hinges, and bathroom pulls.

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among other items, hardware. It is settled that confusion is likely to occur from the use of similar marks for goods, on the one hand, and for services involving those goods, on the other. See, e.g., *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) [BIGG'S (stylized) for retail grocery and general merchandise store services held likely to be confused with BIGGS and design for furniture]; *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) [CAREER IMAGE (stylized) for retail women's clothing store services and clothing held likely to be confused with CREST CAREER IMAGES (stylized) for uniforms]; *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) [STEELCARE INC. for refinishing of furniture, office furniture, and machinery held likely to be confused with STEELCASE for office furniture and accessories]; and *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) [21CLUB for various items of clothing held likely to be confused with THE "21" CLUB (stylized) for restaurant services and towels]. See TMEP § 1207.01(a)(ii) (5<sup>th</sup> ed. 2007). Quite simply, the identification in the cited registration is broad enough to include retail store services featuring goods such as those identified in applicant's application. Moreover, the record suggests that consumers are familiar with hardware and retail store services featuring hardware emanating from the same source. We accordingly conclude that applicant's knobs and

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pulls for cabinetry and registrant's retail services featuring, *inter alia*, hardware are closely related because applicant's goods could be sold through registrant's retail services.

Further, we find applicant's argument that the examining attorney has unjustifiably expanded the identification of services in the cited registration to include "all hardware of all knobs" unavailing. As noted previously and pointed out by the examining attorney, likelihood of confusion must be determined on the basis of the goods and services as they are identified in the application and the cited registration. *Canadian Imperial Bank v. Wells Fargo Bank*, supra. Herein, the identification of services does not restrict the hardware featured by registrant's retail services to hardware for doors, windows and skylights. Therefore it would be improper to artificially restrict the language in the registration. As explained above, the term "hardware" in the cited registration is broad enough to encompass the metal hardware, specifically articulated as knobs and pulls for cabinetry made primarily of metal, identified in applicant's application. See e.g., *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986) (An applicant may not restrict the scope of the goods covered in the cited registration by argument or extrinsic evidence).

Similarly, and contrary to applicant's contention, in the absence of any limitations in the identification of goods in the

application or the recitation of services in the cited registration as to channels of trade or classes of purchasers, we must presume that both applicant's goods and registrant's services will be offered in the normal channels of trade for such goods and services, and will be offered to all normal purchasers of such goods and services. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). That is to say, potential consumers of applicant and registrant would overlap to the extent that consumers seeking to purchase hardware in the nature of knobs and door pulls for cabinets would utilize retail store services featuring such hardware.

In view thereof, the *du Pont* factors of the similarity of the goods, channels of trade and classes of purchasers strongly favor a finding of likelihood of confusion as to the cited registration.

Considering next the similarity of the marks, we must determine whether applicant's mark and registrant's mark, when compared in their entireties, are similar or dissimilar in terms of sound, appearance, connotation and commercial impression. Although the marks must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d

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1056, 224 USPQ 749 (Fed. Cir. 1985). For instance, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark..." Id. at 224 USPQ at 751. Furthermore, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Applicant contends that the connotations of the respective marks reduces the likelihood of confusion. While its mark is merely a fanciful term used to identify the knob and pull collection, registrant's mark refers to a store located on the "westside" of town, and consumers would recognize the distinction. (Brief at unnumbered p. 1).

The examining attorney, on the other hand, maintains that the registered mark is highly similar to applicant's mark because the dominant portion of the registered mark is phonetically equivalent to applicant's mark. She further contends that the

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deletion of the wording "DOOR & MOULDING" does not sufficiently distinguish the marks.

We agree that applicant's mark WEST SIDE is very similar to the cited mark WESTSIDE DOOR & MOULDING. In particular, the dominant portion of the registrant's mark is WESTSIDE, as the descriptive and disclaimed term "DOOR & MOULDING" is subordinate in nature. Applicant's mark is virtually identical to the dominant portion of the cited mark. The sole difference being the space between the terms "west" and "side" in applicant's mark. We do not find the difference in spacing distinguishes applicant's mark from the cited mark. See *Stockpot, Inc. v. Stock Pot Restaurant, Inc.* 220 USPQ 52, 54 (TTAB 1983), *aff'd*, 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984) ("There is no question that the marks of the parties [STOCKPOT and STOCK POT] are confusingly similar. The word marks are phonetically identical and visually almost identical"); and *In re Best Western Family Steak House, Inc.*, 222 USPQ 827, 827 (TTAB 1984) ("There can be little doubt that the marks [BEEFMASTER and BEEF MASTER] are practically identical"). Moreover, applicant's mere deletion of the descriptive wording "DOOR & MOULDING" from the registered mark fails to overcome the similarity between the marks. See e.g., *In re Optical Int'l*, 196 USPQ 775 (TTAB 1977) (Applicant's mark OPTIQUE and the registered mark OPTIQUE BOUTIQUE when used

in connection with competing optical wear likely to cause confusion).

When we compare applicant's mark to registrant's mark in their entireties as we must, we find that applicant's mark is highly similar in appearance, sound, connotation and overall commercial impression to the registered mark due to the shared term WESTSIDE/WEST SIDE. Any differences, primarily in appearance, are outweighed by the similarities of the marks.

Applicant's argument that the connotations of the two marks differ is unpersuasive. While the term "westside" may be perceived by some as a geographical term, there is nothing in the record to suggest that consumers upon seeing this term used in connection with retail store services featuring doors, windows, skylights, moulding and hardware would think "destination" as opposed to something "arbitrary." For the reasons just stated, we find applicant's mark and the cited mark highly similar in appearance, sound, connotation and overall commercial impression.

This factor thus favors a finding of likelihood of confusion.

In view of the foregoing, we conclude that prospective purchasers familiar with the registered mark WESTSIDE DOORS & MOULDING for retail store services featuring doors, windows, skylights, moulding and hardware would be likely to believe, upon encountering applicant's substantially similar mark WEST

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SIDE for pulls and knobs for cabinetry made primarily of metal, that such goods emanate from, or are sponsored by or affiliated with the same source.

Last, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., *supra*.

**Decision:** The refusal to register is affirmed.