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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re KAEMARK, Inc.

Serial No. 77091033

David W. Carstens of Carstens & Cahoon, L.L.P. for KAEMARK, Inc.

James Ringle, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).

Before Seeherman, Quinn and Hairston, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

KAEMARK, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register LUXE, in standard character form, as a trademark for "salon furniture."[1] Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the mark

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[1] Application Serial No. 77091033, filed January 25, 2007, based on Section 1(b) of the Trademark Act (intent-to-use).

LUXE, previously registered in standard character format for "furniture,"[2] that, if used in connection with applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Our determination of the issue of likelihood of confusion is based on an analysis of all of 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 Co., 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).

Turning first to the goods, the registrant's goods are broadly described as "furniture." As a result, the Examining Attorney takes the position that this identification encompasses the more specific "salon furniture" identified in applicant's application, and therefore applicant's goods must be deemed legally

[2] Registration No. 3159521, issued October 17, 2006.

identical to the registrant's goods. However, we cannot agree. Although the USPTO Identification of Goods and Services Manual lists "furniture" as an acceptable identification, so that an applicant need not list each item of furniture that it may sell under a particular mark, we do not consider that the term should be read so broadly that it will encompass every possible item that can be used to furnish any possible type of business or industry.

Applicant has explained that "salon furniture" comprises items that are specific to use in a beauty salon.

> For example, one of the goods used under the LUXE mark includes salon chairs used to cut hair. These "barber-shop" like chairs are adjustable and typically stationary to allow the hair designer to easily cut the patient's [sic] hair. The chairs are adjustable from the rear[,] meaning the occupant of the chair cannot adjust the chair but must rely on a person standing behind them to so adjust the chair. This highlights the fact that this chair will have little utility outside of a salon environment. Similarly, another good offered under the LUXE mark includes a "dryer chair" whereby a user places their head inside an overhanging dryer which dries the occupants [sic] hair. These are goods only used in a salon. Outside of a salon, these and other goods under the LUXE mark typically have no utility. Further, while called furniture because they are used like furniture, the goods are more akin to equipment. Again, the highly specialized "furniture" is designed to be used solely in a salon

> environment and typically have little or no utility outside of a salon.

Request for reconsideration, filed May 19, 2008.

Because of the specialized nature of "salon furniture" which, as applicant points out, is more in the nature of equipment, we do not consider applicant's goods to be encompassed by the identification of "furniture" in the cited registration.

Further, "salon furniture" will be sold to those in the beauty-related industry, such as owners and operators of beauty salons. Although applicant has not specifically limited its channels of trade to such consumers, by the very identification of its goods it is clear that salon furniture is not sold to the general public. Thus, we consider the channels of trade to be different.

We recognize that there is one area of overlap between applicant's and the registrant's goods. Beauty salon operators and the like may purchase both the specialized salon furniture discussed above and general types of furniture, such as couches or chairs, for their salon waiting rooms. However, we think that there is only a remote possibility that confusion could arise from this circumstance, rather than a likelihood of confusion, for the following reasons. And the Trademark Act prohibits the

registration of marks only where confusion is likely to be caused, not where there is merely a theoretical possibility of confusion.

First, there is no evidence that salon furniture and the more general furniture that is found in salon waiting rooms are sold in the same channels of trade, and therefore we cannot assume that beauty salon operators would encounter them together. More importantly, the registrant's mark, LUXE, cannot be considered a strong mark. The word "luxe" means "something luxurious, a luxury."[3] Thus, although applicant's mark and the registrant's mark are identical, because LUXE has a laudatorily suggestive meaning, the relevant consumers here are not likely to assume that specialized salon furniture and general purpose furniture have the same source merely because they bear this same mark.

Adding to our conclusion that confusion is not likely is the du Pont factor of the conditions of purchase. The purchasers of salon furniture, as noted, are owners and

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[3] The American Heritage Dictionary of the English Language, 4th ed., © 2000. The Board may take judicial notice of dictionary definitions. University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). We also note that, during the course of examination the Examining Attorney had cited a second registration for LUXE SPA for towels, and three pending applications for LUXE marks, VERA WANG LUXE for towels, SHANGHAI LUXE for decorative home furnishings, and LUXE in stylized form for hair care accessories.

operators of beauty salons. They must be considered discriminating and careful purchasers. Because of their knowledge of the beauty industry, they are not likely to assume that any items that may be used in a beauty salon will emanate from a single source, even if they are sold under the same mark. In this connection, we note that the Examining Attorney has not submitted any evidence that manufacturers of salon furniture also sell furniture that is used by the general public, such as couches and coffee tables that may be found in a salon waiting area.

We recognize that under established case law the goods of applicant and the registrant need not be similar or competitive, or even move in the same channels of trade, to support a holding of likelihood of confusion. See In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978). We also recognize the principle that where the applicant's mark is identical to the registrant's mark there need be only a viable relationship between the respective goods or services in order to find that a likelihood of confusion exists. See In re Opus One Inc., 60 USPQ2d 1812, 1815 (TTAB 2001). We do not suggest that in all circumstances there can be no likelihood of confusion when an identical mark is used for products that can be purchased by the same individuals, including for use

in the same enterprise. However, in the particular circumstances of this case, including the specialized nature of applicant's goods, the sophistication of the purchasers, and the laudatorily suggestive nature of the marks, we find that confusion is not likely.

Decision: The refusal of registration is reversed.