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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hunter Fan Company

Serial No. 78196829

Valerie Walsh Johnson of Baker, Donelson, Bearman, Caldwell & Berkowitz for Hunter Fan Company.

Karen K. Bush, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Hohein, Hairston and Walters, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Hunter Fan Company has filed an application to register the mark WEST INDIES COLLECTION in standard character form for "ceiling fans, electric light fixtures and portable lamps."[1]

[1] Serial No. 78196829, filed on December 20, 2002, which alleges a bona fide intention to use the mark in commerce. The word COLLECTION is disclaimed apart from the mark as shown.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that applicant's mark, if used on applicant's goods, so resembles the previously registered mark AMERICAN SIGNATURE WEST INDIES COLLECTION for "furniture,"[2] as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

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. duPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, In re Majestic Distilling Co., 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

[2] Registration No. 2,632,779, issued October 8, 2002. The words AMERICAN and WEST INDIES COLLECTION are disclaimed apart from the mark as shown.

re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Turning first to a consideration of the respective goods, the examining attorney maintains that applicant's ceiling fans, electric light fixtures, and portable lamps and registrant's furniture are related goods. The examining attorney argues that the goods are complementary in nature and are marketed in the same types of stores. In support of her position that the goods are related, the examining attorney has made of record twenty "hits" from the "Yahoo" database that show on-line retailers who sell furniture, ceiling fans, and lamps. Further, the examining attorney has made of record copies of use-based third-party registrations which she maintains show that "numerous entities offer the respective products under the same trademark. This evidences that purchasers are accustomed to viewing the same trademark on the identified goods." (Examining attorney's 2/23/04 office action at unnumbered 2).

Applicant, on the other hand, argues that the respective goods are not related and are very different in nature. Applicant maintains that it is not enough that the kinds of goods involved herein may be sold by the same on-line retailers because such retailers often market a wide

variety of products from unrelated sources. Finally, applicant argues that purchasers of furniture, ceiling fans, electric light fixtures and portable lamps are sophisticated, and that these kinds of goods are purchased only after careful consideration.

It is well settled that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992); and The Chicago Corp. v. North American Chicago Corp., 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that 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 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 could give rise, because of the marks used or intended to be 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 cases cited therein.

To establish a relationship between applicant's and registrant's goods, the examining attorney has submitted copies of nine use-based third-party registrations for marks that cover furniture, on the one hand, and ceiling fans, electric light fixtures, and/or lamps, on the other hand. 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 have some probative value to the extent that they may serve to suggest that such good or services are the type which may emanate from a single source." See In re Mucky Duck Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). See also In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1786 (TTAB 1993. Moreover, the involved goods would be bought by the same classes of purchasers (e.g., interior designers and home owners), and at the very least, furniture and portable lamps would be offered in some of the same traditional channels of trade (e.g. home furnishing and decorating stores). Further, we agree with the examining attorney that the goods are complementary in that an interior designer or home owner, for example, may coordinate ceiling fans, electric light fixtures, and/or portable lamps with a

home's furniture. Under the facts of this case, we conclude that furniture, on the one hand, and ceiling fans, electric light fixtures and portable lamps, on the other hand, are related goods. We note that the Board has previously found that furniture and electric light fixtures are related goods. See Drexel Enterprises, Inc. v. Prescolite Manufacturing Corporation, 148 USPQ 92 (TTAB 1965) [Applicant's use of the mark THE HERITAGE COLLECTION for electric light fixtures is likely to cause confusion with registrant's mark HERITAGE for furniture].

Applicant asserts that purchasers of both applicant's and registrant's types of goods are sophisticated and will distinguish source based on the differences between the involved marks and the goods offered there under. The involved identifications of goods, however, do not include any limitations. Accordingly, we must presume that the identifications encompass all goods of the type described therein and that the identified goods move in all channels of trade and to all classes of purchasers that would be normal for such goods. In re Elbaum, 211 USPQ 639, (TTAB 1981). We must presume, therefore, that the goods are offered to not only sophisticated purchasers such as interior designers, but also ordinary consumers. In other words, the types of goods involved herein are presumed to

be offered to consumers who are not particularly sophisticated and may be much less capable of distinguishing between the sources of applicant's and registrant's related goods if offered under similar marks. In determining likelihood of confusion, it must be remembered that, at least with respect to ordinary consumers, due to the normal fallibility of human memory over time, these consumers retain a general rather than a specific impression of trademarks encountered in the marketplace. In re Research and Trading Corp., 793 F.2d 1276, 230 USPQ 49 (Fed. Cir. 1986). Further, to the extent that some purchasers may be knowledgeable with respect to home décor and lighting products, this does not necessarily mean that they are immune from source confusion. In re Decombe, 9 USPQ2d 1812 (TTAB 1988). We find, therefore, that if the respective goods were sold under the same or similar marks, confusion as to source or sponsorship would be likely to occur.

Considering then the marks, the examining attorney argues that applicant's mark WEST INDIES COLLECTION and registrant's mark AMERICAN SIGNATURE WEST INDIES COLLECTION are very similar because both marks include WEST INDIES COLLECTION. The examining attorney argues that applicant

has appropriated registrant's mark and merely deleted registrant's house mark – AMERICAN SIGNATURE.

Applicant, on the other hand, argues that "[r]egistrant's inclusion of its AMERICAN SIGNATURE house mark in its AMERICAN SIGNATURE WEST INDIES COLLECTION mark creates a sufficiently distinct overall impression that is readily distinguished from applicant's WEST INDIES COLLECTION." (Applicant's brief, at 4).

With respect to 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 1056, 224 USPQ 749 (Fed. Cir. 1985). 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 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).

In this case, applicant seeks to register WEST INDIES COLLECTION, while the cited mark is AMERICAN SIGNATURE WEST INDIES COLLECTION. Obviously, because applicant's mark consists of the identical phrase WEST INDIES COLLECTION in the cited mark, there are consequent similarities in sound, appearance, connotation and commercial impression. Although applicant argues that the inclusion of registrant's house mark AMERICAN SIGNATURE in the cited mark creates a different commercial impression from applicant's mark, each of the marks, due to the shared phrase WEST INDIES COLLECTION, connotes a similar theme of a collection of West Indies-style items. The additional words AMERICAN SIGNATURE in the registered mark do not change that meaning or the commercial impression of the marks. One who is familiar with AMERICAN SIGNATURE WEST INDIES COLLECTION for furniture is likely to view WEST INDIES COLLECTION for ceiling fans, electric light fixtures, and portable lamps as a mark used to identity a line of products emanating from the same source as the AMERICAN SIGNATURE WEST INDIES COLLECTION product. Even

assuming that the phrase WEST INDIES COLLECTION is suggestive or geographically descriptive or geographically misdescriptive, the respective marks have essentially the same connotation, and when used on related goods, the marks are likely to cause confusion among purchasers.

Accordingly, we conclude that applicant's mark WEST INDIES COLLECTION for ceiling fans, electric light fixtures and portable lamps is likely to cause confusion with the cited mark AMERICAN SIGNATURE WEST INDIES COLLECTION for furniture.

To the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, we resolve that doubt, as we must, in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

Decision: The refusal to register under Section 2(d) is affirmed.