

THIS IS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: January 5, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Merillat Industries, LLC

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Serial No. 78380659

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Edgar A. Zarins of Masco Corporation for Merillat Industries, LLC.

Cimmerian Coleman, Trademark Examining Attorney, Law Office 102 (Thomas V. Shaw, Managing Attorney).

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Before Grendel, Zervas and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

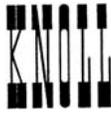
Merillat Industries, LLC seeks registration on the Principal Register of the mark KNOLL RIDGE (standard character claimed) for goods ultimately identified as "kitchen and bath cabinets" in International Class 20.<sup>1</sup>

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used with its identified goods, is

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<sup>1</sup> Application Serial No. 78380659, filed March 9, 2004, alleging a bone fide intention to use the mark in commerce under Section 1(b) of the Trademark Act. 15 U.S.C. §1051(b).

likely to cause confusion, mistake or deception with the following registered marks owned by the same registrant:<sup>2</sup>



for "articles of furniture-namely, tables, desks, seats, chairs, stools, couches, sofas, beds, chests, cabinets and trays" in International Class 20, Registration No. 557891, issued April 22, 1952 based on acquired distinctiveness under Section 2(f), renewed;

KNOLL INTERNATIONAL (in typed form) for "articles of furniture; namely, tables, desks, seats, chairs, stools, couches, sofas, chests, cabinets and trays" in International Class 20, Registration No. 557893, issued April 22, 1952 based in part on acquired distinctiveness of KNOLL under Section 2(f), renewed;

KNOLL (in typed form) for "systems furniture, namely desks, filing cabinets, free standing wall panels, free standing desks, chairs, tables, and leather furniture" in International Class 20, Registration No. 1897530, issued June 6, 1995, renewed;

KNOLL STUDIO (in typed form) for "articles of furniture; namely, tables, desks, seats, chairs, stools, couches, sofas, beds, chests, credenzas, cabinets" in International Class 20, STUDIO disclaimed, Registration No. 1821382, issued February 15, 1994, renewed; and

KNOLL EXTRA (in typed form) for "office furnishings, namely desk-mounted shelves" in

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<sup>2</sup> In her brief, the examining attorney also referenced Registration No. 1449734 for "fabrics for furniture, office systems and drapery" in International Class 24. However, in the August 8, 2005 Office Action, the examining attorney withdrew the refusal as to this registration and no further consideration will be given to the refusal based on this registration.

**Serial No. 78380659**

International Class 20, Registration No. 1886080  
issued March 28, 1995, renewed.

When the refusal was made final, applicant appealed and briefs have been filed. 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. 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. 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 begin our analysis with the first du Pont factor, i.e., whether applicant's mark KNOLL RIDGE and registrant's KNOLL marks are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. The analysis is not whether the marks can be distinguished when compared side-by-side.

**Serial No. 78380659**

Rather, we must determine whether the marks are sufficiently similar so that there is a likelihood of confusion as to source and, in making this determination, we must consider the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

We find that applicant's mark KNOLL RIDGE is similar in sound, appearance and overall commercial impression to registrant's KNOLL marks. In particular, with regard to Registration Nos. 557891 and 1897530 the only differences between the marks are the addition of the word RIDGE to applicant's mark and the very minor stylization in the mark in Registration No. 557891. Applicant argues that the addition of the word RIDGE to its mark "connotes a geographical feature erecting an entirely different commercial impression from the cited marks." We are not persuaded that RIDGE creates a different commercial impression. Applicant's mark incorporates the entirety of registrant's marks in Registration Nos. 557891 and 1897530. In addition, KNOLL in applicant's mark is the more prominent portion and tends to dominate over RIDGE inasmuch as it is the first word, which is typically most memorable in the consumer's mind. See *Palm Bay Imports, Inc. v.*

Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). Moreover, KNOLL, by itself, has the same connotation in applicant's and registrant's marks. As to the marks in the other registrations, the respective additions of INTERNATIONAL, STUDIO and EXTRA are not sufficient to distinguish these marks from applicant's mark. Each of these terms is weak and subordinate to the preceding term KNOLL. INTERNATIONAL simply indicates that the provision of the goods is international in scope. See *In re Billfish International Corp.*, 225 USPQ 192 (TTAB 1986). STUDIO is disclaimed and disclaimed matter is often "less significant in creating the marks' commercial impression." *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001). EXTRA merely indicates that the goods include something more than the usual and is almost laudatory in nature.

Overall, we find that the marks are similar in sound and appearance, have a very similar commercial impression and the "points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161, 163 (D.C. Cir. 1956) (internal citation omitted). Thus, the factor of the similarity of the marks weighs in favor of likelihood of confusion.

We turn next to a consideration of the goods identified in the application and the cited registrations. It is well settled that goods and services need not be similar or competitive in nature to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods and services themselves, but rather whether purchasers are likely to confuse the source of the goods and services. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider the cited registrant's goods as they are described in the registration and we cannot read limitations into those goods. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the cited registration describes goods broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration encompasses all goods of the type described, that they move in all channels of trade normal for these goods, and that they are available to all classes of purchasers for the described goods. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

**Serial No. 78380659**

The identified goods of applicant are encompassed by the identifications of goods in Registration Nos. 557891, 557893 and 1821382 inasmuch as registrant's "cabinets" are not limited and can include "kitchen and bath cabinets." Further, to the extent that registrant's cabinets may be limited by the preceding word "furniture" which could imply movable articles and "kitchen and bathroom cabinets" could imply fixed or mounted articles, the examining attorney has submitted evidence in the form of third-party use-based registrations that support her argument that applicant's kitchen and bathroom cabinets are related to registrant's various furniture and shelving goods, including the filing cabinets in Registration No. 1897530. See, e.g., Registration No. 1493147 (IMPERIAL CABINETRY for kitchen cabinets, vanities, [sic] hutch cabinets, office cabinets and home cabinets); Registration No. 1978279 (SHELVI STORAGE SYSTEM for shelving and furniture cabinets, kitchen cabinets and medicine cabinets); Registration No. 2296509 (IN YOUR SPACE for inter alia kitchen cabinets and filing cabinets); Registration No. 2344537 (MARK WILKINSON for inter alia furniture, shelving, furniture cabinets, and kitchen cabinets); Registration No. 2457861 (SKY VALLEY for inter alia filing cabinets, kitchen cabinets, bathroom cabinets, and furniture cabinets); Registration No. 2935699

**Serial No. 78380659**

(PROSERPIO for inter alia sofas, chairs, writing desks, dining tables, and kitchen cabinets); Registration No. 2567482 (PAVE' STREET WOODWORKS for inter alia furniture, namely, dining room furniture, office furniture, display cabinets, kitchen cabinets and bathroom cabinets); and Registration No. 2745308 (ART IN KITCHEN DESIGN for inter alia kitchen cabinets and office furniture). Third-party registrations which individually cover a number of different items, and which are based on use in commerce, serve to suggest that the listed goods are of a type which may emanate from a single source. In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993). We find the examining attorney's evidence persuasive on this point.

Applicant argues that the goods in the registrations are "traditional home and office furniture which includes filing cabinets"<sup>3</sup> and such furnishings are sold in furniture showrooms and "are movable to accommodate a rearrangement of the room" as contrasted to applicant's goods which are "marketed through specialized kitchen and bath centers" and "since these cabinets become a permanent fixture attached to the wall, there is no rearranging according to taste."

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<sup>3</sup> The purported excerpt from registrant's website was submitted for the first time with the brief and is untimely. Therefore, this excerpt has not been considered. Trademark Rule 2.142(d). In any event, applicant may not restrict the scope of

Further, applicant argues that the design, manufacture and installation of its cabinetry "requires specialized services which results in an expensive project that is not lightly undertaken by the consumer."

We first note that there is no specific limitation in applicant's identification of goods to indicate that they only encompass wall-mounted or built-in cabinets and, at least, as to bathroom cabinets they may be free standing and moveable as well as wall-mounted. Second, as shown above, even if we were to so limit applicant's identification of goods, the evidence of record shows a relatedness between applicant's and registrant's goods. As to the channels of trade, again, there is no limitation in either the registrations or the subject application and applicant's and registrant's goods could be encountered in a multitude of venues that sell indoor furnishings, including filing cabinets and kitchen and bath cabinetry. Overall, the record supports a finding that the goods are related, travel in the same channels of trade and share the same class of customers.

In reaching our decision, we have considered applicant's contention that its goods are expensive and may

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registrant's goods through extrinsic evidence. In re Bercut-Vandervoort & Co., 229 USPQ 763, 764 (TTAB 1986).

be part of a more involved purchase, where its customers would take greater care in the purchasing decision. We find that the strong similarity between the marks and the relatedness of the goods outweigh any purchaser sophistication. In re Decombe, 9 USPQ2d 1812 (TTAB 1988); In re Pellerin Milnor Corp., 221 USPQ 558 (TTAB 1983). Moreover, the fact that purchasers are sophisticated in a particular field does not necessarily mean that they are knowledgeable in the field of trademarks or immune from source confusion. In re Total Quality Group Inc., 51 USPQ2d 1474, 1477 (TTAB 1999); In re Hester Industries, Inc., 231 USPQ 881, 883 (TTAB 1986) ("While we do not doubt that these institutional purchasing agents are for the most part sophisticated buyers, even sophisticated purchasers are not immune from confusion as to source where, as here, substantially identical marks are applied to related products").

In conclusion, we find that because the marks are similar, the goods are related, and the channels of trade overlap, confusion is likely between applicant's mark and the cited registrations.

**Decision:** The refusal to register under Section 2(d) of the Trademark Act is affirmed.