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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Columbia Insurance Co.

Serial No. 78472460

Lisa A. Iverson of Neal & McDevitt, LLC for Columbia Insurance Co.

Ada P. Han, Trademark Examining Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).

Before Seeherman, Bucher and Walsh, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

Columbia Insurance Co. (applicant) has applied to register the mark CROSSPOINT FABRICS in standard characters on the Principal Register for goods now identified as "textile wallcoverings not sold through retail outlets" in International Class 27.¹ Applicant has disclaimed "FABRICS."

¹ Application Serial No. 78472460, filed August 24, 2004, claiming first use of the mark anywhere and first use of the mark in commerce on October 31, 2000.

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The Examining Attorney has finally refused registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on a likelihood of confusion with Registration No. 2940166 on the Principal Register for the mark CROSSPOINT in standard characters for goods identified as "furniture" in International Class 20. The registration issued on April 12, 2005 and is active. Applicant has appealed. Applicant and the Examining Attorney have filed briefs.

We reverse.

Section 2(d) of the Trademark Act precludes registration of an applicant's mark "which so resembles a mark registered in the Patent and Trademark Office ... as to be likely, when used on or in connection with the goods of the applicant, to cause confusion ..." 15 U.S.C. § 1052(d). In *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1977), the Court set forth the factors to consider in determining likelihood of confusion. See also *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). Below, we will consider each of the factors as to which applicant or the Examining Attorney have presented arguments or evidence.

In its brief, applicant has not argued that the marks are not similar. In fact, the marks, CROSSPOINT FABRICS

and CROSSPOINT, both in standard characters, are virtually identical. Accordingly, we will proceed with our analysis of the other relevant factors on the basis that the marks are virtually identical.

In its arguments, applicant places the most emphasis on the differences between the respective goods and the channels of trade for the respective goods. Applicant identifies its goods as "textile wallcoverings not sold through retail outlets." The goods identified in the cited registration are "furniture."

The differences between the goods themselves are obvious. The respective goods involve different manufacturing processes. Although furniture and textile wallcoverings both "equip" and decorate a room or other interior space, textile wallcoverings typically require permanent installation and they are primarily decorative. Furniture, on the other hand, is typically not installed as a permanent fixture, and it is primarily functional.

Turning to the trade channels for the respective goods, applicant has explicitly excluded "retail outlets" from its trade channels in its identification of goods. Applicant has also provided an affidavit from Steve Magel, the vice president of its affiliated group which is

responsible for the textile wallcoverings identified in the application. The affidavit, in relevant part, states:

The wallcoverings sold in connection with the CROSSPOINT FABRICS mark are not sold or marketed in any location where furniture is sold or in any retail outlets. Rather, the wallcoverings are marketed by distributors in various field locations such as an office, meeting room, sample book library and small warehouse. The wallcoverings sold in connection with the CROSSPOINT FABRICS mark are essentially sold through sample and swatch books sold in warehouses by field salespeople. The wallcoverings sold in connection with the CROSSPOINT FABRICS mark are not sold in any furniture showrooms or stores and are sold by distributors who do not have furniture showrooms.

Magel Affidavit at page 2.

Applicant argues that the furniture identified in the cited registration would be sold through retail channels distinct from the channels applicant identifies in its application. Contrary to applicant's claim here, in the absence of any restriction as to trade channels in the cited registration, we must and do assume that the "furniture" identified in the cited registration moves through all normal trade channels for such goods, including both wholesale and retail channels.

The Examining Attorney states:

The parties' goods are related in that they are used for interior furnishings of a building. More importantly, the activities surrounding their marketing are such that confusion as to origin is likely. Relevant consumers understand the goods of wallcoverings and furniture to

emanate from a single source. The record reflects the examining attorney has provided market evidence in the form of multiple advertising websites of various vendors that clearly show that the goods wallcoverings and furniture would emanate from a single vendor. The evidence includes both manufacturers and distributors of wallcoverings and furniture.

Examining Attorney's Brief at 4.

The Examining Attorney has not identified or discussed any of the specific evidence in question. We have reviewed all of the evidence the Examining Attorney submitted and find little, if any, support in that evidence for the broad claim that consumers would understand that the goods identified in the application and cited registration emanate from the same source.

First, the Examining Attorney has submitted listings of results from searches using the Google search engine. The listings are both brief and truncated and have no probative value here. *See In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060 (TTAB 2002).

The Examining Attorney has also submitted excerpts from several web sites.

One excerpt is from decoratorswalk.com connected with F. Schumacher & Co. It includes the following text:

The company is a leading designer and marketer of a broad range of home furnishings products, including decorative fabrics, wallpaper, carpeting and area rugs. The company also manufactures and markets an array of home

fashions, including, bedroom ensembles, window treatments, and decorative accessories. Recently, F. Schumacher & Co. has expanded into fine furniture and decorative accent pieces.

The site indicates that F. Schumacher & Co. markets its products under different brands to different markets, that is, the "interior design community," "the decorative home furnishings retail market" and the "do-it yourself home improvement retail market."

Another excerpt is from brunswick.com which is associated with Brunswick & Fils. The company promotes itself as a "designer of contemporary and historically inspired decorative fabrics, wallcoverings, trimmings, upholstered furniture, lamps, tables, mirrors and accessories." The company appears to target the high-end retail market and to sell directly to the public.

Another excerpt is from susansargent.com associated with Susan Sargent, an interior designer. The site includes references to choices of wallcoverings and furniture, as well as rugs, pillows and bedding, books, ceramics, fabrics and trims, decorative accessories and paint. The text indicates that Susan Sargent has worked with "York Studio" to design wallpaper coordinated with her licensed products. It appears that this designer services the public directly, that is, at the retail level.

Another excerpt is from katecrowstoninteriors.com associated with Kate Crowston Interior Design. The company appears to service the public directly and, as part of its interior design services, presents selections of interior furnishings, including "design fabrics" and "furniture."

Another excerpt is from wallflowersinteriors.com, associated with Wallflowers Decorating Studios, and it states, "We specialize in unique wallcoverings, custom drapery design, bedding and accessories. Room layouts and furniture. Our staff are trained professionals and are capable of assisting you with all of your decorating needs." The company is an interior design company providing service directly to the public.

Another brief excerpt from davisonshowroom.com and refers to George & Frances Davison, Inc. and "Stephen Gerould Showroom Consignments" with photos of lamps and a set of "buttons" to the left including two identified as "wallcoverings" and another as "furniture." The precise nature of the business or its trade channels are not clear from the excerpt provided.

An excerpt from wallpaperinstaller.com refers to wallpaper and wallcoverings only and not furniture. The excerpt from pioneerthinking.com includes an article about "Cleaning Fabric Wall Coverings" and refers to other

subjects related to home repair and maintenance; there is no mention of the sale of either fabric wallcoverings or furniture.

We find this evidence insufficient to establish that the goods of applicant and registrant are related. There are significant differences between the goods themselves, which we discussed above. To the extent that the evidence includes entities which deal in both textile wallcoverings and furniture, there is no clear evidence that the same mark is applied to both types of goods, such that potential purchasers would expect that both types of goods emanate from the same source. Also, it appears that the context for selling textile wallcoverings, through sample and swatch books, would lead potential purchasers to perceive this product as distinct from furniture and other products for interior decor.

A number of the entities appear to be interior designers which offer a wide range of products, apparently from varied sources. There is no evidence that these parties apply a single mark to the types of goods identified in the application and cited registration. The more reasonable inference to be drawn from this evidence is that customers will recognize that the interior designer mark relates to their design service and not to the

products which the interior designer offers or recommends in conjunction with rendering that service. We decline to construe this evidence as establishing that their clients will perceive that the wide variety of goods they display or recommend come from a single source. See *In re Norfolk Wallpaper, Inc.*, 216 USPQ 903, 904 (TTAB 1983).

(installation of wallpaper and retail wallpaper store services" held not related to "interior and exterior ready-mixed paints and varnishes and thinners for paints and varnishes").

Even in the case of F. Schumacher & Co., which may, in fact, apply various marks to goods it designs, it is unclear from the evidence of record whether this company applies a single mark to textile wallcoverings and furniture. The excerpt only refers to "wallpaper" and not textile wallcoverings, and it indicates that the company uses different marks in different markets, without indicating whether any mark is applied to both wallpaper and furniture?

Likewise in the case of Brunschwig & Fils, the only other company which appears to design and market its own products, once again it is unclear whether a single mark is applied to textile wallcoverings and furniture.

Furthermore, the method of sale applicant describes for its textile wallcoverings, that is, through direct sale and use of sample and swatch books indicates that applicant's clients will view the textile wallcoverings they encounter in this context as distinct from furniture they may consider purchasing in a different context. In fact, on this record, we have no reason to conclude that textile wallcoverings are sold other than through the use of swatch or sample books as applicant explains. See, e.g., *Crown Wallcovering Corporation v. The Wall Paper Manufacturers Ltd.*, 208 USPQ 686 (TTAB 1980). This circumstance provides further assurance that its customers, which may include interior design firms or other individuals of similar knowledge and sophistication, would not be confused as to the source of the respective goods. *Duron Paint Manufacturing Company, Inc. v. St. Charles Manufacturing Co.*, 198 USPQ 187, 190-191 (TTAB 1978).

Finally, based on the record before us, we conclude that the circumstances related to the sale of the applicant's goods and the goods identified in the cited registration are sufficiently distinct to preclude confusion. *Local Trademarks Inc. v. The Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990).

Applicant has also made separate arguments that confusion is not likely because its customers are sophisticated. We believe that we have addressed this factor adequately in our discussion of the trade channels and need not discuss it further.

Applicant also argues that confusion is not likely because there has been no actual confusion to date. We consider this factor neutral in this case. Applicant has not provided any evidence as to the extent of its use, nor is there any evidence as to registrant's use, such that we can determine whether there has been a meaningful opportunity for confusion to occur. Furthermore, an applicant's unsupported claim that there has been no actual confusion is entitled to little, if any weight in an ex parte appeal proceeding. *Majestic Distilling*, 65 USPQ2d at 1205.

In sum, based on the record before us, we conclude that there is no likelihood of confusion between applicant's CROSSPOINT FABRICS mark when used in connection with "textile wallcoverings not sold through retail outlets" and the registered CROSSPOINT mark when used in connection with "furniture" principally because the respective goods and trade channels for the respective

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goods differ significantly even though the marks are virtually identical.

Decision: We reverse the refusal to register applicant's mark under Trademark Act Section 2(d).