

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

Mailed: September 4, 2007

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. 78611644

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

Michelle E. Dubois, Trademark Examining Attorney, Law Office  
107 (Joan Leslie Bishop, Managing Attorney).

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Before Walters, Grendel and Kuhlke, Administrative Trademark  
Judges.

Opinion by Walters, Administrative Trademark Judge:

Liberty Hardware Mfg. Corp. has filed an application to  
register the mark DURAGUARD (in standard character form) on  
the Principal Register for "coatings in the nature of a  
protective finish for metal hardware," in International  
Class 2.<sup>1</sup>

The examining attorney has issued a final refusal to  
register under Section 2(d) of the Trademark Act, 15 U.S.C.

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<sup>1</sup> Serial No. 78611644, filed April 19, 2005, based on an allegation of a  
bona fide intention to use the mark in commerce.

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1052(d), on the ground that applicant's mark so resembles the mark DURAGUARD, previously registered for "protective polymer coating for application to laminates for furniture products," in International Class 2 that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.<sup>2</sup>

Applicant has appealed. Both applicant and the examining attorney have filed briefs.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper*

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<sup>2</sup> Registration No. 2099812 issued September, 23, 1997, and renewed on January 18, 2007 for a period of ten years.

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Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

We turn, first, to consideration of the marks. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). As applicant concedes in its brief, applicant's mark and registrant's mark are identical. We also note that both marks consist entirely of the term DURAGUARD, which is likely to be perceived as suggestive of a durable finish which will "guard" the surface of the product from damage.

We turn next to consider the goods involved in this case. 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 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 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; and *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002).

The examining attorney argues that the goods are confusingly similar because "both parties provide a coating that functions to protect" and many all-purpose coatings are sold together in the marketplace. Examining Attorney's Brief at 4.

The applicant argues that because it applies its coatings to hardware during manufacture and it believes the registrant sells furniture already treated with a coating, the "true comparison of the respective goods is between metal hardware and wood furniture." Applicant's response to office action 1. This argument is not well taken. It is well-settled that the likelihood of confusion analysis must be based on the goods or services as they are identified in the application and cited registration, rather than what a party believes the goods or services to be. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Thus, in the instant case the primary issue is whether protective coatings for metal hardware would travel in the same channels of trade and be encountered by the same consumers as protective polymer coatings for laminates for furniture products. To the extent that polymer coatings may be used

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on metal hardware, applicant's coatings could include polymer coatings; and applicant's identified goods encompass coatings used by metal hardware manufacturers as well as metal hardware coatings sold at retail. Registrant's identification specifies "polymer coating for application to laminates for furniture," which suggests a coating that is used only during the manufacturing process of either the laminate alone or the laminated furniture. The purchasers of coatings for use in the manufacturing process are likely to be discriminating, knowledgeable purchasers.

In support of her refusal to register, the examining attorney has attached excerpts from six websites to show that a number of articles such as metal fasteners, car parts, floors, crafts, and furniture are often treated or covered with polymer coatings. For example:

- An excerpt from the EMPIGARD.COM web site entitled "Eliminate the high cost of corrosion!" describes a third party coating and states, "EMPIGARD 10 polymer coating is a versatile new clear thermosetting coating which provides outstanding corrosion resistance to metal parts. This improved coating material has been developed in our research laboratories especially to meet the requirements of the automotive, appliance hardware and fastener industries." Examining Attorney's Office Action No. 1, Attachment.
- An excerpt from the HOWSTUFFWORKS.COM website entitled "Plastic Coating Extends Car's Life" states "Cars and other metal structures will last up to 10 times longer with the use of a new plastic coating." *Id.*

- An excerpt from the UNIQUEPOLYMERSYSTEMS.COM website entitled "Advanced Polymers" describes a "superior high gloss polymer coating" and states "This is an EXTREMELY TOUGH, decorative floor coating. For use in High Traffic Areas, workshop floors, warehouse, showrooms, storage areas where fork lift trucks are operating etc." *Id.*
- An excerpt from the DELVIESPLASTICS.COM website advertises two polymer coatings; and a multi-purpose clear sealer (all under different trademarks) for use on wood, prints, photographs, plastics, fabrics, silk flowers, puzzles, and other goods. Regarding the polymer coating, the website states: "Polytex, a versatile product, may be applied over almost any surface, rough or smooth. It may be applied over leather, wood, varnish, ceramics, rocks, dried flowers, shells, and many other items." Examining Attorney's Office Action No. 2, Attachment.
- An excerpt from the INDOBASE.COM website titled "Cleaning Furniture Upholstery & Hardware" states: "Furniture sometimes has metal hardware as part of it. The metal used is usually brass, bronze or silver. Hardware in modern furniture has a clear lacquer finish that gives them a lustrous appearance." *Id.*

This evidence shows not only that some polymer coatings are used to coat a wide variety of products and surfaces but also that other polymer coatings are only used in highly specialized applications such as on metal auto parts or concrete floors. The evidence further indicates that specialized coatings often are applied by manufacturers during the product manufacturing stage and these coatings may not be used by or even seen by end consumers of the products to which the coatings are applied. Lastly, the evidence shows that furniture may include coated metal

hardware but there is no evidence to show that furniture manufacturers make their own hardware or apply the same coating to both laminates and metal hardware used in manufacturing furniture.

Thus, while it appears that coated metal hardware may be used on coated laminated furniture, these are not the goods for which registration is sought. The problem with the evidence is that it does not show that consumers of one kind of highly specialized coating such as for furniture laminates are likely to come across another kind of highly specialized coating for other products such as metal hardware, even if marketed under the same or similar marks. Nor is it enough, as the examining attorney states in her brief, merely that "[b]oth [parties] provide a type of coating for application to a product." This is not a case where one party's broadly-worded identification of goods could logically be presumed to include another party's more narrowly-worded identification of goods. Instead, both applicant's and registrant's identification of goods are narrowly worded and do not overlap. The goods in the instant case have different uses and are used by different consumers. There is simply no evidence in the record that these specialized coatings travel in the same channels of trade and that their respective users would encounter the respective goods or be confused as to their source.

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We also note that, although applicant's and the cited registrant's marks are the same, they also are suggestive. Thus, the cited registration is not entitled to as broad a scope of protection as an arbitrary mark. In *re W.W. Henry Co.*, 82 USPQ2nd 1213, 1216 (TTAB 2007). Purchasers are not likely to assume that any specialized coating offered under these suggestive marks must emanate from the same source. Given the difference in the specialized coatings particularly the different uses to which they are directed, and the suggestive nature of the marks, we find that the record does not support a finding of likelihood of confusion.

*Decision:* The refusal under Section 2(d) of the Act is reversed.