

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB FEB. 3, 98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Cavco Industries, Inc.**

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Serial Nos. 74/**661,944** and 74/**661,770**

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**Anna Conyers Kuhn** of Baker & Botts, L.L.P. for Cavco  
Industries, Inc.

**Angela M. Micheli**, Trademark Examining Attorney, Law Office  
108 (**David E. Shallant**, Managing Attorney).

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Before **Simms**, Cissel and Hanak, Administrative Trademark  
Judges.

Opinion by **Hanak**, Administrative Trademark Judge:

On April 17, 1995 Cavco Industries, Inc. (applicant)  
filed intent-to-use applications seeking registration of  
CEDAR SPRINGS (74/661,770) and CEDAR COURT (74/661,944) for  
"prefabricated residential and commercial buildings  
manufactured primarily of non-metallic materials." During  
the examination process, applicant disclaimed in each case  
the exclusive right to use "CEDAR" apart from the marks in  
their entireties. Also, in its appeal brief, applicant

memorialized a fact that apparently had been conveyed to the examining attorney by telephone, namely, that applicant's prefabricated residential and commercial buildings are not made of cedar wood. (Applicant's brief page 1).

In each case, the examining attorney refused registration pursuant to Section 2(a) of the Lanham Trademark Act on the basis that applicant's marks are deceptive as applied to applicant's goods.

When the refusal was made final, applicant appealed to this Board. Applicant and the examining attorney filed briefs. Applicant did not request a hearing.

As a housekeeping matter, we note that both the applicant and the examining attorney have filed essentially identical briefs in these two cases. Thus, although there are two sets of briefs, we will refer to them in the singular form.

At page 5 of her brief, the examining attorney articulates the basis of her Section 2(a) deceptiveness refusal as follows: "In summary, the evidence of record, the architectural dictionary, the building books and the Nexis articles show that cedar is a siding material and that use of cedar in applicant's mark would deceive people into believing that the goods are made of cedar. Accordingly, the mark must be found to be deceptive as used in the goods and the refusal under Section 2(a) should be affirmed." As

support for her Section 2(a) refusal, the examining attorney places a great deal of reliance on a prior decision of this Board where it was held that the mark CEDAR RIDGE was deceptive "for non-cedar siding products which simulate cedar." Evans Product Company v. Boise Cascade Corp., 218 USPQ 160, 163 (TTAB 1983). This case will be discussed at greater length later in this opinion.

In order for a term to be held deceptive as applied to particular goods (or services), the examining attorney must submit evidence which would support an answer of "yes" to each of the following three questions: (1) Is the term misdescriptive of the character, quality, function, composition or use of the goods? (2) If so, are prospective purchasers likely to believe that the misdescription actually describes the goods? (3) If so, is the misdescription likely to affect the decision to purchase? In re Budge Manufacturing, 857 F.2d 773, 8 USPQ2d 1259, 1260 (Fed. Cir. 1988). Moreover, it has long been held that in determining whether a mark or term is deceptive, the mark or term must be considered in its entirety. A.F. Gallun v. Aristocrat Products, 135 USPQ 459, 460 (TTAB 1962). Thus, in these two cases, the terms to be considered are CEDAR SPRINGS and CEDAR COURT, and not the term CEDAR per se.

In considering the first of the Budge questions, we find that the examining attorney has simply not established

that either CEDAR SPRINGS or CEDAR COURT is misdescriptive of the composition of even a part of prefabricated residential and commercial buildings, namely, the siding component. Applicant has argued that both CEDAR SPRINGS and CEDAR COURT evoke images of particular physical locations. (Applicant's brief page 2). At page 5 of her brief, the examining attorney acknowledges that it "may be true ... that the mark[s] may conjure an image of" a particular physical location.

We believe that in their entirety, the marks CEDAR SPRINGS and CEDAR COURT, when applied to entire buildings, are more likely to evoke the imagine of a physical location such as a street or a subdivision, as opposed to evoking the notion that the siding component of these buildings is necessarily cedar. In this regard, the facts of these two cases are very different from the facts in Evans Products. In Evans Products, the goods were non-cedar siding products. In these cases, the goods are entire buildings, or more precisely, pre-fabricated residential and commercial buildings manufactured primarily of non-metallic materials. More importantly, in Evans Products this Board found "that the deceptive significance of the term CEDAR for a non-cedar product is [not] lost by its combination which the word RIDGE ... [because] applicant has acknowledged in its brief that the term RIDGE suggests the surface configuration [of a

particular type] of hardboard siding." 218 USPQ at 164.

Thus, CEDAR RIDGE was found to be deceptive in its entirety as applied to non-cedar siding because the record revealed that there was in existence both cedar siding and ridge siding. In the present cases, the examining attorney has never indicated that the words SPRINGS and COURT have any misdescriptive meaning or connotation whatsoever when applied to buildings or when applied to particular components of buildings (i.e. the siding).

Because we have found that the first of the three Budge questions must be answered in the negative, we could stop our analysis here. However, even if the first Budge question had been answered in the affirmative, we find that the examining attorney has failed to show that prospective purchasers of prefabricated buildings are likely to believe that the purported misdescription actually describes the buildings (i.e. the second prong of the Budge test). Obviously, prefabricated residential and commercial buildings are very expensive items which would be purchased only with great care. The examining attorney has never disputed that the purchase of such a building would involve numerous "necessary details." (Applicant's request for reconsideration page 3).

Thus, even assuming for the sake of argument that the marks CEDAR SPRINGS and CEDAR COURT in their entireties

were misdescriptive of the composition of a component of prefabricated buildings (which they are not), we find that prospective purchasers, in negotiating the numerous details to buy these expensive products, would not be likely to believe the purported misdescription. Again, comparing these two cases to Evans Products, we note that purchasers would, of course, exercise far greater care in the purchase of an entire building as opposed to merely buying siding products from retail lumber yards, perhaps in small quantities.

One final comment is in order. As noted, these are intent-to use applications. Applicant has not yet submitted any specimens of use. Should applicant's specimens of use indicate that applicant, by using the marks CEDAR SPRINGS or CEDAR COURT, is attempting to convey to the buyers of its buildings that said buildings have cedar siding or other cedar components, then this would be evidence of bad intent on the part of the applicant. In this regard, it should be noted that in Evans Products, the Board found that in selecting the mark CEDAR RIDGE, applicant's own documents showed "that applicant intended to adopt a mark that conveyed the impression of authentic cedar." 218 USPQ at 164. If the present applicant's specimens of use demonstrate bad intent, then the examining attorney is not

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bound by this decision from again issuing a refusal pursuant to Section 2(a).

**DECISION:** The refusals to register are reversed.

R. L. Simms

R. F. Cissel

E. W. Hanak  
Trademark Administrative  
Judges, Trademark Trial and  
Appeal Board

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