

THIS DIPOSITION IS NOT
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JULY 7, 1997

Paper No. 10
RLS/King

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Perfect Fit Industries, Inc.**

Serial No. 74/**522,760**

Joel G. Goldhammer of Panitch Schwarze Jacobs & Nadel for
Perfect Fit Industries, Inc.

John Tingley, Trademark Examining Attorney, Law Office 102
(**Myra K. Kurzbard**, Managing Attorney).

Before **Simms**, **Hairston** and **Walters**, Administrative Trademark
Judges.

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

Perfect Fit Industries, Inc. (applicant) has appealed
from the final refusal of the Trademark Examining Attorney
to register the mark HOME COMFORT for pillows and chair
cushions in International Class 20 and mattress pads in
International Class 24.¹ Applicant has disclaimed exclusive
right to use "HOME" apart from the mark. The Examining

¹ Serial Number 74/522,760, filed May 10, 1994, based upon
applicant's bona fide intention to use the mark in commerce
under Section 1(b) of the Act, 15 USC 1051(b).

Attorney has refused registration under Section 2(d) of the Act, 15 USC 1052(d), on the basis of Registration Number 1,827,045, issued March 15, 1994, for the mark HOME COMFORT FURNITURE & MATTRESS CENTER ("HOME" and "FURNITURE AND MATTRESS CENTER" disclaimed) for retail furniture store services.

The Examining Attorney argues that confusion is likely because of the similarities of the marks and the goods and services. With respect to the goods, the Examining Attorney contends that mattress pads and mattresses (presumably sold in registrant's furniture and mattress stores) are complementary products used in the home furnishings field. The Examining Attorney has made of record a copy of a page from a yellow pages directory showing that a retail furniture store also sells mattresses. The Examining Attorney argues that many furniture stores also sell mattress pads, cushions and pillows. The Examining Attorney argues, brief, 6:

Although the respective marks differ, it is the Examining Attorney's belief that consumers are likely to ascribe these differences not in the fact that the goods and services came from different sources but to differences in the goods and services themselves. Consumers familiar with registrant's HOME COMFORT FURNITURE & MATTRESS CENTER for "retail furniture store services" may well believe, upon viewing the mark HOME COMFORT, that registrant has modified or streamlined its mark to better suit it for such furniture or mattress store services or simply to indicate a complete line of furniture and

mattresses.

Applicant, on the other hand, while conceding that some furniture outlets sell pillows, cushions and mattress pads, argues that there is no indication that registrant itself produces any such products under an abbreviated version of its mark.

Further, it is unlikely that the consuming public would perceive that a local furniture store produced their [sic] own line of nationally distributed pillows, chair cushions and mattress pads. Such is the situation that could exist but not what is likely.
(Brief, 3)

Applicant contends that confusion is no more than a mere possibility.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that confusion is likely. Giving greater weight to the origin-indicating feature of registrant's mark and less weight to the descriptive and disclaimed features thereof ("FURNITURE & MATTRESS CENTER"), and considering the close relationship between applicant's mattress pads and other goods and registrant's retail furniture store services, we conclude that applicant's mark so resembles the registered mark that, as applied to applicant's goods, confusion is likely.

Decision: The refusal of registration is affirmed.

R. L. Simms

Ser No. 75/522,760

P. T. Hairston

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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