

THIS DISPOSITION IS NOT
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Paper No. 14
RFC

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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

Serial No. 74/**593,376**

Ronald L. Panitch of Panitch Schwarze Jacobs & Nadel, P.C.
for Perfect Fit Industries, Inc.

Jeffrey R. Cohen, Trademark Examining Attorney, Law Office
102 (Myra K. Kurzbard, Managing Attorney).

Before **Cissel**, Quinn and Hohein, Administrative Trademark
Judges.

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

On November 1, 1994, applicant applied to register the
mark "FINISHING TOUCHES" on the Principal Register for
"pillows," in Class 20, and for "comforters, bedspreads,
curtains, bed ruffles, and pillow shams," in Class 24. The
application was based on applicant's assertion that it
possessed a bona fide intention to use the mark in commerce.

The Examining Attorney refused registration under
Section 2(d) of the Act on the ground that applicant's mark,
if applied to the goods set forth in the application, would

so resemble the identical mark, "FINISHING TOUCHES," registered for "mail order catalog services featuring home furnishings and accessories,"¹ in Class 42, that confusion would be likely.

Applicant responded with arguments that confusion was not likely, but the Examining Attorney was not persuaded, and the refusal to register was made final on August 1, 1995. Attached to the final refusal were copies from the mail order catalog of a company called Sugar Hill. The catalog shows a wide variety of home furnishings and accessories, including bedspreads, curtains, bed ruffles and shams. Also submitted by the Examining Attorney were copies of three registrations. One shows a mark registered for retail store and mail order services featuring a variety of housewares and furnishings, including bed linens.² The other two third-party registrations are both for a single mark, and both registrations are owned by Williams-Sonoma, Inc.³ One lists the goods as various types of linens, including bed sheets and pillow cases, and the other lists "catalog mail order services for furnishings and accessories for the bed and bath." The Examining Attorney argued that the third-party registrations and the Sugar Hill mail order

¹Reg. No. 1,712,802, issued to Museum Publications of America, Inc. on Sept. 1, 1992, based on a claim of first use in commerce on Aug. 26, 1991.

²Reg. No. 1,469,515, issued to Euromarket Designs, Inc. on Dec. 15, 1987; combined Section 8 and 15 affidavit filed.

³Reg. Nos. 1,663,476 and 1,661,260, issued Nov. 5, 1991 and Oct. 15, 1991, respectively.

catalog demonstrate that consumers have reason to expect a common source for applicant's "FINISHING TOUCHES" pillows and bed linens and registrant's "FINISHING TOUCHES" mail order catalog services featuring home furnishings and accessories.

Applicant filed a notice of appeal. Both applicant and the Examining Attorney filed briefs, but applicant did not request an oral bearing before the Board.

Based on careful consideration of the record in this application, we affirm the refusal to register.

In view of the identity of the marks in this case, the relationship between the goods and services of applicant and registrant does not need to be as close to support a finding of likelihood of confusion as might be the case if the marks were different. *Amcor, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981). The respective goods and services of applicant and the owner of the cited registration are certainly not the same, but they are clearly related in such a way that the use of the same mark on them would likely cause confusion. Moreover, it is well settled that even if the marks are not the same, the goods and services would not have to be identical or even competitive. It would be sufficient enough if they are related in some manner and that their character or the circumstances surrounding their marketing are such that they would likely be encountered by the same people under circumstances that would give rise to the mistaken belief that a common source is responsible for

both. In re International Telephone and Telegraph Corp., 197 USPQ 910 (TTAB 1978). Mail order catalog services featuring home furnishings and accessories ordinarily include the sale of products like pillows, bedspreads and curtains. The copies from the catalog submitted by the Examining Attorney support this conclusion as well. So do the third-party registrations of record. See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993). The use of identical marks on the goods and in connection with the services of selling them would clearly be likely to cause confusion. In re Peebles Inc., 23 USPQ2d 1795 (TTAB 1992).

Whether confusion is likely is determined on the basis of the ways the goods and services are identified in the application and the cited registration, respectively, without any limitations or restrictions not specifically set forth therein. Toys "R" Us, Inc. v. Lamps R Us, 219 USPQ 340 (TTAB 1983). Applicant argues that its goods are not sold through mail order catalogs, but rather are available only in retail stores. In the absence of such a limitation in the way the goods are identified in the application, however, the argument is not well taken. Moreover, even if the application had been so restricted, confusion would still be likely because, as the evidence submitted by the Examining Attorney demonstrates, consumers have a reasonable basis to expect goods of these types to be available both at retail housewares stores and through mail order catalogs featuring such products.

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For the reasons set forth above, the refusal to register under Section 2(d) of the Act is affirmed.

R. F. Cissel

T. J. Quinn

G. D. Hohein
Administrative Trademark Judges
Trademark Trial & Appeal Board

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