

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE  
TTAB

SEPT 29,98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re KKH Corp.

---

Serial No. 75/051,067

---

William H. Pavitt, Jr. of Beehler & Pavitt for KKH Corp.

Rudy R. Singleton, Trademark Examining Attorney, Law Office 109  
(Deborah S. Cohn, Managing Attorney).

---

Before Hanak, Hohein and Wendel, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

KKH Corp. has filed an application to register the mark "CHAIR BUDDIES" for "children's cushion seats in the form of stuffed fanciful figures of animals, birds or fish for use inside homes and other structures and in cars".<sup>1</sup>

Registration has be finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the mark "CHAIR BUDDY IN A BAG," which is registered for "folding

---

<sup>1</sup> Ser. No. 75/051,067, filed on January 31, 1996, which alleges dates of first use of October 1, 1995. The word "CHAIR" is disclaimed.

beach chair furniture,"<sup>2</sup> as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed,<sup>3</sup> but an oral hearing was not requested. We affirm the refusal to register.

Applicant contends that confusion is not likely from contemporaneous use of the marks "CHAIR BUDDIES" and "CHAIR BUDDY IN A BAG" since, in addition to the "differences in the marks," the respective goods are specifically different in nature and travel in separate and distinct channels of trade. In this regard, applicant argues that despite the fact that the specimens of use refer to applicant's "CHAIR BUDDIES" product as a "CUDDLY SOFT KID'S CHAIR" and "[a] fun, soft chair for kids" which is

---

<sup>2</sup> Reg. No. 1,810,802, issued on December 14, 1993, which sets forth dates of first use of December 1, 1992. The words "CHAIR" and "BAG" are disclaimed.

<sup>3</sup> Both applicant and the Examining Attorney assert in their briefs that this appeal also involves an issue as to the propriety of applicant's amendment of the classification of its goods from International Class 20, which the Examining Attorney maintains is the proper class, to International Class 28, in which toys and games are classified. Such issue, however, particularly in light of the Examining Attorney's repeated requirement in his brief that applicant amend the classification of its goods back to International Class 20, in which furniture and miscellaneous items are classified, is properly the subject of a petition to the Commissioner under Trademark Rule 2.146(a), in the event that applicant ultimately prevails herein, rather than an appealable substantive matter for resolution by the Board. Thus, while the only issue before us on appeal is the refusal under Section 2(d), it is nevertheless pointed out that, as stated in TMEP §1402.01, "[t]he [Patent and Trademark] Office's purpose in using the classification system is administrative rather than as an indication of relatedness" of goods or services. See *In re Leon Shaffer Golnick Advertising, Inc.*, 185 USPQ 242 (TTAB 1974) at n. 2. Irrespective, therefore, of whether applicant's goods are classified in International Class 20, which is the class in which registrant's goods are registered, or International Class 28, which applicant insists is proper, the fact remains that the class or classes in which the goods at issue are classified is simply immaterial in determining

"[g]reat for a room decoration, watching a show, or as a travel companion," its children's cushion seats actually "are in the nature of fanciful stuffed animals, birds or fish configured as pillows or cushions which can be propped against a supporting surface." Such goods, applicant notes, "do not provide actual back support absent another supporting surface such as a wall or car seat." Due to their nature, applicant maintains that its goods "would more likely be marketed through toy stores or department stores selling toys, dolls or perhaps bedding and pillows." By contrast, applicant insists that registrant's folding beach chair furniture is, "presumably[,] capable of being stored in a compact carrying bag" and "serv[es] the function of a beach chair by providing actual support for the user's back." Applicant urges that because registrant's goods would be sold in such entirely different channels of trade as "sporting goods, outdoor and camping supply stores," confusion as to the source or sponsorship of the respective goods is not likely to occur.

The Examining Attorney, on the other hand, argues that the marks "CHAIR BUDDIES" and "CHAIR BUDDY IN A BAG" are "highly similar" since "[t]he dominant term of both marks is the term BUDDY in its singular or plural form." In particular, inasmuch as the "IN A BAG" portion of registrant's mark "merely indicates that the [registrant's] goods are capable of being stored in a carrying bag," the Examining Attorney urges that "[t]he general connotation of both marks is that of a 'buddy' for a chair."

---

the issue of likelihood of confusion. See, e.g., *In re Clay*, 154 USPQ 620, 621 (TTAB 1967) and cases cited therein.

As to the respective goods, the Examining Attorney contends that "the registrant's 'folding beach chair furniture' is so broadly stated that it could include applicant's 'children[']s cushion seats,' since chair furniture includes seats and could be for children." In addition, the Examining Attorney points out that "registrant's folding beach furniture could be used inside structures such as tents or beach homes. Furthermore, and in any event, the Examining Attorney asserts that:

Even if, for argument's sake, the registrant's goods did not include the applicant's goods, the respective goods most likely travel in the same channels of trade. The applicant contends that the registrant's goods are typically sold in sporting goods, outdoor and camping supply stores. The record provides no justification for such an assumption. If the cited registration describes the goods without limitations as to their channels of trade or classes of purchasers, it is presumed that the registration encompasses goods that move in all normal channels of trade, and that the goods are available to all potential customers. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Both registrant's and applicant[']s goods are most likely sold in department stores as casual furniture and available to parents and grandparents who need casual furniture.

We agree with the Examining Attorney that confusion is likely. In particular, while we concur that, as set forth in the cited registration, registrant's "folding beach chair furniture," especially since it undoubtedly comes in a carrying bag, is broad enough to include folding beach chairs as well as, in theory, cushions for use therewith, we disagree with the Examining Attorney's insistence that such cushions would include the type

of children's cushion seats sold by applicant or necessarily include cushions at all. This is because seat cushions for folding beach chairs would not only be unusual, but it would be even rarer for such a cushion to take the form of stuffed fanciful figures of animals, birds or fish, as is the case with applicant's children's cushion seats. Nevertheless, we find that applicant's cushion seats and registrant's folding beach chairs are closely related inasmuch as both are suitable for use by children for sitting or lounging in chairs. Moreover, while registrant's goods are obviously seasonal items, it is still the case that, like applicant's goods, they would share such common channels of trade as the home sections of department stores, mass merchandisers, discount outlets, variety stores and drug stores.

Furthermore, although applicant's goods are, in a sense, a children's plaything, their principal use--as applicant's specimens make clear--is as a "CUDDLY SOFT KID'S CHAIR" or seat cushion for a chair. Registrant's folding beach chair furniture could similarly include chairs for use by children. Consequently, inasmuch as both applicant's and registrant's goods constitute seats for use by children, even though the former is for indoor and car use while the latter is for beach or beach-house environments, the respective goods are so closely related in their essential function that, if sold under the same or substantially similar marks, confusion as to the origin or affiliation thereof is likely to occur.

Turning, therefore, to consideration of the respective marks, we concur with the Examining Attorney that they are

"highly similar". Although, concededly, differences are apparent on a side-by-side comparison,<sup>4</sup> applicant's "CHAIR BUDDIES" mark and registrant's "CHAIR BUDDY IN A BAG" mark, when considered in their entireties, are substantially similar in sound, appearance, connotation and overall commercial impression, particularly inasmuch as the descriptive phrase "IN A BAG" in registrant's mark adds little which is source-indicative. Both marks, as used in connection with the respective goods, project the impression of a chair "buddy" or comparison, whether the product is folding beach chair furniture or a children's cushion seat in the form of a stuffed fanciful animal, bird or fish.<sup>5</sup>

We accordingly conclude that purchasers and prospective customers, familiar or acquainted with registrant's "CHAIR BUDDY IN A BAG" mark for folding beach chair furniture, could reasonably believe, upon encountering applicant's substantially similar "CHAIR BUDDIES" mark for children's cushion seats in the form of stuffed fanciful figures of animals, birds and fish for

---

<sup>4</sup> Such a comparison, however, is not the proper test to be used in determining the issue of likelihood of confusion since it is not the ordinary way that a prospective customer will be exposed to the marks. Instead, it is the similarity of the general overall commercial impression engendered by the marks which must determine, due to the fallibility of memory and the consequent lack of perfect recall, whether confusion as to source or sponsorship is likely. The proper emphasis is accordingly on the recollection of the average purchaser, who normally retains a general rather than a specific impression of marks. See, e.g., *Envirotech Corp. v. Solaron Corp.*, 211 USPQ 724, 733 (TTAB 1981); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); and *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573, 574 (CCPA 1973).

<sup>5</sup> Although we note that the term "BUDDY" is in the singular in registrant's mark while it is in the plural in applicant's mark, there is no material difference, in a trademark sense, between the singular and the plural form of a word. See, e.g., *Wilson v. Delaunay*, 245 F.2d 877, 114 USPQ 339, 341 (CCPA 1957).

**Ser. No.** 75/051,067

use inside homes and other structures and in cars, that such closely related products emanate from, or are sponsored by or otherwise affiliated with, the same source. Moreover, to the extent that we may possibly have any doubt in this regard, we resolve such doubt, as we must, in favor of the registrant. See, e.g., In re Pneumatiques Caoutchouc Manufacture et Plastiques Kelber-Columbes, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

**Decision:** The refusal under Section 2(d) is affirmed.

E. W. Hanak

G. D. Hohein

H. R. Wendel  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board