

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

APRIL 8, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hindman Manufacturing Co. of Centralia, Inc.

Serial No. 74/699,256

Robert S. Beiser of Michael Best & Friedrich for Applicant.

Cindy B. Greenbaum, Trademark Examining Attorney, Law
Office 104 (Sidney I. Moskowitz, Managing Attorney).

Before Simms, Hanak and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant, Hindman Manufacturing Co. of Centralia,
Inc., an Illinois corporation, has filed an application for
registration of the mark "AMERICANA BUILDING PRODUCTS" for
"exterior aluminum awnings and canopies" in Int. Class 6;
"exterior non-metal carports, columns, shelters and patio
enclosures in the nature of screened and glass rooms, and
vinyl panels for roofing, doors and walls" in Int. Class

19; and "exterior fabric awnings and canopies; patio covers in the nature of fabric awnings" in Int. Class 22.¹

The Trademark Examining Attorney issued a final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's proposed mark, "AMERICANA BUILDING PRODUCTS," when used on the enumerated home improvement items, so resembles the registered mark, "AMERICANA COLLECTION," as applied to "aluminum siding" as to be likely to cause confusion, or to cause mistake, or to deceive.²

Applicant has appealed the final refusal to register. Briefs have been filed but applicant did not request an oral hearing. We affirm the refusal to register.

In the course of rendering this decision, we have followed the guidance of In re E.I. DuPont DeNemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973), which sets forth the factors which, if relevant, should be considered in determining likelihood of confusion.

¹ Serial No. 74/699,256, filed July 10, 1995, alleging use since June 1988.

² Registration No. 1,715,001 issued on September 15, 1992. §8 affidavit accepted and §15 affidavit filed.

The Marks

The first factor we consider is the similarity of the marks as to appearance, sound, meaning and commercial impression. The Trademark Examining Attorney argues correctly that when applicant's mark is compared to the registered mark, "the points of similarity are of greater importance than the points of difference." Esso Standard Oil Co. v. Sun Oil Co., 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), cert. denied, 351 U.S. 973, 109 USPQ 517 (1956).

Applicant's mark is AMERICANA BUILDING PRODUCTS, with the generic term, "BUILDING PRODUCTS," disclaimed. Registrant's mark is "AMERICANA COLLECTION" with the word "COLLECTION" disclaimed.

As applicant argues, when making a determination under Section 2(d) of the Act, we must look at the marks in their entireties. On yet the other hand, one feature of a mark may be recognized as having greater significant in creating a commercial impression. In this context, greater weight can be given to a dominant feature in determining whether there is a likelihood of confusion. In re National Data Corp., 224 USPQ 749 (Fed. Cir. 1985); Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693 (CCPA 1976);

and In re J.M. Originals Inc., 6 USPQ2d 1393 (TTAB 1988). Disclaimed matter is typically less significant in this analysis. Here, the dominant, non-disclaimed portions of the two marks are identical.

Because homeowners will be in the market for the goods of registrant and applicant so infrequently, we do not assume that these marks will be compared by shoppers for the respective goods on a side-by-side basis. Hence, in evaluating the similarities between the marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression, of trademarks. The general impression of registrant's mark may be recalled imperfectly, especially if it is several years later that one is shopping for applicant's goods. For this reason, we agree with the Trademark Examining Attorney that the average purchaser of applicant and registrant's goods will retain only the "AMERICANA" aspect of these marks. See Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106, 109 (TTAB 1976).

As to the strength of the word "Americana," the Trademark Examining Attorney argues that inasmuch as "the word AMERICANA has no descriptive or even suggestive meaning with respect to the goods here at issue..." the mark

is strong. However, we do find that according to dictionary entries, including one referenced in applicant's reply brief, this matter must be considered highly suggestive of a style of materials, especially in the context of applicant's goods.

Nonetheless, we agree with the Trademark Examining Attorney's conclusions that applicant's mark is similar in sound, appearance, meaning and commercial impression to registrant's mark.

The Goods

The Trademark Examining Attorney then argues that applicant's exterior aluminum awnings and canopies, carports, patio enclosures and exterior fabric awnings and canopies and registrant's aluminum siding are highly related home improvement exterior building products. She submitted a sampling of registrations demonstrating that several manufacturers of applicant's goods also manufacture and market registrant's goods under the same mark. These third-party registrations have some probative value to the extent that they may serve to suggest that the goods of the applicant and the registrant are of a type which emanate from a single source. See In re Mucky Duck Mustard Co.

Inc., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), and cases cited therein. She concludes that purchasers are accustomed to viewing the same or similar marks on the goods of the applicant and the registrant. We too conclude that some of applicant's goods (e.g., exterior aluminum canopies and vinyl panels for walls) are certainly complementary and arguably quite similar to registrant's aluminum siding.

Trade Channels

The Trademark Examining Attorney argues correctly that neither the applicant nor the registrant has in any way limited its channels of trade or class of purchasers. In the absence of any evidence to the contrary in the file, it is presumed that the application and registration encompass all goods of the type described, that the goods 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). The Trademark Examining Attorney contends that purchasers of applicant's goods would encounter registrant's goods in the same stores and at the hands of contractors involved with home improvement products and services.

Conditions of Sale

Applicant argues that the customers involved herein are sophisticated purchasers. Although there is really no evidence as to the costs of the goods of applicant or of registrant, it is probably true that the cost of putting registrant's aluminum siding on an entire house is quite expensive. It may be less obvious that this is the case if one is purchasing from applicant a single fabric awning for a window. We are hesitant to base our decision on applicant's argument of buyer sophistication in the absence of probative evidence that the customers of applicant and of registrant are sophisticated. Rather, they are ordinary purchasers having one trait in common -- they are members of the home-owning public. They turn to the registrant and applicant in order to maintain or improve their homes. Thus, there is an identity of purchasers.

Furthermore, even if we were to conclude that registrant's customers are sophisticated, the fact that purchasers are knowledgeable in a particular field does not necessarily mean that they are immune from source confusion. See In re Decombe, 9 USPQ2d 1812; In re Pellerin Milnor Corp., 221 USPQ 558 (TTAB 1983).

Strength of Mark

Applicant argues that its mark should be entitled to registration because this is not a very strong mark as there are dozens of other federal registrations and pending applications containing trademarks which include the term AMERICANA. However, decisions by previous Trademark Examining Attorneys in approving other marks are without evidentiary value and are not binding upon this Board. Each case must be decided on its own merits as third party registrations do not provide a complete record of the underlying factors in that earlier case -- facts which may not be present in the instant case. See In re National Novice Hockey League, Inc., 222 USPQ 638, 641 (TTAB 1984); In re Carvel Corp., 223 USPQ 65 (TTAB 1984)].

We accord these third party registrations little weight except to the extent they demonstrate that this term may well be highly suggestive of a wide array of unrelated goods. In focusing more specifically on the other third party registrations initially cited by the Trademark Examining Attorney in the first Office action, we conclude that the word "Americana" is entitled to a narrow scope of protection, even in the field of home construction or improvement. If we examine more closely these three other

registrations featuring the word "Americana" as a dominant feature of the mark, we conclude that it is not inconsistent to refuse registration for applicant's mark under Section 2(d) of the Act based upon the cited registration, while these three other registrations are permitted to co-exist. Given the highly suggestive nature of the word "Americana," and looking at the types of goods involved, we conclude that applicant's exterior aluminum canopies and vinyl panels for walls, for example, are more closely related to registrant's aluminum siding than are goods such as interior drapery fixtures, metal garage doors, or wooden window blinds.

Decision

On balance, when the above *du Pont* factors are weighed, as they must be, we conclude that purchasers who encounter the marks of the applicant and the registrant on the specified goods would mistakenly believe that the goods originate from the same source. Specifically, given the overall similarity of the marks, the close relationship of the goods, the infrequency with which these items are purchased combined with the imperfect recall of the average consumer, as well as an assumption that the goods of applicant and registrant both move in the same channels of

trade to ordinary purchasers, the mere fact that the word "Americana" appears to be highly suggestive of these goods is not enough to convince this Board to reverse the Trademark Examining Attorney. Of course, to the extent that there is any doubt as to the correctness of our holding, we must resolve any doubt in favor of registrant. Accordingly, the refusal to register under Section 2(d) of the Lanham Act is hereby affirmed.

R. L. Simms

E. W. Hanak

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board