

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

JAN. 19, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Baldwin Hardware Corporation**

Serial No. 75/046,595

Edgar A. Zarins of Masco Corporation for **Baldwin Hardware Corporation**.

Frances G. Smith, Trademark Examining Attorney, Law Office 103 (**Michael Szokes**, Managing Attorney)

Before **Simms**, **Chapman** and **Wendel**, Administrative Trademark Judges.

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

Baldwin Hardware Corporation (applicant), a Pennsylvania corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark THE ESTATE COLLECTION for metal cabinet hardware, namely, handles, pulls and knobs and metal bathroom accessories, namely, towel bars, towel rings, tissue holders, soap dishes and toothbrush/tumbler holders, in

Ser No. 75/046,595

Class 6.¹ The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 1,899,424, issued June 13, 1995, for the mark ESTATES COLLECTION ("COLLECTION" disclaimed) for drinking glasses, toothbrush holders, and waste baskets sold only in applicant's department stores, in Class 21; bed sheets, blankets, dust ruffles, decorative fabric table rounds, curtains, textile valances, towels, pillow shams, comforters and shower curtains, sold only in applicant's department stores, in Class 24; braided and stencil-print rugs, sold only in applicant's department stores, in Class 27; and pillows and chair pads, sold only in applicant's department stores, in Class 20. The registration is owned by Dayton Hudson Corporation.

Briefly, the Examining Attorney argues that the marks are very similar in sound, appearance and meaning (applicant does not argue that the marks are dissimilar), and that some of the goods in the registration are essentially identical to some of the goods listed in applicant's application (for example, toothbrush holders v. toothbrush/tumbler holders).

¹ Application Serial No. 75/046,595, filed January 22, 1996, based upon applicant's bona fide intention to use the mark in commerce under Section 1(b) of the Act, 15 USC §1051(b). In the application, applicant has disclaimed exclusive rights to use the word "COLLECTION" apart from the mark as shown.

Applicant, on the other hand, argues that the goods are not identical and that the channels of trade of the respective goods do not conflict. More particularly, applicant's attorney states that applicant's goods include attachable metal hardware for cabinets and the bath which are mounted to the cabinet, and metal bathroom accessories for mounting to the wall. According to applicant's attorney, each of these metal goods is made of brass, resulting in a heavy and relatively expensive item, which would cause consumers to carefully consider their purchases. Registrant's goods, according to applicant, are relatively inexpensive decorative accessories which may be purchased "on a whim." Applicant also notes that registrant's goods are sold in its department stores, whereas applicant's goods are sold to independent home specialty stores including plumbing outlets and home stores. The respective products, according to applicant, would not be found in the same aisles or departments of home centers, even if they were all sold in such stores.

In response, the Examining Attorney contends that there is no limitation with respect to the composition of registrant's goods, which may also be made of metal. The Examining Attorney also contends that there is nothing in applicant's identification that restricts applicant's goods

Ser No. 75/046,595

from being sold through department stores, including registrant's department stores.

We agree with the Examining Attorney that applicant's mark THE ESTATE COLLECTION is substantially identical to registrant's mark ESTATES COLLECTION. Except for the "S" in registrant's mark, the respective marks are almost identical. They are similar in sound, appearance and meaning.

With respect to the goods, as the Examining Attorney has noted, registrant's toothbrush holders (the item most similar to any of applicant's goods) and applicant's toothbrush/tumbler holders are very similar, if not identical, products. If only one item in a particular class in an application is the same as a product or service listed in the cited registration, and if the marks are confusingly similar, then registration may be refused. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981). The only real issue, as we see it, is whether confusion is likely despite the restriction in registrant's identification of goods limiting the channels of trade of registrant's products to its own department stores.

The fact that registrant's goods may be sold only in registrant's own stores is, of course, a factor which we

must consider. Here, applicant's goods (as we must look at them), even if registrant chose not to sell them, would be sold in similar or competing retail stores. In this case we believe that prospective purchasers, familiar with registrant's ESTATES COLLECTION toothbrush holders and related goods including drinking glasses and waste baskets, sold in registrant's department stores, who then encounter applicant's THE ESTATE COLLECTION toothbrush/tumbler holders and other goods in different retail stores, are likely to believe that applicant's goods are produced or sponsored by the registrant but now sold in a different store. That is to say, these prospective purchasers are likely to believe that registrant has now chosen to sell toothbrush holders, etc. in other stores besides its own retail department stores. In this regard, we have held that confusion may be likely even though goods may be sold in different channels of trade [Tiffany & Co. v. Classic Motor Carriages, Inc., 10 USPQ2d 1835 (TTAB 1989) (holding confusion likely between opposer's famous mark TIFFANY and applicant's mark TIFFANY CLASSIC for automobiles, despite the fact that opposer does not sell automobiles). See also Habitat Design Holdings Limited v. Habitat, Inc., 196 USPQ 425, 430 (S.D.N.Y. 1977) ("The fact that the junior user markets its products in a manner different from that used

Ser No. 75/046,595

by the registrant does not, without more, raise the inference that the public is not likely to be confused.")].

Accordingly, because the respective marks are substantially similar and some of applicant's goods are almost identical to registrant's goods, we believe that purchasers encountering applicant's goods would be confused as to source.

Decision: The refusal of registration is affirmed.

R. L. Simms

B. A. Chapman

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

Ser No. 75/046,595