

THIS DISPOSITION IS NOT
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SEPT. 2, 99

HRW

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Herman Miller, Inc.

Serial No. 75/229,955

Timothy E. Eagle of Varnum, Riddering, Schmidt & Howlett
LLP for Herman Miller, Inc.

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Office 102 (Thomas Shaw, Managing Attorney).

Before Cissel, Wendel and Bucher, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Herman Miller, Inc. has filed an application to
register the mark PUZZLE for office furniture.¹

Registration has been finally refused under Section
2(d) of the Trademark Act on the ground of likelihood of

¹ Serial No. 75/229,955, filed January 23, 1997, based on the
assertion of a bona fide intention to use the mark in commerce.

confusion with the registered mark PUZZLE CRAFT for furniture.²

Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

In looking to the du Pont factors³ which we find to be relevant in this case, we first consider the similarity or dissimilarity in the nature of the respective goods. Applicant's goods are specifically limited to office furniture. Registrant's goods, on the other hand, are broadly identified in the registration as "furniture." Applicant argues, however, that registrant in fact only uses its mark in connection with children's furniture which is readily assembled by the parents, or even by the children themselves. Applicant has made of record copies of screens from the Web site of registrant to support applicant's allegations that registrant's goods are limited in this way.

As pointed out by the Examining Attorney, it is a well established principle that the issue of likelihood of confusion must be determined on the basis of the goods as identified in the application *and* in the cited

² Reg. No. 1,923,683, issued October 3, 1995, claiming first use in December 1992.

³ See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

registration, without limitations or restrictions which are not set forth therein. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Despite any evidence which applicant may have submitted with respect to one type of furniture on which registrant is presently using its mark, because it is not limited to one type of furniture, the registration must be construed as covering furniture in general, including office furniture. For purposes of determining the likelihood of confusion under Section 2(d), the goods of the parties are identical.

Similarly, there are no restrictions in the registration as to channels of trade and thus registrant's "furniture" must be presumed to travel in all the normal channels of trade for these goods. See Kangol Ltd. v. KangaROOS U.S.A. Inc., 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992). Applicant's arguments with respect to distinctions in the manner of sale of the goods of the parties are to no avail.

It is well accepted that the greater the degree of similarity of the goods, the lesser the degree of similarity in the marks which is necessary to conclude that there will be a likelihood of confusion. See Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874,

23 USPQ2d 1698 (Fed. Cir. 1992). While applicant argues that the marks PUZZLE and PUZZLE CRAFT differ not only in sound and appearance, but also in connotation, we do not find the overall commercial impressions created by the marks to be so dissimilar as to avoid the likelihood of confusion.⁴

We agree with the Examining Attorney that the word PUZZLE, applicant's entire mark, is the dominant component of the registered mark PUZZLE CRAFT. While it is true that marks must be considered in their entireties in determining likelihood of confusion, it is also well established that there is nothing improper in giving more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

Here, the term CRAFT, when used in connection with furniture, clearly is suggestive of the goods or the manner

⁴ Applicant's arguments with respect to the distinctive style in which registrant is presently using its mark can be given no consideration. The mark, as registered, is in a typed drawing and thus registrant is free to use its mark in any style, including one very similar to that adopted by applicant. See *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937 (Fed. Cir. 1983).

in which the goods are made.⁵ Applicant itself described the CRAFT portion of the registered mark as evoking a connotation of "arts and crafts" or "handcrafted," although applicant argued that the presence of this term resulted in different connotations for the two marks as a whole. We agree that CRAFT gives the idea of being handcrafted, but, in doing so, the word is relegated to secondary importance in the mark as a whole. The suggestive word CRAFT does not detract from the dominance of the arbitrary word PUZZLE; the overall commercial impressions created by the marks PUZZLE and PUZZLE CRAFT, when used in connection with furniture, are highly similar.

Accordingly, when the marks PUZZLE and PUZZLE CRAFT are used on identical goods, we find confusion to be likely.

⁵ We take judicial notice of the dictionary definitions of "craft" which the Examining Attorney has attached to her brief. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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

R. F. Cissel

H. R. Wendel

D. E. Bucher
Trademark Administrative Judges,
Trademark Trial and Appeal Board

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