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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **O'Sullivan Industries, Inc.**

Serial No. 75/396,003

Andrew B. Mayfield of Armstrong Teasdale for applicant.

Vanessa J. Cooper, Trademark Examining Attorney, Law Office
113 (Meryl Hershkowitz, Managing Attorney).

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

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by O'Sullivan
Industries, Inc. to register the mark shown below

for, as amended, "ready-to-assemble computer furniture,
namely, workstations and mobile work centers" (in

International Class 9) and "ready-to-assemble furniture, namely, desks, entertainment centers, TV/VCR cabinets and carts, bookcases and cabinets" (in International Class 20).¹

The Trademark Examining Attorney has refused registration under Section 2(d) of the Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the previously registered mark I. D. KIDS ("KIDS" disclaimed) for "children's furniture"² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Applicant argues that the marks are different in sound, appearance and meaning. More specifically, applicant contends that the letters "I" and "D" in registrant's mark are constructed so that they will be

¹ Application Serial No. 75/396,003, filed November 25, 1997, alleging dates of first use of May 19, 1997. Although a proposed amendment to the identification of goods was rejected in the final refusal, the Examining Attorney, in her brief, indicates that her action was in error. Accordingly, she has accepted the amended identification of goods (set forth above) and, thus, there is no issue with respect thereto on appeal.

² Registration No. 1,928,469, issued October 17, 1995. For some inexplicable reason, the prosecution record includes an Examiner's Amendment wherein a claim of ownership of the cited registration was made. A handwritten notation "DO NOT PRINT" appears on the amendment. The Board has independently checked the ownership of the cited registration, and Office records show that applicant does not own the registration.

pronounced as separate letters which, in turn, will be perceived as the abbreviation for "identification." Thus, according to applicant, registrant's mark, as applied to children's furniture, connotes products "identified with kids." Applicant contrasts this with its mark which, applicant argues, does not suggest a separate pronunciation for the letters "I" and "D". Applicant goes on to assert that the letters in its mark stand for "intelligent designs," and that the design and type style of its mark creates an overall commercial impression of modern, high-tech goods used by adults, not children. As to the goods, applicant states that its goods do not include children's furniture, and that its goods are generally sold through general merchandise retailers and office supply stores rather than furniture stores. Applicant also contends that furniture products are not inexpensive goods subject to impulse purchases, and that purchasers tend to be sophisticated and brand-conscious in their buying decisions.

The Examining Attorney maintains that the dominant portions of the marks are the letters "ID" which are identical. The Examining Attorney further maintains that the presence of the descriptive term "KIDS" in registrant's mark and the design feature in applicant's mark are

insufficient to distinguish the marks. With respect to the goods, the Examining Attorney contends that they are closely related, pointing to excerpts retrieved from the NEXIS database which show, according to the Examining Attorney, that the same manufacturers make both types of furniture as involved herein.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); and In re Azteca Restaurant Enterprises Inc., 50 USPQ2d 1209 (TTAB 1999).

We first turn to consider the marks. Insofar as appearance is concerned, both marks include the letters "I" and "D" which we view as the dominant portion of the marks. Although we stress that we have considered the marks in their entireties, including the disclaimed portion of registrant's mark, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that]

the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For example, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark..." Id. at 751. In registrant's mark, "I. D." is the dominant portion, with the disclaimed term "KIDS" being relegated to a subordinate role because it lacks distinctiveness as applied to children's furniture. Likewise, in applicant's mark, the letter portion is dominant. Although applicant's mark includes a prominent design feature, we find that the literal letter portion, because it will be used to call for the goods, dominates over the design. See: In re Appetito Provisions Co., 3 USPQ2d 1553 (TTAB 1987). The letter portions also sound alike. As to meaning, although applicant asserts that the letters in its mark stand for "intelligent designs," there is nothing establishing that purchasers will perceive the letters as such. We must consider the mark as sought to be registered without the wording shown on the specimens of record. Having said this, we acknowledge that the meanings of the marks may differ, with registrant's mark connoting furniture identified with kids (or that kids will identify

with the furniture). On balance, however, we find that the similarities between the marks, when they are considered in their entireties, outweigh the dissimilarities.

In finding that the marks are similar, we note that the record is devoid of any evidence of any third-party uses or registrations of marks which include the letters "ID" in the furniture field. We also have kept in mind the normal fallibility of human memory over time and the fact that consumers retain a general, rather than specific, impression of trademarks encountered in the marketplace.

With respect to the goods, it is not necessary that they be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same person under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978). In the present case, the identification of goods in the cited registration, "children's furniture," is broad enough to encompass ready-to-assemble furniture

such as desks, workstations, bookcases and cabinets which might designed for and used by children.

In finding that applicant's and registrant's goods are related, we have considered the NEXIS excerpts. The gist of the articles is that a single entity may produce both types of goods as those involved herein. [See, e.g., "In addition to manufacturers such as Child Craft/ETC., which is dedicated to making children's furniture from cribs to computer desks, many mainline manufacturers debuted new youth designs..."] Although the articles do not indicate whether the goods are marketed under the same marks, the articles serve to suggest that applicant's and registrant's goods are of a kind which may emanate from a single source. Here, consumers familiar with registrant's mark and registrant's products, upon encountering applicant's mark on applicant's goods, are likely to mistakenly assume that applicant's mark identifies another line of furniture emanating from registrant.

Inasmuch as there are no limitations as to trade channels and purchasers in either the cited registration or the application, the identified goods must be assumed to move through all the normal channels of trade for such goods, and would be offered to all types of purchasers.

Octocom Systems Inc. v. Houston Computer Services Inc., 918

F.2d 937, 16 USPQ2d 1783, 1788 (Fed. Cir. 1990). Thus, in the present case, we assume that applicant's and registrant's furniture is sold in the same types of stores (e.g., general merchandise retailers or furniture stores) to the same classes of purchasers, including ordinary purchasers. Moreover, the goods, as identified in both the application and the registration, include relatively inexpensive furniture, the purchase of which would not require anything more than ordinary care.

We conclude that purchasers familiar with registrant's children's furniture sold under the mark I. D. KIDS would be likely to believe, upon encountering applicant's mark ID and design for computer furniture and other types of furniture such as desks, bookcases and cabinets, that the goods originated with or are somehow associated with or sponsored by the same entity.

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Decision: The refusal to register is affirmed.

R. F. Cissel

T. J. Quinn

T. E. Holtzman
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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