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**THIS DISPOSITION
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Paper No. 9
JQ

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **The Marvel Group, Inc.**

Serial No. 75/581,705

Edgar A. Zarins for applicant.

Kevon L. Chisolm, Trademark Examining Attorney, Law Office
103 (Michael Szoke, Managing Attorney).

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

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by The Marvel Group,
Inc. to register the mark ELEVATIONS for "modular office
workstations comprising frames, shelving, work surfaces,
keyboard trays, cabinets, enclosures, drawers and printer
stands."¹

The Trademark Examining Attorney has refused
registration under Section 2(d) of the Trademark Act on the

¹ Application Serial No. 75/581,705, filed November 2, 1998,
alleging a bona fide intention to use the mark in commerce.

ground that applicant's mark, if applied to applicant's goods, would so resemble the previously registered mark ELEVATIONS for "furniture"² as to be likely to cause confusion.

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

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).

In the present case, the marks are identical. Moreover, the record is devoid of any evidence of any third-party uses or registrations of the mark ELEVATIONS or similar marks in the furniture field.

Due to the identity between the marks, if there is a viable relationship between applicant's goods and

² Registration No. 1,157,343, issued June 9, 1981; combined Sections 8 and 15 affidavit filed.

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registrant's goods, a likelihood of confusion would exist. Indeed, "even when goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

With respect to the goods, it is well settled that the issue of likelihood of confusion must be determined on the basis of the goods as they are set forth in the involved application and cited registration. See, e.g., CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983). Thus, where the goods are broadly described as to their nature and type, as in the case of registrant's "furniture," it is presumed that in scope the registration encompasses all types of furniture, and that registrant's furniture moves in all channels of trade which would be normal for such goods and that they would be purchased by all potential buyers thereof. In re Elbaum, 211 USPQ 639, 640 (TTAB 1981). Here, the identification of goods in the cited registration, "furniture," is broad enough to encompass office furniture, such as office modular workstations of the type identified in applicant's application. When the goods are so compared, it must be presumed that the goods would travel in the same or similar

trade channels, and that the goods would be purchased by the same classes of purchasers.

Applicant argues that registrant is a well-known bedding manufacturer and that the cited mark is used in connection with household furniture, more specifically mattresses. Applicant goes on to point out obvious differences between home furniture and office furniture, and that the respective types of furniture are sold in different channels of trade. The question is not, however, whether consumers would confuse the two types of furniture, but rather, because of the identical marks used thereon, whether consumers would attribute a common source to the furniture. Suffice it to say, the distinctions highlighted by applicant are irrelevant in view of the constraints of our legal analysis as set forth above. See: Octocom Systems Inc. v. Houston Computers Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Decision: The refusal to register is affirmed.

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