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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re HNI Technologies Inc.¹

Serial No. 76514832

Ronald A. Sandler of Jones Day for HNI Technologies Inc.

Susan Hayash, Trademark Examining Attorney, Law Office 110
(Chris A. F. Pedersen, Managing Attorney).²

Before Quinn, Zervas and Kuhlke, Administrative Trademark
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

HNI Technologies Inc. has filed an application to register the mark BASYX (typed form) for goods ultimately identified as "office furniture, namely, office guest chairs, task chairs, executive chairs, leather lounge seating, desks, desk returns, credenzas, hutches, book cases, file cabinets, wall cabinets, presentation

¹ We note applicant's change of name from HON Technology Inc. to HNI Technologies Inc. recorded at Reel/Frame 3044/0487.

² During the course of prosecution, this application was reassigned to the above-noted examining attorney.

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furniture, lecterns, conference tables, folding tables, and training tables" in International Class 20.³

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used on its identified goods, so resembles the registered mark BASIC (standard character form) for "furniture, namely sofas, sectional couches, love seats, chairs and ottomans" in International Class 20,⁴ as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed and filed a request for reconsideration. Upon the examining attorney's denial of the request for reconsideration, the appeal was resumed. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201

³ Application Serial No. 76514832, filed May 16, 2003, alleging a bona fide intent to use the mark in commerce.

⁴ Registration No. 2427022, issued February 6, 2001.

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(Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We turn first to a consideration of the goods identified in the application and the cited registration. It is well settled that goods need not be similar or competitive in nature to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods themselves, but rather whether purchasers are likely to confuse the source of the goods. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider the cited registrant's goods as they are described in the registration and we cannot read limitations into those goods. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the cited registration describes goods or services broadly, and there is no limitation as to the nature, type, channels of trade

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or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all channels of trade normal for these goods, and that they are available to all classes of purchasers for the described goods. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

With regard to "furniture, namely sofas, sectional couches, love seats, chairs and ottomans" as identified in Registration No. 2427022, because the identification of goods in the registration is not limited to specify office or residential furniture or to any specific channels of trade, it must be presumed that the furniture encompasses furniture of all types, including office furniture, and that it is sold through all types of outlets that deal in furniture. Accordingly, for purposes of the likelihood of confusion analysis, applicant's various office chairs and leather lounge seating are encompassed within registrant's identification. Moreover, the examining attorney has presented evidence of a relationship between office furniture and residential furniture through third-party use-based registrations showing that entities have registered a single mark for both office furniture and residential furniture. See, for example, Reg. Nos. 2003830, 2455758, 2808895 and 2268960. Third-party

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registrations which individually cover a number of different items, and which are based on use in commerce, serve to suggest that the listed goods are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Accordingly, we find that the identified goods are related and overlap. In addition, inasmuch as there are no limitations in the registrant's identification of goods, we presume an overlap in trade channels and that the goods would be offered to all normal classes of purchasers.

Applicant's statements that its furniture is "simple, economical office furniture" which serves "a different function and purpose from the couches, loveseats, chairs and ottomans of the registrant" (brief p. 6) and are purchased in "office supply stores and office furniture stores" (brief p. 7) while registrant's goods are sold in registrant's retail establishments, are not persuasive. Applicant supports its statements with excerpts from applicant's and registrant's websites; however, an applicant may not restrict the scope of the goods covered in the registrant's registration by extrinsic evidence. See *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986).

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In view of the above, the du Pont factors of the similarity of the goods and the channels of trade favor a finding of likelihood of confusion as to the cited registration.

We turn then to a consideration of the marks. We find that applicant's mark is highly similar to the cited mark. Applicant's mark is the phonetic equivalent of the plural form of registrant's mark and, as such, sounds highly similar. See *Re/Max of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960 (TTAB 1980) (REMACS similar to RE/MAX). In addition, the connotation of the marks is the same inasmuch as when spoken they are both the word "basic"; therefore, they share the same meaning. Although the appearance of applicant's mark is slightly different from the mark in the registration due to the phonetic spelling, we do not believe that this difference alone creates an overall different commercial impression. Applicant's phonetic spelling of the plural form of registrant's mark simply does not create a dissimilarity sufficient to distinguish applicant's mark from the cited mark due to the similarity in sound and connotation. Thus, the factor of the similarity of the marks also favors a finding of likelihood of confusion.

In making this finding, we have considered applicant's argument regarding the possible weakness of the mark in the registration. In support of its position, applicant states that "the word 'BASIC' has been used in a variety of marks in Class 20" (brief p. 8) and "is generally understood to mean simple or plain without embellishments or luxuries" (brief p. 10). In support of this argument, applicant noted four registrations in the text of its response to the Office action and again in its brief. These references are not particularly helpful or probative. The Board does not take judicial notice of registrations; therefore, the registrations are not considered of record. In re Wada, 48 USPQ2d 1689, n.2 (TTAB 1998), aff'd, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999). To the extent that such registrations exist, are valid and subsisting, and are based on use in the United States, they do not support applicant's position. Only one of them, BASIC CHOICES, is for office furniture and the mark is more in the nature of a phrase or statement. Such examples certainly are not a sufficient basis upon which to determine that a mark "has been adopted and registered by so many individuals in a particular field for different products embraced by said field that a registration of the mark in that trade is entitled to but a narrow or restricted scope of

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protection." *Baf Industries v. Pro-Specialties, Inc.*, 206 USPQ 166, 175 (TTAB 1980).

With regard to applicant's argument based on the common meaning of the word "basic," we note that applicant did not provide a dictionary definition of the word. We take judicial notice of the following definitions of "basic" from *The American Heritage Dictionary of the English Language*, (4th ed. 2000): "1. adj. Of, relating to, or forming a base; fundamental. 2. Of, being, or serving as a starting point or basis... n. 1. An essential, fundamental element or entity. 2. Basic training. ."

University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983) (Board may take judicial notice of dictionary definitions). It would appear that the word "basic" has several meanings and nuances. It is possible that the word "basic" may be suggestive, but there is simply nothing of record to conclude that it is a weak mark. However, even if it were, weak marks are entitled to protection against registration by a subsequent user of the same or similar mark for the same or closely related goods or services. *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182

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USPQ 108, 109 (CCPA 1974); Hollister Incorporated v. IdentAPet, Inc., 193 USPQ 439 (TTAB 1976).

We have also considered applicant's contention that furniture is relatively expensive, and more care is taken by prospective purchasers in the purchasing decision. While there is no evidence on this point, even assuming such is the case, we find that the substantial similarity of the marks and goods clearly outweigh any purchaser sophistication. In re Decombe, 9 USPQ2d 1812 (TTAB 1988); In re Pellerin Milnor Corp., 221 USPQ 558 (TTAB 1983). See also HRL Associates, Inc. v. Weiss Associates, Inc., 12 USPQ2d 1819 (TTAB 1989), aff'd, Weiss Associates, Inc. v. HRL Associates, Inc., 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (similarities of goods and marks outweighed sophisticated purchasers, careful purchasing decision, and expensive goods).

Moreover, the fact that purchasers are sophisticated in a particular field does not necessarily mean that they are knowledgeable in the field of trademarks or immune from source confusion. In re Total Quality Group Inc., 51 USPQ2d 1474, 1477 (TTAB 1999); In re Hester Industries, Inc., 231 USPQ 881, 883 (TTAB 1986) ("While we do not doubt that these institutional purchasing agents are for the most part sophisticated buyers, even sophisticated purchasers

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are not immune from confusion as to source where, as here, substantially identical marks are applied to related products.")

In conclusion, we find that because the marks are similar, the goods are the same and/or closely related, and the channels of trade are the same or overlapping, confusion is likely between applicant's mark and the cited registration.

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.