

**THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB**

Mailed:

August 16, 2006  
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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re L-7 Designs, Inc.

Serial No. 76562232

Dara L. Onofrio of Onofrio Law for L-7 Designs, Inc.

Mitchell Front, Trademark Examining Attorney, Law Office 111  
(Craig D. Taylor, Managing Attorney).

Before Hohein, Hairston and Holtzman, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

L-7 Designs, Inc. has filed an application to register on the Principal Register in standard character form the term "HANDMADE MODERN" for "kits for making furniture comprised primarily of unfinished or finished wood; metal composites or metal pieces; [and] foam, plastic, fabric or self stick veneers, namely[,] kits for making tables, kits for making table tops and kits for making bookshelves" in International Class 20.<sup>1</sup>

Registration has been finally refused under Section 2(e) (1) of the Trademark Act, 15 U.S.C. §1052(e) (1), on the

<sup>1</sup> Ser. No. 76562232, filed on November 28, 2003, which is based on an allegation of a bona fide intention to use such term in commerce.

ground that, when used in connection with applicant's goods, the term "HANDMADE MODERN" is merely descriptive thereof.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of such use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from

consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, in its brief, argues among other things that the Examining Attorney has "improperly dissected the Applicant's mark and accorded undue weight to the individual word elements of HANDMADE MODERN" instead of considering such term as a whole. Noting, in addition, that the Examining Attorney "has only submitted evidence demonstrating that the terms, 'HANDMADE' and MODERN[,] are descriptive when viewed individually, not in combination," applicant contends that:

Applicant's mark when viewed in its entirety, including composite terms, conveys a distinct commercial impression that is only suggestive of the products. It is well established that a non-descriptive mark can result from the combination of two or more descriptive terms if it conveys a distinct commercial impression. See *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968) (SUGAR & SPICE held not merely descriptive of bakery products); *In re TBG Inc.*, 229 USPQ 759 (TTAB 1986) (SHOWROOM ON LINE held not merely descriptive of computerized interior furnishings product information service); *In re Shutts*, 217 USPQ 363 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow removal hand tool).

HANDMADE MODERN when viewed in its entirety conveys an original commercial impression that is merely suggestive of the goods.

Citing a definition of "modern" which it made of record, applicant further argues that:

The Merriam-Webster Online Dictionary at [www.merriamwebster.com](http://www.merriamwebster.com) contains the following definition:

Modern: **1a:** of, relating to, or characteristic of the present or the

immediate past: CONTEMPORARY. **1b**: of, relating to, or characteristic of a period extending from a relevant remote past to the present time. **2**: involving recent techniques, methods, or ideas: UP-TO-DATE. **3**: *capitalized*: of, relating to, or having the characteristics of the present or most recent period of development of a language. **4**: of or relating to modernism: MODERNIST.

The definitions of the term MODERN ... are not specifically meant to be "descriptive" in relation to kits for making furniture. Moreover, these "do it yourself" kits will include items such as wood veneer applied to furniture, contact paper applied as decorative surface elements, resin powder, elements to construct small furniture or home furnishing accessories, textile printing kits and kits to use in conjunction with computers for printing fabric designs. Consequently, the word modern in conjunction with the described items does not "naturally direct attention to the purpose or function of the product." *Zatarain's, Inc. v. Oak Grove Smokehouse, Inc.*, 698 F.2d 786 (5<sup>th</sup> Cir. 1983).

When examining the terms together, ... "HANDMADE MODERN" the phrase as a whole is "suggestive" not descriptive of the types of goods ... because it "requires the consumer to exercise imagination in order to draw a conclusion as to the nature of the goods and services". *Zatarain's, Inc. v. Oak Grove Smokehouse, Inc.*, 698 F.2d 786 (5<sup>th</sup> Cir. 1983)  
....

The entire mark "HANDMADE MODERN" does not automatically cause one to conclude that the nature of the goods consists of kits to build furniture and thus it is a suggestive mark. Moreover, HANDMADE MODERN could just as easily convey or be "suggestive" of specialty clothing or pottery.

Noting, in addition, that "[a]nother test to measure the descriptiveness of an item analyzes the extent to which a

term has been used by others who are marketing similar products," applicant contends that:

A search of the [I]nternet revealed that the term "HANDMADE MODERN" is not used by others to market kits for building furniture. Instead, the term was occasionally used to describe jewelry and rugs. Since others have not used the same term to market similar products[,] it can be concluded that HANDMADE MODERN is not descriptive.

Furthermore, the TTAB [in *TBG*] has held that an Examiner's failure to cite any third-party uses of a mark rejected for being "merely descriptive" can support an applicant's argument that the mark has no immediate, obvious meaning in relation to its services. ....

Applicant also asserts that the furniture made from its kits is more properly or accurately described as "retro" in character and style rather than "modern," pointing out that:

In March 2005, the book HANDMADE MODERN: MID-CENTURY INSPIRED PROJECTS FOR YOUR HOME ... by the Applicant, L-7 Designs, Inc. ([Author:] Todd Oldham)[,] was published. The HANDMADE MODERN kits take inspiration from the projects described in this book.

In fact, the term ["]modern["] does not describe the spectrum of projects in the book. For example, the Corduroy Ottoman ..., Storage Bench ... and the Thrifty Throne ... are more adequately described as "retro" in style and character. The Merriam Webster Online Dictionary defines ["]retro["] as: "relating to, reviving, or being the styles and especially the fashions of the past: fashionably nostalgic or old-fashioned" .... Since the kits take inspiration from the retro projects of Applicant's book, the term ["]modern["] does not necessarily describe the goods.

Lastly, applicant urges that because "furniture can often include the word modern, the wording MODERN in the mark does not adequately identify the Applicant's goods with any one

degree of particularity." The term "HANDMADE MODERN," applicant insists, "requires the customer to use thought, imagination, and extrapolation, and thus is suggestive" of its kits for making furniture.

The Examining Attorney, on the other hand, argues that the term "HANDMADE MODERN, taken as a whole, merely describes a feature, characteristic and quality of the applicant's kits for making furniture." As the Examining notes, the definition which he made of record from The American Heritage Dictionary of the English Language (3rd ed. 1992) defines the term "handmade" as meaning "made or prepared by hand rather than by machine." Therefore, he maintains, "[c]onsumers who purchase the applicant's kits will be constructing tables and bookshelves by hand," which "will result in a *handmade* piece of furniture" (italics in original). The Examining Attorney also contends that "applicant's kits will feature designs based on *modern* furniture" (italics in original), pointing out that the "attached excerpts of 20 stories taken from the LEXIS/NEXIS computer database," which he made of record, demonstrate that "the term 'modern' is commonly used to refer to a style of furniture." The following excerpts are illustrative (emphasis added):

"'[I]t doesn't take a lot of money to buy good design,' says Roberts, the owner of Zeitgeist **Modern Furniture** Classics in Denver. ....

....  
Midcentury [sic] **modern furniture**, from the 1940s through the 1960s, is what makes Dave and Yvonne Steers most comfortable. The look suits their 1955 Denver house." -- Sun-Sentinel (Fort Lauderdale, FL), June 11, 2004

(article headlined: "EXPERTS SAY GOOD FURNITURE IS TIMELESS");

"... manufacturers cut corners, rattan starts to look ratty and is soon surpassed in popularity by plywood and molded fiberglass **modern furniture**." -- Los Angeles Times, June 10, 2004;

"Ted Boerner, ... a **modern furniture** designer based in San Francisco, has opened a New York showroom ...." -- New York Times, June 10, 2004;

These guys are the fathers of the **modern furniture** movement, and ... owner Carl Tranghese has stocked his store with their distinctive sofas, chairs, tables, and bureaus." -- Boston Globe, June 6, 2004;

"The retro-style barbershop is a contrast to the stylish and ever-changing Plaza Lounge and Café next door, which has **modern furniture** and trendy drinks like mojitos." -- Newsday (New York, NY), June 6, 2004;

"If you're doing a plain polka dot, it brings a more youthful, fun look to **modern furniture**," advises Becky Bishop Hill, owner of New Metropolis, a contemporary furniture and accessories store in Winter Park." -- Orlando Sentinel (Florida), June 6, 2004;

"In that way, if you live in a traditional house but have a few pieces of **Modern furniture** and you want a more contemporary feeling, her fabrics, as well as lighting, can pull it all together, she adds." -- Biloxi Sun Herald, June 5, 2004, and Chicago Tribune, May 30, 2004;

"The company's heritage was rich, its reputation as an innovative manufacturer of **modern furniture** secure, but, when Lynch took over in 1994, the company was widely recognized as mismanaged ...." -- Union Leader (Manchester, NH), May 23, 2004;

"The accent is on textures with a blend of European and Scandinavian **modern furniture**, seen in the living room's custom

wood pieces ...." -- Sarasota Harold-Tribune (Florida), May 2, 2004;

"**Modern furniture** dominates this room, a highlight being a womb chair by early Modernist designer Eero Saarinen." -- Baltimore Sun, April 25, 2004;

"Robert Bruce Thomas creates pieces of upscale **modern furniture** so hip they're admired by art thieves." -- Richmond Times Dispatch (Virginia), March 15, 2004; and

"The home is furnished with appropriate-to-the-era mid-century **modern furniture**, which is negotiable with the sale." -- Detroit News, February 6, 2004 (article headlined in part: "Modernist house fulfills its promise").

With respect to the book referenced by applicant, the Examining Attorney observes that such book "contains 52 home projects" and, after noting applicant's previously mentioned statement that its "HANDMADE MODERN furniture kits 'take inspiration from the projects described in this book,'" points out that (*italics in originals*):

In a forward section of the book, the author ... makes clear that the projects in the book are based on *modern* design. The author states:

I've always admired the modern aesthetic in design. But it's interesting to me how design has strayed so far away from the roots of true modernism, which always combined hand-kissed sensibilities with technology and automation. Sadly, most people have come to think of modernism as cold or sterile or antiseptic or wildly uncomfortable--or all of the above. But it's really not that way at all. Modernism can be every bit as warm and decorative and wonderfully cozy (not to mention unimpeachably pretty) as the most traditional overstuffed bergere--or fully feathered nest.

With this book, we've accented the aspects that keep modernism warm and vital, always emphasizing the *handmade* in Handmade Modern ....

.... This page of the book was ... attached as evidence. This statement makes clear that the applicant is emphasizing *modern* design principles for its projects. If the applicant's kits are to be based on the projects contained in this book, then the kits will clearly feature modern designs. Furthermore, in the above statement, the applicant places great emphasis on the fact that such projects will be *handmade*.

Based upon such evidence, the Examining Attorney concludes that not only are the words "HANDMADE" and "MODERN," when used in connection with applicant's goods, respectively descriptive of kits for making furniture which is made by hand and is modern in style, but the combined term "HANDMADE MODERN" likewise merely describes kits for making modern furniture by hand. While acknowledging that applicant correctly asserts that "a mark that combines descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning," the Examining Attorney properly adds, however, that "if each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive." See, e.g., In re Putnam Publishing Co., 39 USPQ2d 2021, 2022 (TTAB 1996) [term "FOOD & BEVERAGE ONLINE" found merely descriptive of news and information service for the food processing industry]; and In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990) [term "OATNUT" held merely descriptive of bread containing oats and hazelnuts]. Here, the Examining Attorney insists, "the wording *handmade* and *modern* both

retain their descriptive significance as applied to the goods" inasmuch as applicant's "kits will be used to make *modern-inspired* furniture pieces by hand" (italics in original). Applicant's argument that the word "modern" is "not specifically meant to be 'descriptive in relation to the kits for making furniture'" is "not persuasive," according to the Examining Attorney, because the evidence demonstrates that "the term *modern* has a specific meaning in the context of the goods" (italics in original). Thus, as the Examining Attorney correctly observes, "[t]he fact that a term may have different meanings in other contexts is not controlling on the question of [mere] descriptiveness." See, e.g., *In re Chopper Industries*, 222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, supra; and *In re Champion International Corp.*, 183 USPQ 318, 320 (TTAB 1974).

Upon consideration of the arguments and evidence presented, we agree with the Examining Attorney that the term "HANDMADE MODERN" is merely descriptive of applicant's goods. Such term immediately conveys, without the need for speculation, imagination or conjecture, that a significant feature or characteristic of applicant's "kits for making furniture" is that they permit the purchaser thereof to assemble a piece of modern style furniture which is made by hand. Plainly, when viewed in the context of applicant's goods, there is nothing in the term "HANDMADE MODERN" which is incongruous, ambiguous or even suggestive, nor is there anything which would necessitate the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to

consumers of applicant's goods. Instead, such term merely describes, with the requisite particularity, two significant features or characteristics of applicant's goods, namely, that its kits are for making Danish, Scandinavian or other modern styles of furniture by hand. See, e.g., In re Entenmann's Inc., supra ["term OATNUT readily informs purchasers, with the required degree of particularity, of two not inconsequential ingredients in applicant's bread"]. Finally, as the Examining Attorney has also properly noted, it is well settled that the fact that applicant may be or intends to be the first and/or sole user of a merely descriptive term does not entitle it to registration thereof where, as here, the evidence of record demonstrates that the term projects only a merely descriptive significance in the context of applicant's goods. See, e.g., In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983); and In re Mark A. Gould, M.D., 173 USPQ 243, 245 (TTAB 1972).

**Decision:** The refusal under Section 2(e)(1) is affirmed.