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OF THE TTAB

Paper No. 11
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Buck House, L.L.C.

Serial No. 76/130,954

Myron Amer, Esq. for Buck House, L.L.C.

Susan Leslie DuBois, Trademark Examining Attorney, Law
Office 111 (Craig Taylor, Managing Attorney).

Before Cissel, Bottorff and Drost, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On September 20, 2000, applicant filed the above-
referenced application to register the mark "BUCK HOUSE" on
the Principal Register for "buying and selling of
antiques," in Class 35. The basis for filing the
application was applicant's claim of first use of the mark
in commerce on August 9, 2000.

Upon examination of this application, the Examining
Attorney made two requirements of applicant. The first was
to amend the recitation of services in order to make the

recitation more definite. She suggested that applicant adopt the following: "retail stores featuring antiques; retail consignment stores featuring antiques; import and export agency services featuring antiques."

The second requirement was for acceptable specimens of use. Although the application had characterized the specimens submitted with it as "advertising and promotional materials," the actual specimens appear to be receipts for furniture and chandeliers purchased by applicant. The first is from Kate Bannister in London. It shows that a pair of leather tables and a pair of glass chandeliers were sold to "Buck House" on August 23, 2000. The second specimen submitted with the application appears to be a certification issued by Focus Packing Services Limited, also in London, on the next day, August 24, 2000. It is addressed to Deborah Buck, applicant's president. It certifies that the tables and chandelier purchased from Kate Bannister, as well as a mirror purchased from the Charlton House Antiques in London, "were produced more than 100 years ago and are therefore antique." The mark applicant seeks to register does not appear on this specimen. The third specimen appears to be an invoice for a mahogany and marble console that applicant purchased from Fred Silberman in New York. This invoice is addressed to

"Buck House, Deborah Buck, 150 East 77 Street 14A, New York, N.Y. 10021."

The Examining Attorney held that the specimens submitted with the application are not evidence of actual service mark use because they do not show the use of the mark by applicant in connection with services performed by applicant. She characterized the specimens as "invoices and receipts show[ing] the purchase of antiques by 'Buck House,'" and noted that applicant's purchase of antiques does not necessarily constitute a service within the meaning of the Lanham Act.

Applicant responded to the first Office Action with argument as to both requirements. Applicant declined to adopt the suggested recitation of services "because it is inaccurate." Applicant included a dictionary definition of the word "antique" as "a piece of furniture, decorative object, or work of art produced in a former period, or, according to U.S. Customs laws, 100 years before the date of purchase; to shop for or collect antiques." Applicant argued that based on this definition, the recitation of services meets the standard for definiteness set forth in TMEP Section 1301.05, and that the specimens submitted with the application "show the practice of applicant's service to be the purchase and sale of antiques."

In her second Office Action, the Examining Attorney made final the requirements for a more definite recitation of services and for specimens which show applicant's use of the mark it seeks to register in connection with services rendered to others.

Applicant responded by timely filing a Notice of Appeal on November 5, 2001. Both applicant and the Examining Attorney filed briefs, but applicant did not request an oral hearing before the Board. As noted in the Board's ruling on May 15, 2002, the late-filed reply brief filed by applicant has not been considered, except to the extent that it confirms that applicant seeks to amend the recitation of services to adopt the language that the Examining Attorney indicated in her brief would be acceptable: "antique brokerage services, namely, buying and selling antiques for and to collectors."

In that applicant has not filed any objection to this conclusion, we consider the requirement for an acceptable recitation of services to have been met. Accordingly, the only issue before us in this appeal is the propriety of the requirement for new specimens of use.

On this issue, it is not at all clear that counsel for applicant understands the basis for the Examining Attorney's finding that the invoices submitted as specimens

do not constitute acceptable specimens of use, which Section 1(a)(1) of the Lanham Act requires. Applicant's appeal brief focuses on whether the amended recitation sets forth a service within the meaning of the Act, concluding that "'experts' like applicant, in recognizing and verifying the authenticity of 'antiques,' provide a valuable service in the antique trade." (Brief, p.3) Applicant goes on to state that the specimens show the practice of applicant's service by evidencing the purchase of antiques.

This point has never been disputed. The Examining Attorney does not question the fact that applicant brokers antiques. As she points out, however, this is not the issue. The issue is whether the specimens of record show applicant's use of the mark it seeks to register as a service mark, i.e., used by applicant to identify applicant as the source of "antique brokerage services, namely, buying and selling antiques for and to collectors."

Trademark Rule 2.56(b)(2) states that "a service mark specimen must show the mark as actually used in the sale or advertising of the services." As noted above, although the application, as filed, claimed that the mark "is used in advertising and promotional materials, and one specimen showing the mark as actually used is presented herewith,"

three specimens were actually attached, but only two of the three specimens submitted with the application even show the mark applicant seeks to register, and neither of these specimens shows applicant's use of the mark in the sale or advertising of its services. These specimens do not meet the requirement of the rule for specimens to show use of the mark in the sale or advertising of the services. They do not show use of the mark by applicant, and they do not show use of the mark in the sale or advertising of applicant's services. They do show that applicant purchases antiques, but that, in and of itself, is not a service within the meaning of the Lanham Act because it is not an activity necessarily performed for the benefit of others.

In summary, because the specimens of record do not show applicant's use of the mark it seeks to register in the sale or advertising of the service of brokering the purchase and sale of antiques for others, they do not meet the requirements of Trademark Rule 2.56(b)(2).

DECISION: The requirement for acceptable specimens of use is affirmed.