

12/12/02

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 13  
RFC

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Buck House, L.L.C.  
Request for Reconsideration

Serial No. 76/130,954

**Myron Amer, Esq.** For Buck House, L.L.C.

Susan 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 July 30, 2002, the Board affirmed the requirement for acceptable specimens of applicant's use of the mark it seeks to register in connection with the services specified in the application. Applicant timely filed a request for reconsideration of the Board's decision on August 27, 2002.

Applicant's request appears to be grounded on the contention that the Board may not have understood precisely what the basis was for the Examining Attorney's finding

that the specimens submitted with the application do not meet the requirements of the Trademark Act.

(Reconsideration Request, p. 3) Applicant argues that the problem the Examining Attorney raised is that the letterhead on the third specimen discussed in the Board's opinion, the receipt from Fred Silberman for a mahogany console which Silberman sold to applicant, was "not generated by applicant." Applicant contends that "although not in the hand of applicant, the BUCK HOUSE-embodied letterhead is at the behest of applicant and, most important, is critical because if not provided by Fred Silberman (at applicant's behest) but by applicant's stationer, it would be self-serving[sic] as to pedigree of the object involved."

Careful consideration by the Board of applicant's argument does not reveal any error in the Board's ruling. As the Board pointed out at page five of its opinion, the issue is whether the specimens show applicant's use of the mark it seeks to register as a service mark, i.e., used by applicant to identify the source of the services applicant renders. We concluded that the specimens do not show use of the mark by applicant, and went on to note that they do not show use of the mark in the sale or advertising of applicant's services, either.

Even applicant does not contend that the receipt from Fred Silberman constitutes use of the mark by applicant. Applicant does argue, however, that the party to whom applicant will sell the console referenced in the Silberman receipt "will undoubtedly not just display the described antique console in mahogany etc., but will enhance the display by providing a copy of the specimen to an admirer thereof," so that Silberman's receipt will end up being used to promote applicant's services.

This scenario is entirely speculative. We have no evidence that such receipts are used in this manner in this field of commerce. Moreover, even if this were industry practice and the record established that as a fact, it would not change the fact that the receipt in question simply is not evidence of the use of the mark by applicant. As has been repeatedly stated, in order to meet the requirement of the Act for specimens of use of the mark, even if the specimens refer to applicant, the specimens must show applicant's use of the mark, rather than use by someone other than applicant.

For this reason, the argument applicant raises in its request for reconsideration is without merit. Accordingly, the July 30, 2002 decision of the Board stands as issued.