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Paper No. 13
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Kolpin Manufacturing Inc.

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Serial No. 75/827,982

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Gerald E. Helget of Rider Bennett Egan & Arundel for Kolpin Manufacturing Inc.

Tarah K. Hardy, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

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Before Seeherman, Rogers and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

Kolpin Manufacturing Inc. (applicant) has filed an application to register the mark HOT SEAT (in typed form) for goods ultimately identified as "insulated cushions for fishing, hunting and outdoor use to insulate the buttocks from and conform to irregular surfaces" in International Class 20.[1]

[1] Serial No. 75/827,982 filed on October 20, 1999. The application claims a date of first use and first use in commerce of December 30, 1998.

The Examining Attorney has refused to register applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of the registration of the mark HOT SEATS (in typed form) for "furniture, namely, fireside benches" in International Class 20.[2]

After the Examining Attorney made the refusal final, this appeal followed. Both applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

We reverse.

The Examining Attorney points out that applicant's mark is merely the singular form of the registered mark. In addition, while acknowledging that the goods are not identical, the Examining Attorney argues that cushions and benches are sold under the same marks and are highly related. In addition, she has submitted evidence that trademarks for benches and cushions were registered under the same mark. Also, the Examining Attorney maintains that the evidence "proves that benches and seat cushions are related enough to prove a likelihood of confusion." Examining Attorney's Final Refusal at 3.

Applicant, on the other hand, submits that the goods must be considered based on the goods set forth in the application and registration. Applicant argues that its

[2] Registration No. 2,196,905 issued October 20, 1998.

goods would be sold in hunting and fishing specialty stores while registrant's goods would be sold in furniture stores. In addition, applicant points out that its goods are designed to be used on irregular surfaces while "[b]y definition, a fireside bench is furniture that presents a **regular, flat** surface to any cushions that might be used." Applicant's Br. at 5 (emphasis in original).[3]

In a case involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors set out in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). In considering the evidence of record on these factors, we must keep in mind that "[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

The first question we address is whether applicant's and registrant's marks, when compared in their entireties, are similar in sound, appearance, or meaning such that they create similar overall commercial impressions. In this

[3] Applicant also twice argues that "[a]s shown by the attached printout from the TESS search system, the mark HOT SEAT has been registered for use on a number of goods." Applicant's Br. at 5; Response dated July 31, 2000 at 4. No printout is in the application file.

case, the marks are virtually identical because applicant's mark is merely the singular of the registered mark HOT SEATS.

Therefore, we now look at the other relevant du Pont factors concerning the nature of applicant's and registrant's goods, their channels of trade, and prospective purchasers. The Examining Attorney has argued that "benches and seat cushions are related enough to prove a likelihood of confusion." If applicant's goods were identified only as "seat cushions" and if registrant's goods were identified only as "benches," we agree that this would likely be a different case. However, applicant correctly points out that we are bound to determine the question of likelihood of confusion based on the identification of the goods in the application and the registration. In re Dixie Restaurants, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1493, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987); Paula Payne Products v. Johnson Publishing Co., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973).

The limited identifications of goods are important in this case. Both applicant and registrant limit their goods significantly. Registrant's identification of goods is

limited to “furniture, namely, fireside benches.” Applicant’s identification of goods is very narrow, i.e. “insulated cushions for fishing, hunting and outdoor use to insulate the buttocks from and conform to irregular surfaces.” Applicant’s identification of goods shows that its cushions are insulated; for hunting, fishing, and outdoor use; and designed to conform to irregular surfaces. In other words, they are not designed to be used with furniture. They are designed to be used outdoors when furniture is not available. Hunters, fisherman, and others interested in outdoor activity would be potential purchasers and the cushions would be sold in hunting and fishing stores and sporting goods sections of other stores. Registrant’s fireside benches are clearly furniture and they would be marketed to those interested in purchasing furniture in furniture stores and furniture sections of stores. Therefore, applicant’s and registrant’s goods would not be sold in the same channels of trade, the prospective customers would be different, and it is highly unlikely that they would be used together.

We also note that “hot seat” is a unitary term that means “the electric chair (slang)” and “a situation of

stress, embarrassment, or uneasiness."[4] In addition, this unitary term would have additional very suggestive connotations when applied to both applicant's and registrant's goods. Registrant's fireside benches would be "hot seats" when they are close to a roaring fire, and applicant's insulated seat cushions for hunting, fishing, and outdoor use would also be a "hot seat" on a cold day in the field. The suggestiveness of the marks makes it less likely that potential purchasers familiar with registrant's fireside benches who subsequently encountered applicant's insulated cushions for hunting, fishing, and outdoor use would assume that there is any relationship or association with registrant.

Therefore, because of the suggestiveness of the marks and the significant differences in the goods, their channels of trade, and their prospective purchasers, we conclude that there is no likelihood of confusion.

Decision: The refusal to register is reversed.

[4] *Webster's II New Riverside University Dictionary* (1984). We take judicial notice of this dictionary definition. 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).