

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 7, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Carolina Apparel Trading

Serial No. 75/240,152

David M. Carter of Carter & Schnedler, P.A.
for Carolina Apparel Trading.

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Office 109 (Ronald Sussman, Managing Attorney).

Before Wendel, Holtzman and McLeod, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Carolina Apparel Trading has filed an application to
register the mark CAT NAP for "children's sleeping
pallets."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 USC § 1052(d), on the ground

¹ Serial No. 75/240,152, filed February 11, 1997, based on an
assertion of a bona fide intention to use the mark in commerce.

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of likelihood of confusion with the following registered marks, all of which are owned by the same entity:

CATNAPPER for reclining chairs;²

for reclining chairs;³

for furniture, namely, chairs;⁴ and

for furniture, namely, chairs.⁵

Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

² Registration No. 931,385, issued June 8, 1971, Section 8 & 15 affidavits accepted and acknowledged; first renewal.

³ Registration No. 1,068,554, issued June 28, 1977, Section 8 & 15 affidavits accepted and acknowledged; first renewal. A disclaimer has been made of the word CHAIR.

⁴ Registration No. 1,426,594, issued January 27, 1987, Section 8 & 15 affidavits accepted and acknowledged. A disclaimer has been made of the words POW'R LOUNGER.

⁵ Registration No. 1,416,665, issued November 11, 1986, Section 8 & 15 affidavits accepted and acknowledged. A disclaimer has been made of the words POW'R LOUNGER.

Here, as in any determination of likelihood of confusion, two key considerations in our analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods with which the marks are being used. See *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

We first consider the similarity or dissimilarity of the respective marks. The Examining Attorney takes the position that the word CATNAPPER is either the sole or the central feature of each of the cited marks; that CATNAPPER, similar to applicant's mark CAT NAP, is formed from the root word "catnap"; and that, as a result, the cited marks and applicant's mark "share common appearances, sounds, connotations and commercial impressions."

Applicant maintains that the three composite marks of registrant contain so many elements in addition to the word CATNAPPER that the likelihood of confusion is nonexistent with respect to these marks. Thus, applicant has restricted its specific arguments to the registration for the mark CATNAPPER alone. Even here, applicant argues that the Examining Attorney has improperly dissected the cited mark by considering only the CATNAP- portion of the mark. Applicant insists that if the mark CATNAPPER is considered

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as a whole, the distinction in connotation between applicant's mark CAT NAP, the activity of taking a cat nap, and the cited mark CATNAPPER, the person taking a cat nap, results in different commercial impressions for the marks.

It is well recognized that purchasers are not infallible in their recollection of trademarks and often retain only a general or overall impression of the marks. See *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); and *Interco Inc. v. Acme Boot Company, Inc.*, 181 USPQ 664 (TTAB 1974). Here we find the marks CAT NAP and CATNAPPER to be similar in appearance, sound and connotation and to create similar overall commercial impressions. The distinction which applicant attempts to draw between the activity of taking a cat nap and the person taking the cat nap is much too subtle to reasonably result in different commercial impressions on the part of the ordinary purchaser. The mental picture conjured up is the same. Whether it is CAT NAP being used with a sleeping pallet or CATNAPPER being used with a reclining chair, we visualize a place to take a short nap. See *Geo A. Hormel & Co. v. Hereford Heaven Brands, Inc.*, 341 F.2d 158, 144 USPQ 493 (CCPA 1965)[LITTLE SIZZLERS and SIZZLE conjure up identical mental images when used as marks for meat products].

Furthermore, although three of the cited marks contain elements other than the term CATNAPPER, we agree with the Examining Attorney that the term CATNAPPER is the central feature of each of these composite marks. The remaining wording in the cited marks is either descriptive, and has been disclaimed, or highly suggestive. Although descriptive portions of a mark cannot be ignored, the fact remains that the purchasing public is more likely to rely on the non-descriptive portion as the indication of source. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993). The design elements are also of little import, because it is the word portion of a mark, rather than any design feature, unless highly distinctive, which is more likely to be remembered and relied upon by purchasers in calling for the goods. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). In two of the marks CATNAPPER is clearly being used as the house mark. In all of the composite marks, CATNAPPER is the dominant feature and, as such, the commercial impressions for these marks are highly similar to applicant's mark.

Turning to the goods involved, the Examining Attorney argues that the sleeping pallets of applicant and the chairs of registrant are related furniture items which

would travel in the same channels of trade. Applicant, on the other hand, contends that the goods are not competitive; that applicant's children's sleeping pallets are similar to sleeping bags and are not furniture items; and that applicant's children's sleeping pallets would be marketed through toy stores and/or stores carrying sleeping bags whereas registrant's chairs, and in particular reclining chairs, would be marketed in furniture stores.

As a general principle, the issue of likelihood of confusion must be determined on the basis of the goods as identified in the application and in the cited registration(s). *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed.Cir. 1987). It is not necessary that the goods of the applicant and registrant be similar or even competitive to support a holding of likelihood of confusion, it is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate, or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) and the cases cited therein. If there are no restrictions

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in the application or registration(s) as to channels of trade, the parties' goods must be assumed to travel in all the normal channels of trade for goods of this nature. See *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992).

The Examining Attorney has made of record the dictionary definition of a "pallet" as a "thin straw-filled mattress" or a "small hard bed." Applicant has submitted drawings of the product with which its mark is intended to be used which show the pallet as a narrow mattress similar in appearance to a sleeping bag and has offered its definition of a "pallet" as a "narrow sleeping mattress." Thus, we find it reasonable to consider applicant's goods similar in kind to a small bed or a mattress.

The Examining Attorney has made of record several third-party registrations showing that the same entities produce chairs, beds, and/or mattresses (or chairs and sleeping bags) and market these goods under a single mark. Applicant argues that this evidence is not dispositive as to whether the listed goods actually travel in the same channels of trade. Although the third-party registrations are admittedly not evidence of use of the marks in commerce, they are adequate to suggest that these are goods which may be produced by a single entity. See *In re Albert*

Trostel & Sons Co., *supra*; and In re Mucky Duck Mustard Co., 6 USPQ2d 1467 (TTAB 1988). Accordingly, if highly similar marks are used on sleeping pallets, which may be likened to small beds or mattresses (or sleeping bags), and on chairs, purchasers may assume that the goods emanate from the same source. This alone is sufficient to support a conclusion of likelihood of confusion. Furthermore, we see no reason not to assume that the goods being produced by a single entity would travel in the same channels of trade. Certainly it would be a reasonable assumption that the various furniture items listed in these registrations would travel in the same channels of trade.

Although applicant attempts to draw distinctions between its sleeping pallets and the mattresses of the third-party registrations or between the specific types of chairs listed in certain of the registrations and the chairs of registrant, we find such distinctions untenable. It has been established that applicant's sleeping pallets are akin to mattresses or small beds. The cited registrations cover not only reclining chairs, but chairs in general. Nor do we find any merit in the argument that the goods of applicant and registrant are targeted to different customers. It seems readily apparent that the purchasers of sleeping pallets for their children might

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well be the same persons purchasing reclining chairs or other chairs for their own use.

Finally, applicant argues that the registered CATNAPPER marks are not famous and should not be viewed "expansively." While there is no evidence of record with respect to the fame of the registered marks, we would point out that applicant has not made of record any third-party registrations for other marks containing the term CATNAP- for similar goods. Thus, there is no reason to limit the scope of protection for registrant's marks to less than that afforded to strong marks.

Accordingly, in view of the similarity of the marks and the related nature of the goods upon which they are, or are intended to be, used, we find confusion to be likely.

Decision: The refusal to register under Section 2(d) is affirmed.

H. R. Wendel

T. E. Holtzman

L. K. McLeod
Administrative Trademark Judges,
Trademark Trial and Appeal Board

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