UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/419733

APPLICANT: Lifetime Products, Inc.

CORRESPONDENT ADDRESS:
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RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: LIFETIME ACCENT

CORRESPONDENT'S REFERENCE/DOCKET NO: 15499.371.1

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address..

Serial Number 76/419733

Applicant is requesting reconsideration of a final refusal dated May 12, 2005. The amended identification of goods is acceptable. However, after careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Applicant has amended its identification of goods to append "excluding laboratory furniture and bedroom furniture" to the identification. This does nothing to change the analysis. The identification of goods as previously written already did not include bedroom furniture. Very few people presumably have use for a folding table in their bedroom. The issue is whether the purchasing public is likely to be confused into thinking that applicant's products emanate from the registrant or vice versa. Simply adding applicant's house mark to what is otherwise a mark identical to the registrant's does not lessen the likelihood of confusion. Where marks are otherwise virtually the same, the addition of a house mark is more likely to add to the likelihood of confusion than to distinguish the marks. *Key West Fragrance & Cosmetic Factory, Inc. v. Mennen Co.*, 216 USPQ 168 (TTAB 1982). It is likely not only that the two products sold under these marks would be attributed to the same source but also that purchasers would mistakenly assume that both were products of applicant by virtue of its use of LIFETIME with the shared term ACCENT. *See In re Dennison Mfg. Co.*, 229 USPQ 141, 144 (TTAB 1986), citing *Menendez v. Holt*, 128 US 514 (1888) ("It is a general rule that the addition of extra matter such as a house mark or trade name to one of two otherwise confusingly similar marks will not serve to avoid a likelihood of confusion between them."); *A.T. Cross Co., v. Jonathan Bradley Pens, Inc.*, 470 F.2d 689, 176 USPQ 15 (2nd Cir. 1972); *W.E. Bassett Co. v. Revlon, Inc.*, 435 F.2d 656, 168 USPQ 1 (2nd Cir 1970); *Hat Corp. of America v. John B. Stetson Co.*, 223 F.2d 485, 106 USPQ 200 (C.C.P.A. 1955);

Hammermill Paper Co. v. Gulf States Paper Corp., 337 F.2d 662, 143 USPQ 237 (C.C.P.A. 1964). Each such case must be determined on its own facts and circumstances. *Rockwood Chocolate Co., Inc. v. Hoffman Candy Co.*, 372 F.2d 552, 152 USPQ 599 (C.C.P.A. 1967).

The examining attorney has presented substantial evidence showing that other registrants make both applicant's goods and bedroom furniture, and has also shown that retailers sell both applicant's goods and bedroom furniture in the same locations. Applicant submitted evidence that its goods are sold on Amazon.com. The examining attorney attaches hereto additional evidence showing that bedroom furniture is also sold on Amazon.com.

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c).

/James T. Griffin/
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