

This Opinion is not a
Precedent of the TTAB

Mailed: July 10, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Horizon Merchant, Inc.
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Serial No. 86736229
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Melissa M. Martinez of Martinez Law Group, PLLC,
for Horizons Merchant, Inc.

Kevon L. Chisolm, Trademark Examining Attorney, Law Office 103,
Michael Hamilton, Managing Attorney.

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Before Kuhlke, Taylor and Ritchie,
Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Horizon Merchant Inc., DBA Billy Bob's Beds, ("Applicant") seeks registration on the Principal Register of the mark FURNITUREBOBS (in standard characters) for "retail furniture stores" in International Class 35.¹

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that

¹ Application Serial No. 86736229 was filed on August 25, 2015, based upon Applicant's allegation of use under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming first use anywhere and use in commerce since at least as early as April 1, 2014.

Applicant's mark is likely to be confused with the marks in the three registrations listed below all owned by the same entity.

1. Registration No. 2023414²

BOB'S DISCOUNT FURNITURE (in typed form³ and with DISCOUNT FURNITURE disclaimed) for "retail furniture store services" in International Class 42.

2. Registration No. 4432651⁴

BOB'S DISCOUNT FURNITURE and design (DISCOUNT FURNITURE disclaimed) as shown below, for "Retail discount store services featuring furniture, mattresses and mattress foundations; On-line retail discount store services featuring furniture, mattresses and mattress foundations" in International Class 35; and

"Furniture, mattresses and mattress foundations" in International Class 20.



3. Registration No. 4432652⁵

BOB'S DISCOUNT FURNITURE and design (DISCOUNT FURNITURE disclaimed) as shown below, for "Retail discount store services featuring furniture, mattresses and mattress foundations" in International Class 35.



² Issued December 17, 1996; second renewal.

³ Before November 2, 2003, "standard character" drawings were known as "typed" drawings. A typed mark is the legal equivalent of a standard character mark. TMEP § 807.03(i) (April 2017).

⁴ Issued November 12, 2013.

⁵ Issued November 12, 2013.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

LIKELIHOOD OF CONFUSION

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976) (“The 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.”). We consider the likelihood of confusion factors about which either party introduced evidence, and treat the remaining factors as neutral. *See M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944 (Fed. Cir. 2006) (even within *du Pont* list, only factors that are “relevant and of record” need be considered).

In analyzing likelihood of confusion, we limit our discussion to Registration No. 2023414 for the mark BOB’S DISCOUNT FURNITURE (in standard characters) for “retail furniture store services” as this mark and services are the closest to Applicant’s mark and recited services. If we find no likelihood of confusion with this mark, then it follows there would be no likelihood of confusion with the marks in the

other cited registrations. *See In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2008) (confining likelihood of confusion analysis to one of multiple cited registrations deemed closest to the applied-for mark).

A. The Services, Trade Channels and Classes of Consumers

We begin our analysis with the second and third *du Pont* factors and consider the relationship between the services at issue, the channels of trade in which they travel and the classes of purchases to which they are offered. In determining the relationship between the services, we look to the services as identified in the involved application and cited registration. *See Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods [and services] set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods [and services], the particular channels of trade or the class of purchasers to which the sales of goods [and services] are directed.”). Here, both Applicant’s application and the cited registration recite retail furniture store services.⁶ Because the services are legally identical, and Applicant’s and Registrant’s recitations of services are unrestricted as to trade channels, we must presume both Applicant’s and Registrant’s restaurant services move in the same ordinary channels of trade and are marketed to the same

⁶ Applicant’s services are identified as “retail furniture stores” and Registrant’s services are identified as “retail furniture store services.” While there is a slight difference in the wordings of the recitations, we find the difference in wording to be a matter of nomenclature, and the services to be substantively the same.

potential classes of ordinary consumers. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion). We note that Applicant did not dispute this finding. Indeed, it did not even address the relatedness of the services, channels of trade or classes of purchasers in its appeal brief.

Thus, the second and third *du Pont* factors strongly weigh in favor of a finding of likely confusion.

C. Similarity/Dissimilarity of the Marks

We now consider the *du Pont* factor of the similarity or dissimilarity of the marks and compare them, as we must, in their entireties in terms of sound, appearance meaning and commercial impression. *See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). However, and as Applicant acknowledges, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of the mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). That is, “[t]he proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). *See also San*

Fernando Electric Mfg. Co. v. JFD Electronics Components Corp., 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd mem.*, 972 F.2d 1353 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Here, the average customer includes members of the general public seeking to purchase furniture. Finally, given the identical retail store services, "... the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992).

With these principles in mind, we compare Applicant's FURNITUREBOBS mark with the cited mark BOB'S DISCOUNT FURNITURE and find that they are similar in their entireties. Both marks include as essential elements the descriptive word "FURNITURE" and the given name "BOBS" or, as in the case of the cited mark "BOB'S" inclusion of the possessive forming "apostrophe s" rather than the pluralizing "s" present in Applicant's mark. The word "DISCOUNT" in the cited mark fails to distinguish it from Applicant's mark as it merely describes a characteristic of the furniture store services provided by Registrant. Indeed, the word "Discount," along with the word "Furniture" has been disclaimed in the cited mark. Although Applicant has not disclaimed the descriptive portion, i.e., "Furniture" of its applied-

for mark, we point out that Applicant's mark is in a compound format, and is thus considered unitary for disclaimer purposes. TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") Section 1213.05(a) (April 2017). The descriptive meaning of the term "Furniture" in Applicant's mark remains the same despite the absence of a space between it and "BOBS." While we cannot, and do not, ignore these descriptive elements in both marks, they have little source-indicating significance.

We are not persuaded by Applicant's assertion that the apostrophe, along with other elements in the cited mark, change the connotation of BOB'S from that of BOBS in Applicant's mark.⁷ That is, we do not find that the apostrophe "s" in BOB'S in the cited mark would be understood as a singular possessive and the lack thereof in BOBS in Applicant's mark to render the mark as pluralizing the term BOBS. Rather we find that both spellings lend a possessive impression to the name BOB in both marks, particularly given the lack of alternative meanings engendered by the use of

⁷ Applicant particularly maintains that when the marks are viewed in their entirety they "clearly" have different meanings and commercial impressions. Specifically, Applicant urges:

The term "BOB'S" and "BOBS" have different connotations. The use of "BOB'S in Registrant's marks is as a possessive which is in line with the context of the registered marks. BOB'S DISCOUNT FURNITURE means the discount furniture belonging to Bob. There is no other way to interpret the connotation of the registered marks.

Applicant's mark, on the other hand, is not a possessive use of "BOB" and does not in any way connote the same meaning as Registrant's marks. Applicant's use of "BOBS" is as a plural noun. More particularly, the plural noun is actually the whole of Applicant's mark: FURNITUREBOBS. The connotation being that FURNITUREBOB is the name of a location and FURNITUREBOBS is the name of more than one location.

BOB in connection with Applicant's identified furniture-related services. Consumers viewing both Applicant's and the Registrant's mark, in their entireties, are likely to perceive them as identifying furniture store services under the purview of "Bob."

We also find that the reversal of the positions of BOB and FURNITURE in the marks fails to distinguish them. "[T]he reversal in one mark of the essential elements of another mark may serve as a basis for a finding of no likelihood of confusion only if the transposed marks create distinctly different commercial impressions." *In re Nationwide Industries Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988), (citing *Bank of America National Trust and Savings Assn. v. American National Bank of St. Joseph*, 201 USPQ 842 (TTAB 1978), and the cases cited therein). Here, the arrangement of the essential terms "BOB" and "FURNITURE" in the marks have no bearing on their connotation, as they still impart the connotation of furniture store services owned and/or overseen by Bob and they convey very similar commercial impressions. In making this finding, we are cognizant that it is unlikely that the marks will be viewed on a side-by-side basis and, given the fallibility of memory of the average purchaser, he or she may transpose these elements in their own minds, especially in view of the identical services. To the extent Applicant argues that Applicant's mark would be perceived by consumers as the name of more than one location of a furniture store and the cited mark as an individual that owns the discount furniture that is to be sold, we find that consumers are likely to perceive the marks as variant marks under which identical furniture services are offered, perhaps in a different location.

Although Applicant's mark and the cited mark differ in appearance and sound due to additional or transposed elements, we find that in their entirety, they are substantially similar in connotation and commercial impression due to their shared essential elements "FURNITURE" and "BOB." We find so even in the face of the third-party evidence (discussed below) submitted by Applicant.

We thus find the *du Pont* factor of similarity of the marks favors affirmance.

D. Strength of Cited Mark

We turn then to the sixth *du Pont* factor which requires us to consider evidence pertaining to the number and nature of similar marks used in connection with similar goods and services, as this is the factor which is at the heart of Applicant's arguments in favor of registration of its applied-for mark. Applicant maintains that "the Cited Marks are very weak when considered in light of the numerous third-party uses of similar marks on similar goods [and services], both registered marks and common law trademarks and/or trade names in actual use in the furniture industry; therefore the Cited Marks only deserve a limited scope of protection." Br. p. 12.⁸

Although we have considered all of the evidence of record on this factor, we focus on that which Applicant highlighted (summarized in table form) during prosecution and in its brief. We add that we do not find the third-party evidence of additional entities using Bob's, Bobs, Bobby, and Bob combined with a surname for furniture as a collateral attack on the cited registration. Rather, we consider it, as appropriate, merely to determine the scope of protection to be accorded the cited mark.

⁸ 4 TTABVue 17.

Turning then to Applicant's evidence, we first note that Applicant has made of record copies of various third-party registrations covering the same or similar goods and services that include the given name "BOB'S" or derivatives thereof, to show that the purchasing public is able to distinguish between these businesses based on small distinctions between the marks. The registrations are summarized in the following table, included in Applicant's Response to Office Action dated March 31, 2016 and reproduced below.⁹

⁹ Table 1, submitted with the Response to Office Action dated March 31, 2016; TSDR pp. 4-6. Copies of the listed registrations are found at TSDR pp. 21-117.

Applicant noted in the footnote for the second Roche Bobois entry that although "[t]his registration was originally filed under §44(e) of the Lanham Act[,]...a statement of use in commerce in the U.S. was filed by the registrant on Feb. 22, 2007.

Trademark	Registration No.	Goods/Services (relevant)
MITCHELL GOLD + BOB WILLIAMS HOME FURNISHINGS	4,751,602	Retail store services featuring furniture
BOB'S SLEEP CENTER	4,503,285	Furniture, mattresses and mattress foundations; Retail discount store services featuring furniture, mattresses and mattress foundations
BOB-O-PEDIC	4,483,900	Mattresses containing memory foam; furniture containing memory foam
BIG BOB'S OUTLET	4,171,258	Retail store services and wholesale distributorship services in the field of flooring, carpeting, mattresses and furniture; Franchising services, namely, offering business management assistance in the establishment and/or operation of flooring, carpeting, mattresses and furniture retail stores; Advertising services for flooring, carpeting, mattresses and furniture retail stores.
MITCHELL GOLD + BOB WILLIAMS	3,759,075	Bed linens, namely, comforters, bed spreads, bed skirts and duvet covers, bed sheets, pillow cases, pillow shams, blanket throws, quilts, mattress covers; shower curtains; towels, namely, bath towels, washcloths, hand cloths and fingertip towels; window treatments, namely, curtains and draperies.
MITCHELL GOLD + BOB WILLIAMS	3,219,509	Furniture.
BILLY BOB'S BEDS (stylized)	2,695,438	Furniture; beds; bedding components, namely bed frames and mattresses.
B BOB MILLS FURNITURE (stylized)	4,431,827	Retail store services featuring furniture.
BOB MILLS	4,379,228	Retail store services featuring furniture.

FURNITURE		
DUCKY-BOB'S	3,440,807	Rental of furniture
BIG BOB'S CARPET CLEANING COMPANY (stylized)	2,011,750	Carpet cover and furniture cleaning services.
BOB TIMBERLAKE (stylized)	3,367,458	Freestanding furniture and decorative furnishings, namely, bedroom furniture, living room furniture, dining room furniture, office furniture, occasional furniture, outdoor furniture, tables, desks, credenzas, chairs, sofas, ottomans, loveseats, beds, headboards, footboards, armoires, chests, trunks, display cabinets, cupboards, hutches, buffets, sideboards, benches, bookcases, pillows, entertainment centers sold without electronic components, picture frames, mirrors, shelves, racks, and wall decor items, namely, plaques, sold through retail department and furniture stores, mail order, retail home furnishing outlet stores, and/or specialty retail home furnishing shops.
THE WORLD OF BOB TIMBERLAKE	2,003,830	freestanding high quality furniture and decorative furnishings, namely, bedroom furniture, living room furniture, dining room furniture, office furniture, occasional furniture, tables, chairs, sofas, ottomans, loveseats, beds, headboards, footboards, chests, cupboards, hutches, buffets, sideboards, benches, desks, entertainment centers, and mirrors, sold through retail department and furniture stores, mail order, retail home furnishing outlet stores, and/or specialty retail home furnishing shops
BOB GAIL SPECIAL EVENTS	3,597,447	rental of furniture
BOB BARKER	2,183,885	wholesale distributorship services in the field of bedding and beds
BOB BARKER (stylized)	2,653,637	wholesale distributorship services in the field of bedding and beds
VACATION BOB	4,506,010	Beach chairs
BOBKONA	3,767,792	Furniture; and furniture for house, office and garden.
ROCHE BOBOIS	1,224,801	Pillows, furniture, blankets, table covers, table cloths, textiles made of natural and/or synthetic fibers or combinations thereof; retail furniture sales outlets and decorator services
ROCHE-BOBOIS ¹	1,060,784	Furniture
RR ROSANNE	4,739,046	Furniture

ROBERTS		
ROBERTO CAVALLI	4,641,959	Furniture; mirrors; picture frames; furniture goods, namely, chairs, cupboards, cushions, desks, divans, dressers, tables, pillows, display units, television stands, poufs, showcases, wall units, wardrobes, library furniture, living room furniture, bedroom furniture, drawers, furniture chests, upholstered furniture; beds; chests of drawers; stools; seats
ROBERT ALLEN	3,908,049	Retail furniture stores
ROBERT ALLEN	3,907,228	Upholstered furniture
J. ROBERT SCOTT	3,950,149	table lamps; floor lamps; electric lighting fixtures; Furniture; carvings of ivory, wood and bone; sculptures of bone, ivory, wood, plaster, and plastic
PAUL ROBERT	3,274,663	Furniture
ROBERT SMITH	3,912,966	Furniture; Online retail store services featuring furniture; mail order catalog services featuring furniture
ROBERT A.M. STERN COLLECTION	3,723,740	Furniture
ROBERTA SCHILLING COLLECTION	3,735,632	Manufacture of wood, hand-painted furniture to order and/or specification of others

We find that these registrations have little probative value in our decision because the marks at issue in this proceeding are much closer to each other than are any of the marks in the registrations listed above. With the exception of the two Bob Mills Furniture marks, none of the remaining marks include both the word “BOB’S” (or any derivative thereof for that matter) and the word “FURNITURE.” The addition of the non-descriptive surname “Mills” to the BOB MILLS marks imbue those marks with an additional point of distinction between them and Applicant’s mark that is not found in the cited mark.

Applicant also made of record a table summarizing a listing of verified businesses that use the name BOB’S (or derivatives thereof) to identify furniture-related businesses. These business were identified using either the Demographics Now® database or a limited Google® search, and were subsequently contacted by one of

Applicant's attorneys, whose affidavit is of record, to verify actual use of the trademarks/trade names in connection with furniture-related goods and services.

These business are summarized in the tables reproduced below.¹⁰

Table 2:

Trademark/Trade Name Currently in Use	Location Contacted	Web Presence, other than directory (if applicable)	Goods/ Services	Years in Business
Bob's Half Price Bedding	Melbourne, FL	https://www.facebook.com/BobsBedsBedsBeds	Mattress sales	38
Big Bob's Outlet	Independence, MO	www.bigbobsoutlet.com	Furniture Sales	12-13
Bob's Chair Shop	Lancaster, KY	www.bobschairshop.com	Furniture Sales	"since 1973"
Bob's Custom Upholstery	Thurmont, MD		Furniture Re-Upholstering	53
Bob's Discount House	Revere, MA	http://www.bbb.org/boston/business-reviews/furniture-retail/bob-s-discount-house-in-revere-ma-111119/	Furniture Sales	"since 1978"
Bob's Furniture	Parker, AZ		Furniture Sales	>25
Bob's Furniture Repair Service	Rochester Hills, MI		Furniture Repair	"almost 22"
Bob's New & Used Furniture	Myrtle Creek, OR	https://www.angieslist.com/companylist/us/or/myrtle-creek/bob%27s-new-and-used-appliances-reviews-5443254.htm	Furniture Sales	25
Bob Shay's Upholstery	Worcester, MA	www.bobshaysupholstering.com	Furniture Re-Upholstering	>56; "entire adult life"
Bobs Upholstery	Colton, SD		Furniture Re-Upholstering	"since 1945"
Bob's Upholstery	Lancaster, CA		Furniture Re-Upholstering	40
Bob's Upholstery	Groesbeck, TX		Furniture Re-Upholstering	22
Bob's Upholstery	Orange, CA	http://www.bobsupholstery.net/	Custom Furniture Sales and Furniture Re-Upholstering	>20
Bob's Furniture & Auction	Dardanelle, AR		Furniture Sales	Not available
Bob & Fran's Factory Direct	Brainerd, MN	www.furnishingnetwork.com/bobandfrans	Furniture Sales	25
Bob Hoch Home Furnishings	Lebanon, PA	www.bobhochsfurniture.com/	Furniture Sales	58

¹⁰ Tables 2 and 3, submitted with the Response to Office Action dated March 31, 2016; TSDR pp. 31-34.

Bob McCormick & Associates Inc.	Atlanta, GA		Furniture Sales	35
Bobby Wilson Home Furniture	Owensboro, KY	https://www.facebook.com/pages/Bobby-Wilson-HOME-Furniture/112244962212065	Furniture Sales	20
Bob Mills Furniture	Oklahoma City, OK	www.bobmillsfurniture.com	Furniture sales	40
Bobs Furniture Hospital	Goshen, IN	www.angieslist.com/companylist/us/in/goshen/bob%27s-furniture-hospital-reviews-2497112.htm	Furniture repair	>40
Bob's Furniture Outlet	Cleburne, TX		Furniture sales	>12
Bob Loftis Furniture	Muskogee, OK	www.bobloftisfurnitureloft.com/home www.facebook.com/pages/Bob-Loftis-Furniture/111861385543224	Furniture sales	50

Table 3:

Trademark/Trade Name Currently in Use	Location Contacted	Web Presence, other than directory (if applicable)	Goods/ Services	Years in Business
Bob's Furniture	Tipton, MO	www.bobfurniture.net/index2.html	Furniture sales	21
Bob's Outlet	Sauk City, WI	www.bobsoutletfurniture.com	Furniture sales	39
Bob's Factory Outlet	Ashland, WI	www.bobsfactoryoutlet.com www.facebook.com /pages/Bobs-Factory- Outlet/132320560146125	Furniture sales	10
Bob Timberlake	Lexington, NC	www.bobtimberlake.com www.facebook.com/pages/Bob- Timberlake/261460590641	Furniture and art work sales	20
Bob's Furniture & Bedding	Middlebury, VT		Mattress sales	"about 20"
Builder Bob's Home Improvement Center	Ardmore, OK	www.builderbobs.com www.facebook.com /builderbobsardmore	Furniture sales	27
Mitchell Gold + Bob Williams	Houston, TX	http://www.mgbwhome.com	Furniture sales	>2
Bobby's Furniture Inc.	Hamlet, NC	www.bobbysfurniturehamlet.com www.facebook.com/bobbys.furniture	Furniture sales	32
Bobby Trendy	Beverly Hills CA	www.bobbytrendy.com	Furniture rental	10
Bobby Denning Furniture Inc.	Mount Olive, NC	www.bobbydenningfurniture.com	Furniture and appliance sales	>50
Bobby E. Williams Furniture	Tunica, MS		Furniture sales	40
Bobby's Home Fashion	Orange, NJ	www.facebook.com/pages/Bobbys -home-fashion/399256853499725	Furniture sales	4
Bobby Bowdon's Discount Furniture	Calera, AL	https://www.facebook.com/bobbybowdonsfur niture/	Furniture sales	50+
Bobby Pannell Furniture Warehouse Inc.	Ecu, MS		Furniture sales	"Many many"
Bobby T's Mattress and Furniture	Searcy AR	www.bobbytsmattressand furniture.com www.facebook.com/bobbyt mattressandfurniture?rf	Furniture and mattress sales	28

		=169007413110630		
Bob's Discount Mattress	Asheboro, NC		Mattress sales	15
Bob's Family Furniture	Palmyra, NY	www.bobsfamilyfurniture.com	Furniture Sales	>61

Again, while this evidence appears prolific, of the verified thirty-nine uses, only eleven include both the terms “BOB’S” and “FURNITURE.” Of those eleven, six include additional terms which further distinguish the marks and alter their commercial impressions, i.e., BOB’S FURNITURE & BEDDING, BOB’S FURNITURE REPAIR SERVICE, BOB’S FURNITURE & AUCTION, BOB MILLS FURNITURE, BOB’S FURNITURE HOSPITAL and BOB LOFTIS FURNITURE. We find the remaining five uses, i.e., BOB’S FURNITURE, BOB’S NEW & USED FURNITURE, BOB’S FURNITURE OUTLET, BOB’S FURNITURE AND BOB’S FAMILY FURNITURE, do not evidence such a widespread and significant use of the terms “BOBS” and “FURNITURE” in the furniture industry that we can conclude that the cited mark is so weak that the public would be able to distinguish the source of Applicant’s services from those of Registrant by the slight differences in their respective marks. *Cf.*, *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136, n.2 (Fed. Cir. 2015) (at least fourteen relevant third-party uses or registrations of record); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1672, n.1 (Fed. Cir. 2015) (at least twenty-six relevant third-party uses or registrations of record); *see also, In re Broadway Chicken Inc.*, 38 USPQ2d 1559 (TTAB 1996) (“Broadway” is weak for restaurant services based on evidence that hundreds of restaurants and eating establishments use Broadway as a trademark or trade name).

Applicant also made of record third-party registration evidence demonstrating that it is common practice in the furniture industry to utilize a given name in

combination with additional terms, usually descriptive or generic in nature, to identify their goods and/or services to their consumers. Examples of these marks include, by way of example, LINDA'S STUFF (Registration No. 4617600), STEVE'S STATION (Registration No. 4115847), DANIEL'S AMISH (Registration No. 467760) and BILLY BALDWIN (Registration No. 2588057). While the marks in these registrations show use of given names in the furniture industry, they have little to no persuasive value in our determination of whether the use of the given name "Bob" with the descriptive/generic term "Furniture" is so prevalent in the furniture industry that marks including the term are entitled to only a limited scope of protection.

While this evidence fails to demonstrate that the cited mark is entitled to only a narrow scope of protection, we recognize that there is a certain degree of weakness in the cited mark given that it is comprised of descriptive terms and a given name. Nonetheless, even weak marks are entitled to protection against registration of similar marks for identical goods and/or services. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 1401 182 USPQ 108, 109 (C.C.P.A. 1974). *See also In re Max Capital Group*, 93 USPQ2d 1243, 1246 (TTAB 2010); *In re Colonial Stores*, 216 USPQ 793, 795 (TTAB 1982). Here, Registrant is at least entitled to protection from registration of Applicant's very similar mark for identical services.

In view of the foregoing the sixth *du Pont* factor, at best, slightly favors Applicant.

Lastly, we note that both Applicant and the Examining Attorney have relied on a number of prior decisions to bolster their positions with regard to a finding, or not, of likelihood of confusion in this case. While our decision is made within the confines of

established statutes, rules and case precedent, it is axiomatic that each case must be decided on its own facts. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to [Applicant’s] application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”); and *In re Merrill Lynch, Pierce, Fenner & Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987). We are therefore obligated and have assessed the registrability of Applicant’s mark on its own merits and have carefully considered the arguments and evidence of record in this case, even if not specifically addressed in the decision.

E. Conclusion

Based on our findings above, we are unpersuaded by Applicant’s argument that there is only a theoretical possibility of likelihood of confusion. Instead, we conclude that despite any weakness that may be attributed to the mark in the cited registration, given the identity of the services, trade channels and classes of purchasers, and the similarity in the commercial impressions of the marks, a likelihood of confusion exists between Applicant’s applied-for mark FURNITUREBOBS and the cited registered mark BOB’S DISCOUNT FURNITURE.

Decision: The refusal to register Applicant’s mark FURNITUREBOBS under Section 2(d) of the Trademark Act is affirmed.