

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Skoro

Mailed: February 1, 2008

Concurrent Use No. 94002206

THREE BOYS ENTERPRISE, LLC

v.

KEANE CONSTRUCTION INC.

Before Quinn, Drost and Mermelstein  
Administrative Trademark Judges.

Applicant, Three Boys Enterprise, LLC (hereinafter "Three Boys"), has filed an application for the concurrent use registration of the mark NATIONAL BARN COMPANY for "commercial, residential and agricultural building construction" in International Class 37<sup>1</sup>. Three Boys claims as its territory the area comprising the states of Tennessee, Alabama, Kentucky, Virginia, North Carolina, South Carolina, Georgia, Ohio, Pennsylvania, New York, West Virginia, Rhode Island, Delaware, Maryland and Florida. The application names a second applicant, Keane Construction Inc. (hereinafter "KCI"), as the excepted user of the mark NATIONAL BARN COMPANY for "commercial, residential and

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<sup>1</sup> Application Serial No. 78287919 was filed on August 15, 2003, and claims first use anywhere and first use in commerce in January 1998.

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agricultural building construction" in International Class 37<sup>2</sup> as claiming the exclusive right to use its mark in the entire United States and its territories except for Tennessee, Alabama, Kentucky, Virginia, North Carolina, South Carolina, Georgia, Ohio, Pennsylvania, New York, West Virginia, Rhode Island, Delaware, Maryland and Florida. Additionally, the KCI application likewise claims the same geographical area as acknowledged by Three Boys in its application and names Three Boys as the excepted user of its mark for the area comprising the fifteen identified states.

On March 8, 2007, the parties filed a concurrent use agreement, dated March 12, 2003 (KCI) and April 9, 2003 (Three Boys), which provides for concurrent use by the parties of the marks in question within their respectively specified geographical territories.

At the outset it is noted that these companies both acknowledge that they were and continue to be operating concurrently since perhaps as early as 1998. In order to continue, they entered into a coexistence agreement in 2003. The agreement specifically provides that the parties are concerned there may be a likelihood of confusion arising from the similar terms utilized by the parties, and in order to avoid such confusion, agree, in pertinent part, (1) to do

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<sup>2</sup> Application Serial No. 78287913, filed August 15, 2003, and claiming a date of first use anywhere and first use in commerce of March, 1992.

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business only in their respective territories and not expand into the other's territory; (2) to share the website with separate portals, and hyperlinks to direct consumer traffic to the appropriate division (Central, Eastern, Mountain, Northeast) and clearly mark the territory to which each party is entitled on the website; (3) not to damage the goodwill of the name/mark NATIONAL BARN COMPANY; and finally there are provisions about rights of succession should one company or the other disband.

Upon careful consideration of the agreement between the parties, the Board is persuaded that, under the circumstances of this case, concurrent use by the parties of their involved marks will not, in fact, be likely to cause confusion. We have considered such factors as (1) the nature of the services provided, e.g., building construction where the purchasers are more likely to deal with more local entities and to be sophisticated and careful purchasers, and (2) the fact that the companies have coexisted for a long period of time without any reported actual confusion.,

**DECISION:**

Applicant, Three Boys Enterprise, LLC, is entitled to registration of its mark NATIONAL BARN COMPANY for "Commercial, residential and agricultural construction" in International Class 37 for area comprising the states of Tennessee, Alabama, Kentucky, Virginia, North Carolina, South Carolina, Georgia, Ohio, Pennsylvania, New York, West Virginia, Rhode

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Island, Delaware, Maryland and Florida.  
(Application Serial No. 78287919).

Applicant, Keane Construction Inc., is entitled to registration of its mark NATIONAL BARN COMPANY for "Commercial, residential and agricultural construction" in International Class 37 for the area comprising the entire United States and its territories except for the states of Tennessee, Alabama, Kentucky, Virginia, North Carolina, South Carolina, Georgia, Ohio, Pennsylvania, New York, West Virginia, Rhode Island, Delaware, Maryland and Florida. (Application Serial No. 78287913).