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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86382828
Applicant	Abbyson Living Corporation
Applied for Mark	BELMONT
Correspondence Address	JAYE G HEYBL KOPPEL PATRICK HEYBL & PHILPOTT 2815 TOWNSGATE RD , STE 215 WESTLAKE VILLAGE, CA 91361 UNITED STATES generalmail@koppelpatent.com
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Filer's Name	Gregory Z. Boger
Filer's e-mail	gboger@koppelpatent.com, generalmail@koppelpatent.com, kjet-son@koppelpatent.com
Signature	/Gregory Z. Boger/
Date	03/02/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Abbyson Living Corporation  
Mark: BELMONT  
Serial No.: 86/382,828  
Filed: September 2, 2014  
Examining Attorney: Snapp, Tina Louise  
Law Office: 116  
Attorney Docket No.: 1027-47-005

ATTN: TTAB  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPEAL BRIEF**

**I. AMENDMENT OF THE GOODS**

Please amend the goods as follows: “Luxury or high-end domestic plush, living-room furniture, namely, ~~chairs, recliners, sofas, couches, and ottomans~~ entertainment consoles, cabinets, drawers, and storage units.”

**II. STATEMENT OF THE CASE**

Applicant seeks to register the mark “BELMONT” used in connection with “luxury or high-end living-room furniture, namely, entertainment consoles, cabinets, drawers, and storage units.” The Examiner refused registration maintaining that “BELMONT” is likely to be confused with Registration Nos. 513,425 and 732,490.

### **III. PROCEDURAL BACKGROUND**

The Examiner submitted Office Actions of December 22, 2014 and January 30, 2015. Applicant submitted responses thereto on January 12, 2015 and October 28, 2015, respectively, the latter including a Request for Reconsideration and an Appeal to the Board. On December 2, 2015, the Examining Attorney denied Applicant's Request for Reconsideration.

### **IV. STATEMENT OF THE ISSUE**

Whether the mark “BELMONT” when used in connection with “luxury or high-end living-room furniture, namely, entertainment consoles, cabinets, drawers, and storage units” is likely to be confused with the marks “BELMONT” for “box springs” and “mattresses.”

### **V. ARGUMENT**

#### **Standard of Review**

In reviewing the refusal to register a trademark, “the Board reviews the appealed decision of the Trademark Examining Attorney to determine if it was correctly made.” TBMP § 1217. The Board may affirm for the reasons set out by the Examiner, may affirm based upon a different rationale, or may reverse the decision. *Id.*

#### **There is no Likelihood of Confusion Between Registration Nos. 513,425 and 732,490 and Applicant’s Mark.**

The Examining Attorney issued a Section 2(d) Refusal based on a likelihood of confusion, stating that U.S. Registration Nos. 513,425 and 732,490 for “BELMONT” (“the ‘425 and ‘490 Registrations”) are confusingly similar to Applicant’s mark. Applicant respectfully submits that

such a determination is in error. For instance, consumers are not likely to be confused as to the source or sponsorship of Applicant's goods and the '425 and '490 Registrations' goods because the goods are dissimilar. Furthermore, the consumers at issue are sophisticated and discriminating, so it is highly unlikely that there would be any confusion regarding the source of the goods. In addition, Applicant's goods and the '425 and '490 Registrations' goods travel in different channels of trade. For at least the reasons mentioned herein, Applicant respectfully submits that the Board should reverse the Examiner's decision to deny registration of Applicant's mark "BELMONT."

**A. Applicant's goods and the '425 and '490 Registrations' goods are dissimilar so there is no likelihood of confusion as to the source or sponsorship of the goods.**

One of the primary factors in testing for likelihood of confusion under the *du Pont* likelihood of confusion test is "[t]he relatedness of the goods or services as described in the application and registration(s). See, e.g., *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1244 (TTAB 2010); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009)." TMEP § 1207.01(a)(iii). Furthermore, there is "no rule that certain goods or services are per se related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto. See, e.g., *In re White Rock Distilleries Inc.*, 92 USPQ2d 1282, 1285 (TTAB 2009) (regarding alcoholic beverages); *Info. Res. Inc. v. X\*Press Info. Servs.*, 6 USPQ2d 1034, 1038 (TTAB 1988) (regarding computer hardware and software); *Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 USPQ2d 1169, 1171-72 (TTAB 1987) (regarding food products); *In re Quadram Corp.*, 228 USPQ 863, 865 (TTAB 1985) (regarding computer hardware and software); *In re British Bulldog, Ltd.*, 224 USPQ 854, 855-56 (TTAB 1984) (regarding clothing)." TMEP § 1207.01(a)(iv).

Applicant's goods and the '425 and '490 Registrations' goods are significantly different such that there is no likelihood of confusion as to the source or sponsorship of the goods. Applicant seeks to register "BELMONT" for "luxury or high-end living-room furniture, namely, entertainment consoles, cabinets, drawers, and storage units." In contrast, the cited registrations are used in connection with box springs and mattresses, respectively. While each of these goods may be used in a home environment, they are sufficiently distinct such that consumers will not believe they originate from the same source. Indeed, the goods are used in completely separate rooms of the home, as Applicant's goods are usually used in a living room and both cited registrations' goods are primarily used in a bedroom. Consumers are well aware of the fact that unrelated items used in separate and distinct rooms frequently come from different sources.

In addition, "if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012)." TMEP § 1207.01(a)(i). Applicant submits that mattresses and box springs are primarily marketed based on comfort, while appearance is often a non-factor. For example, once purchased, mattresses and box springs are covered and in the privacy of the bedroom, so appearance will not be an issue for consumers. In stark contrast, appearance is a major factor when marketing high-end living room furniture, as it is used in one of the most public rooms of the home.

The Examining Attorney stated "[t]he fact that the goods of the parties differ is not controlling in determining likelihood of confusion." See Office Action dated January 30, 2015. Applicant strongly disagrees, as the Trademark Manual of Examining Procedure states: "the

following two factors are key considerations in any likelihood of confusion determination: The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. The relatedness of the goods or services as described in the application and registration(s).” TMEP § 1207.01 (emphasis added). Therefore, not only is the similarity of the goods a factor in determining likelihood of confusion, it is a key consideration.

The Examining Attorney further states that “[t]he issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source or sponsorship of those goods.” See Office Action dated January 30, 2015. However, even if, *arguendo*, the likelihood of confusion between particular goods is not an issue, there is no likelihood of confusion as to the source or sponsorship of the goods. As stated above, consumers are privy to the fact that mattresses/box springs and luxury living room furniture frequency come from a different source, as they are used in completely separate rooms of a home. Merely because two different items are used in a home environment does not mean that consumers believe they come from the same source. Accordingly, there is no likelihood of confusion as to the source or sponsorship of Applicant’s goods and the ‘425 and ‘490 Registrations’ goods.

**B. Consumers of Applicant’s goods are sophisticated in nature.**

“[C]ircumstances suggesting care in purchasing may tend to minimize the likelihood of confusion. See, e.g., *In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 USPQ 969, 971 (Fed. Cir. 1985).” TMEP § 1207.01(D)(vii). Indeed, “confusion is less likely where the goods are expensive and are purchased after careful consideration.” *PC Club v. Primex Tech., Inc.*, 32 Fed. Appx 576, 579 (Fed Cir. 2002). Therefore, the likelihood of a consumer being confused decreases when that consumer is discriminating and buys expensive goods. *See id.*

Applicant's goods are "luxury or high-end living-room furniture, namely, entertainment consoles, cabinets, drawers, and storage units," which are expensive and purchased by sophisticated, discriminating consumers. Furthermore, Applicant's goods are used in one of the most public rooms of the home, the living room, so consumers are well aware that these goods will be seen by everyone that enters their home. Because people will notice the design and/or labels of high-end living room furniture, consumers are very sophisticated and pay close attention to the design and/or labels of such goods. As a result, consumers of high-end living room furniture, such as Applicant's goods, will be extremely brand-conscious. Moreover, Applicant's goods include entertainment consoles, which are frequently bought in conjunction with other entertainment products, such as televisions. Therefore, consumers are not only concerned with the quality and appearance of Applicant's goods, but other goods as well, so they are extremely sophisticated and discriminating.

In contrast to high-end living room furniture, consumers understand that guests who enter their home will not notice their brand of mattress or box spring. Indeed, because mattresses and box springs are hidden under covers and blankets in the privacy of the bedroom, the actual consumers will not be able to view the design and/or label of the goods, much less a guest that enters their home. For these reasons, consumers of goods that are readily viewed by people in their home, such as high-end living room furniture, are typically more sophisticated and brand-conscious than consumers of goods that are never seen, such as mattresses and box springs. As such, consumers will not confuse Applicant's high-end living room furniture brand with the cited registrations' mattress and box spring brands.

**C. Applicant's goods and the '425 and '490 Registrations' goods travel in different channels of trade.**

Another factor in testing for likelihood of confusion under the *du Pont* likelihood of confusion test is “[t]he similarity or dissimilarity of established, likely-to-continue trade channels.” In re E. I. du Pont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Even when the marks are identical and used in the same industry, to support a claim of likelihood confusion, there must be a reasonable basis for finding that the marks would be encountered by the same persons, other than by chance. See Borg-Warner Chem., Inc. v. Helena Chem. Co., 225 U.S.P.Q. 222, 224 (TTAB 1983); In re Fresco Foods, Inc., 219 U.S.P.Q. 437, 438 (TTAB 1983); In re Unilever, Ltd., 222 U.S.P.Q. 981, 982-83 (TTAB 1984); Murray v. Cable National Broadcasting Co., 39 U.S.P.Q.2d 1214, 1216 (9th Cir. 1996); Cooper Industries, Inc. v. Repcoparts USA, Inc., 218 U.S.P.Q. 81, 84 (TTAB 1983). Indeed, “if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely.” T.M.E.P. § 1207.01(a)(i).

Applicant’s goods and the cited registrations goods travel in different channels of trade, so they will not be encountered by the same consumers in situations that are likely to cause confusion as to the source of the goods. For instance, Applicant’s goods are “luxury or high-end living-room furniture, namely, entertainment consoles, cabinets, drawers, and storage units,” which will be sold and marketed in stores that target consumers of upscale living room furniture. As stated previously, these types of consumers are extremely brand-conscious, so Applicant’s goods are sold and marketed in environments conducive to displaying the quality and craftsmanship of the product, which are easily recognized by the target consumer. Furthermore, Applicant’s goods include entertainment consoles, which are frequently bought in conjunction with other



entertainment products, such as televisions. As such, Applicant's goods will be sold and marketed in a very particular market with a certain niche consumer.

In contrast, the cited registrations' goods are targeted to a completely different consumer market. For instance, the cited registrations' goods are mattresses and box springs, which are frequently sold and marketed in stores that focus only on mattresses and box springs. Indeed, consumers frequently purchase mattresses and box springs at stores that sell little to no additional products. Undoubtedly, 'mattress store' is a phrase commonly heard by consumers during the marketing and advertising of the cited registrations' goods. As such, the trade channels of the cited registrations' goods are not even concerned with luxury living room furniture. Because consumers would easily recognize that the two goods are sold and marketed in separate and distinct markets, consumers would not believe the sources to be related. Accordingly, Applicant's goods and the '425 and '490 Registrations' goods travel in different channels of trade, so consumers are not likely to be confused as to the source of the goods.

## **VI. CONCLUSION**

Consumers are not likely to be confused as to the source or sponsorship of Applicant's goods and the '425 and '490 Registrations' goods, as the goods are sufficiently distinct. Moreover, the consumers at issue are sophisticated and discriminating, so it is highly unlikely that there would be any confusion as to the source of the goods. In addition, Applicant's goods and the '425 and '490 Registrations' goods travel in different channels of trade. As such, there is no likelihood of confusion between Applicant's mark and the '425 and '490 Registrations.

For at least the aforementioned reasons, the Board is respectfully urged to find that there is no likelihood of confusion and to reverse the Examiner's refusal to register.

Respectfully Submitted,  
Koppel, Patrick, Heybl & Philpott

/Gregory Z. Boger/  
Gregory Z. Boger  
Koppel, Patrick, Heybl & Philpott  
2815 Townsgate Rd., Ste. 215  
Westlake Village, CA 91361