

04/03/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 9
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fieldcrest Cannon Licensing, Inc.

Serial No. 75/858,392

Charles E. Baxley of Hart, Baxley, Daniels & Holton for
Fieldcrest Cannon Licensing, Inc.

Susan C. Hayash, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Chapman, Bucher and Rogers, Administrative Trademark
Judges.

Opinion by **Chapman**, Administrative Trademark Judge:

Fieldcrest Cannon Licensing, Inc. has filed an
application to register the mark shown below

for the following goods, as amended: "pillows, cushions,
featherbeds and bumperguards for furniture" in
International Class 20; and "towels and toweling, table
cloths not of paper, placemats and cloth napkins,
decorative and drapery fabrics, bathroom shower curtains,

bathroom hand and face towels and material for same, textile fabrics of cotton, wool, rayon and synthetic materials and mixtures of the same, fabric toilet seat covers, washcloths, household utility cloths, pot holders, bedding namely blankets, bed sheets and sheeting, pillow cases, cloth pillow protectors, mattress pads, mattress covers, dust ruffles, duvet covers, bedspreads, coverlets and throws, comforters, drapes, curtains and fabric valences" in International Class 24.¹

In the first Office action the Examining Attorney required, inter alia, that applicant enter a disclaimer of the descriptive wording "classic casuals," indicating that a properly worded disclaimer should read as follows: "No claim is made to the exclusive right to use CLASSIC CASUALS apart from the mark as shown." Applicant responded to this requirement as follows: "No claim is made to the exclusive right to use CLASSIC apart from the mark as shown. No claim is made to the exclusive right to use CASUALS apart from the mark as shown"; and "Applicant has disclaimed words 'CLASSIC' and 'CASUALS' apart from the mark as shown. Applicant reserves to itself any common-law rights it may

¹ Application Serial No. 75/858,392, filed November 26, 1999, alleging dates of first use and first use in commerce of April 1, 1999.

have in CLASSIC, CASUALS, and/or CLASSIC CASUALS as well as Applicant's right to the mark in its entirety."

Registration was then finally refused under Sections 2(e)(1) and 6(a) of the Trademark Act, 15 U.S.C. §§1052(e)(1) and 1056(a), on the basis of applicant's failure to comply with a requirement to disclaim the unitary wording "CLASSIC CASUALS," rather than the individual elements CLASSIC and CASUALS. It is from this requirement that applicant has appealed.

Both applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

As applicant has stated in its brief, it has disclaimed the word CLASSIC and the word CASUALS separately and individually. (Brief, pp. 2-3.) However, it is well established that disclaimers of individual components of complete descriptive phrases are improper. See *In re Medical Disposables Co.*, 25 USPQ2d 1801, 1805 (TTAB 1992); and *In re Wanstrath*, 7 USPQ2d 1412, 1413 (Comm. 1988). [For a general discussion of unitary marks, and a brief history of disclaimers, see *Dena Corp. v. Belvedere International Inc.*, 950 F.2d 1555, 21 USPQ2d 1047 (Fed. Cir. 1991).] Thus, the only issue before us is whether or not CLASSIC CASUALS, as used in applicant's mark,

constitutes a unitary phrase which must be disclaimed in its entirety.

The Examining Attorney has submitted excerpts from the Nexis database and from the Internet showing that the phrase "classic casual" is used to refer to a type of housewares, linens, interior design and furniture. See, for example, the following (emphasis added):

Headline: The new niche builders; bed ensembles from Albrizio Designs; Ann Gish
...SG Designs has successfully pulled together **classic casual** and formal design elements for a contemporary line of decorative pillows. "HFN The Weekly Newspaper for the Home Furnishing Network," August 5, 1996;

Headline: Great Street a casual retreat
...Natural-finish hardwood floors, white walls, and green plants give the room a **classic casual** look. "Chicago Tribune," May 29, 1992;

Perhaps the most **classic casual** linen design of all is the Gingham check. Artex-int.com; and

Silhouette Shades Get New Casual Fabrics... Its slubbed appearance provides a **classic casual** look for any room. Custom decorators, Oregon City, Oregon.

Further, applicant's own specimens state, "Welcome to *Cannon Classic Casuals*, where cozy softness meets carefree style." (Emphasis in original.)

Both applicant and the Examining Attorney referenced dictionary definitions of the words "classic" and "casual" in their briefs on appeal. The Board hereby takes judicial notice of said dictionary definitions. See TBMP §712.01.

Based on the record before us, when the two words CLASSIC and CASUALS are combined in applicant's mark and used on the identified goods (various home furnishings such as pillows, towels, textiles, bedding, and drapes), it is clear that the phrase CLASSIC CASUALS is merely descriptive of applicant's goods, in that this phrase directly conveys information about these goods, namely, that the goods are of a specific type of décor known as "classic casual."

Applicant's argument that "CLASSIC" refers to an image of high class, fine quality while "CASUAL" refers to carelessness or indifference; and that therefore, CLASSIC CASUALS conjures up a totally contradictory combination is simply not persuasive of a different result. The evidence submitted by the Examining Attorney establishes a prima facie showing that there is a type of decorative design known as "classic casual."

Decision: The refusal of registration in the absence of applicant's compliance with the requirement under Section 6 for a disclaimer of the unitary phrase 'CLASSIC CASUALS' is affirmed. However, this decision will be set

Ser. No. 75/858392

aside and the mark published for opposition if applicant,
no later than thirty days from the mailing date hereof,
submits an appropriate disclaimer of 'CLASSIC CASUALS'.
See Trademark Rule 2.142(g).