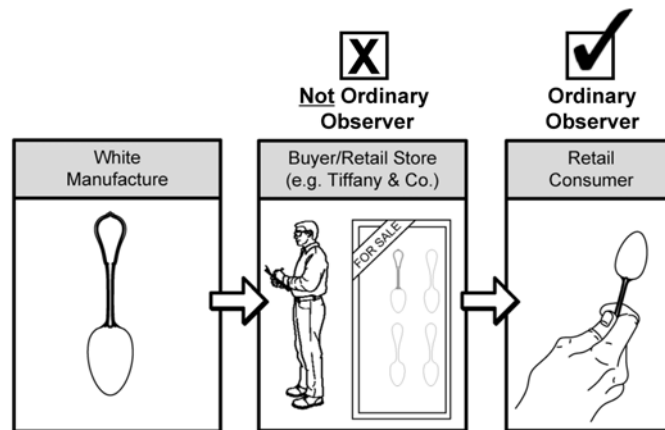


Mr. Carani filed an *amicus* brief on behalf of the Industrial Designers Society of America in *Calmar v. Arminak* before the Supreme Court for the United States of America. The case centers on the following issue:

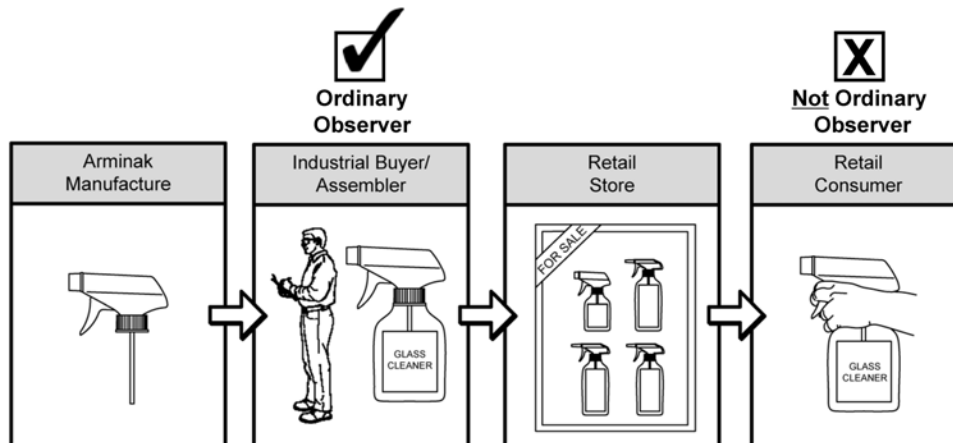
*“Through whose eyes should design patent infringement be determined?”*

Quick Summary of Amicus Argument

In *Gorham v. White*, the U.S. S.Ct. held that design patent infringement was to be judged through the eyes of the "ordinary observers," and not "persons in the trade." (e.g. merchants, dealers, designers, brokers, etc.) The graphic below illustrates the stream of commerce for the accused design, (a spoon handle), and the *Gorham* Court's holding regarding who was the "ordinary observer" for determining infringement:



In *Arminak*, the Federal Circuit held that the ordinary observer was an "Industrial Buyer." "The graphic below illustrates the stream of commerce for the accused design (a portion of a trigger sprayer) and the *Arminak* court's holding regarding who was the "ordinary observer" for determining infringement:



*Arminak* must be reversed for the following reasons:

1) *Arminak's* selection of Industrial Buyers as "Ordinary Observers" directly violates *Gorham*.

2) *Arminak's* new test for identifying "Ordinary Observers" wrongly excludes the perceptions of everyday observers, such as retail consumers and jurors. *Arminak's* new test wrongly concludes that everyday observers, such as retail consumers and your average jurors, do not possess "the capability of making a reasonably discerning decision when observing the accused item's design [to determine] whether the accused item is substantially the same as the item claimed in the design patent." Yet, these everyday observers possess precisely the everyday perceptions and sensibilities that the *Gorham* Court sought to utilize with its "ordinary observer" test. Accordingly, the new *Arminak* test for selecting the ordinary observer also violates *Gorham*.