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Paper No. 12
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Commercial Turf Products, Ltd.

Serial No. 75/380,390

Roger D. Emerson and John M. Skeriotis of Emerson and Associates for applicant.

Sarah A. Otte, Trademark Examining Attorney, Law Office 104 (K. Margaret Le, Managing Attorney).

Before Simms, Hairston and Walters, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Commercial Turf Products, Ltd. has filed a trademark application to register on the Principal Register the mark COMMERCIAL TURF PRODUCTS for "commercial lawn and garden tractors."¹

The Trademark Examining Attorney has finally refused registration, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

¹ Serial No. 75/380,390, in International Class 7, filed October 28, 1997, based on an allegation of a bona fide intention to use the mark in commerce.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that "the combination of these terms is commonly used in connection with goods similar and identical to the applicant's goods, and the public is familiar with this common usage"; that "the phrases COMMERCIAL TURF PRODUCTS and TURF PRODUCTS are commonly used to refer to commercial outdoor power equipment that is similar and identical to applicant's commercial lawn and garden tractors"; and that applicant's proposed mark, considered in connection with the identified goods, "immediately conveys to prospective purchasers that the applicant's goods are manufactured specifically for businesses or professionals for use with topsoil and grass."

In support of her position, the Examining Attorney submitted dictionary definitions of the individual terms comprising the mark, excerpts of articles from the LEXIS/NEXIS database, and copies of excerpts from Internet web sites.

Applicant contends that both the individual words and the phrase "commercial turf products" are too broad to be descriptive; and that the phrase includes other products, such as fertilizer, sod, and grass seed and, thus, does not describe applicant's goods with any degree of particularity.

Applicant argues that the evidence submitted by the Examining Attorney supports the conclusion that the phrase is extremely broad so that several mental steps are necessarily involved in drawing a connection between applicant's goods and the phrase COMMERCIAL TURF PRODUCTS.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We have reviewed the evidence in the record and conclude that applicant's arguments are unpersuasive. It is clear that the phrase "commercial turf products" includes commercial lawn and garden tractors as well as other products related to lawn and turf care. In fact, several of the excerpts in the record indicate that tractor equipment for commercial mowing and trimming may be one of the principal products included in the category of commercial turf products. This certainly appears to be the case in the excerpts referring to tractor and machinery manufacturers.² Following are two examples of the excerpts in the record:

The Bush Hog line of commercial turf products includes zero-turn mowers, tri-deck mowers, air tunnel finishing mowers, rear discharge finishing mowers, side discharge finishing mowers, GT-42 powered rotary cutters, box blades, roll-over blades, single roller pulverizers, double roller pulverizers, pluggers, backhoes, landscape rakes, rotary tillers, rear blades, post hole diggers, rotary cutters, chipper/shredders and front-end loaders. [*Implement and Tractor*, March 1, 1999.]

Toro's current line of commercial turf products includes rotary mowers that cut paths up to 16 feet wide, greens mowers equipped with precision height-adjustment devices that make it possible to trim grass to as short as three-thirty-seconds of an inch, and turf aerators. [*Corporate Report Minnesota*, May, 1990.]

The fact that the phrase "commercial turf products" is a broad term that encompasses goods besides those of applicant is inapposite. In the case of *In re Analog Devices, Inc.*, 6

² There is no evidence in the record that would warrant the conclusion that the few ambiguous references to commercial turf products in the

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USPQ2d 1808, 1810 (TTAB 1988), *aff'd.*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989), although the issue before the Board was genericness, the following statement of the Board is equally applicable in this case:

Applicant argues that the term is too nebulous and vague to be commercially useful for competitors of applicant to use to describe any products. However, while we readily concede that the category of products which the term "analog devices" names encompasses a wide range of products in a variety of fields, we do not believe this fact enables such a term to be exclusively appropriated by an entity for products, some of which fall within that category of goods.

In the present case, it is our view that, when applied to applicant's goods, the phrase COMMERCIAL TURF PRODUCTS immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods, namely, that applicant's lawn and garden tractors are turf products for the commercial market. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the phrase COMMERCIAL TURF PRODUCTS as it pertains to applicant's identified goods.

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.

excerpts in the record exclude commercial lawn and garden tractors.