

5/24/01

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Paper No. 13
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Milliken & Company

Serial No. 75/655,478

Timothy J. Monahan, Esq. and Thomas L. Moore, Esq. for
Milliken & Company.

Florentina Blandu, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Hanak, Walters and Chapman, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Milliken & Company has filed a trademark application to register the mark MILLIKEN IMAGE TILES for "carpet tiles for commercial use."¹ Applicant entered a disclaimer of the term TILES apart from the mark as a whole.

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark IMAGE, previously registered for

¹ Serial No. 75/655,478, in International Class 27, filed March 8, 1999, based on an allegation of a bona fide intention to use the mark in commerce. Applicant claims ownership of several other registrations.

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"carpeting,"² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

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.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

We consider, first, the goods involved in this case. The Examining Attorney contends that applicant's carpet tiles are closely related to registrant's carpeting. Applicant does not contend otherwise. In support of her

² Registration No. 2,031,333 issued January 21, 1997, to Image Industries, Inc., in International Class 27.

position, the Examining Attorney includes copies of third-party registrations of marks for goods that include both carpeting and carpet tiles.

We agree with the Examining Attorney and conclude that the goods involved herein are closely related. The products are essentially identical in that both parties' goods are floor coverings consisting of carpeting. The products differ only in the "format" in which they are sold, *i.e.*, rolls of carpeting versus carpet tiles.

Applicant seeks to distinguish its goods from those of registrant by limiting its identification of goods to "commercial use." However, registrant's identification of goods does not contain any limitations as to channels of trade or classes of purchasers and, thus, encompasses carpeting for commercial use. Because the parties' respective goods are closely related, these goods must be deemed to be sold in the same or similar commercial channels of trade to the same class of commercial purchasers. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

In limiting its goods to commercial use, applicant also argues that the class of purchasers of its goods is exclusively professionals such as architects and, therefore, its purchasers are sophisticated and able to distinguish the marks herein. However, this argument is unavailing because

it is not supported by any evidence regarding the nature of the purchasers of its products.

Further, even if we were to conclude that the goods of the parties are marketed under their respective marks only to professionals in the field, we note that highly educated and sophisticated professionals are not immune from confusion when the marks are confusingly similar and the goods with which they are used are as closely related as the goods herein. *See In re General Electric Company*, 180 USPQ 542 (TTAB 1973).

We note that, in determining likelihood of confusion, a lesser degree of similarity between two parties' marks is required when the marks are applied to identical or closely related goods or services. *HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989).

We turn, next, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average

purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

The Examining Attorney contends that "image" is an arbitrary term in connection with carpeting and carpet tiles; and that applicant's evidence of third-party registrations³ for other "image" marks for flooring products does not establish that "image" is a weak mark in this field because the additional matter in those marks gives those marks entirely different commercial impressions than the two marks involved in this case. The Examining Attorney contends that the MILLIKEN portion of applicant's mark does not distinguish it from the registered mark, and that the

³ Although applicant submitted a mere list of third party registered marks, which is improper evidence of those registrations, the Examining Attorney did not object and, in fact, discussed the registered marks. Therefore, we consider the list of third-party registrations to be of record in this case for whatever limited value it may have. We can draw no conclusions from this regarding the strength or weakness of IMAGE in connection with carpeting and carpet tiles. Not only are the listed marks and goods different from the marks and goods involved in this case, we do not know how many owners are involved in this list or the facts surrounding the registration of each of the listed marks.

addition of applicant's "house mark," MILLIKEN, increases the likelihood of confusion.

Applicant argues that "image" is a weak, suggestive term in connection with flooring products, citing its list of third-party registrations; and that MILLIKEN is a famous mark in connection with applicant's carpet products and, as such, effectively distinguishes its mark from registrant's mark.

First, we note that there is no evidence that IMAGE is a weak mark in connection with carpeting. Further, even weak marks are entitled to protection against the subsequent registration of confusingly similar marks.

We find that applicant has simply incorporated registrant's mark in its entirety into its mark. The term TILES at the end of applicant's mark is at least merely descriptive in connection with applicant's identified goods, if not generic, and it adds little to the mark. Contrary to applicant's contention, registrant's mark IMAGE and the IMAGE TILES portion of applicant's mark, for the goods herein, are substantially similar in sound, appearance, connotation and commercial impression.

While the addition of MILLIKEN as the first word in applicant's mark changes the sound and appearance of applicant's mark, we believe the addition of MILLIKEN will be perceived as the addition of a house mark or trade name

to the IMAGE mark. As a general rule, the mere addition of a trade name, house mark or the like to one of two otherwise confusingly similar marks will not serve to avoid confusion between them. See *In re Champion Oil Co.*, 1 USPQ2d 1920 (TTAB 1986); *In re Shawnee Milling Co.*, 225 USPQ 747 (TTAB 1985) and cases cited therein. In this case, we find that the overall commercial impressions of applicant's and registrant's marks are sufficiently similar that confusion as to source or sponsorship is likely.⁴

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, MILLIKEN IMAGE TILES, and registrant's mark, IMAGE, their contemporaneous use on the closely related goods involved in this case, carpet tiles and carpeting respectively, is likely to cause confusion as to the source or sponsorship of such goods.

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

⁴ While applicant asserts that MILLIKEN is a famous mark for carpet products, applicant has provided no evidence in support of this assertion.