

THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Paper No. 9
TJQ
Mailed: 3/18/03

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re FSG Flooring Sales Group, LLC

Serial No. 76/238,600

Keith D. Grzelak of Wells St. John for applicant.

Khanh Le, Trademark Examining Attorney, Law Office 104
(Michael Hamilton, Managing Attorney).

Before Simms, Cissel and Quinn, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by FSG Flooring Sales Group, LLC to register the mark GREAT FLOORS ("FLOORS" disclaimed) for "floor coverings of ceramic tile" (in International Class 19) and "floor coverings of vinyl, linoleum, wood, stone, marble, granite, plastic, and artificial stone; carpets; rugs; floor mats and floor matting of vinyl, textile and rubber."¹

¹ Application Serial No. 76/238,600, filed April 5, 2001, alleging a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, if used in connection with applicant's goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

Applicant argues, in urging that the refusal to register be reversed, that the mark is just suggestive. In connection with its argument, applicant has relied upon seven third-party registrations and one third-party application of marks which are combinations of the word "GREAT" with other terms; according to applicant, the registered marks issued on the Principal Register.² Thus, applicant contends, the Examining Attorney's refusal herein is inconsistent with the state of the register. Applicant

² Applicant did not submit copies of the registrations. A mere listing of third-party registrations is generally insufficient to make them of record. In re Duofold Inc., 184 USPQ 638 (TTAB 1974). The Examining Attorney, however, considered the registrations as if properly made of record. One disadvantage of such practice is that in the absence of copies of such registrations, the Board is unaware of certain information pertaining to the registrations. See: Beech Aircraft Corp. v. Lightning Aircraft Co., 1 USPQ2d 1290 (TTAB 1986)[the Board does not take judicial notice of registrations]. This disadvantage is highlighted by the fact that the Examining Attorney later pointed out that one registration includes a disclaimer, while another issued pursuant to a claim of acquired distinctiveness under Section 2(f). Nonetheless, in view of the Examining Attorney's consideration of the third-party registrations, we likewise have considered the evidence in reaching our decision.

asserts that its examples of third-party registrations are "more germane" to this appeal than are the Examining Attorney's examples.

The Examining Attorney maintains that the involved mark is laudatorily descriptive, that is, the mark immediately conveys the meaning that applicant's floors are superior in quality. The Examining Attorney submitted dictionary meanings of the words "great" and "floor." Also made of record by the Examining Attorney are ten third-party registrations showing "GREAT" marks registered on the Supplemental Register or with disclaimers of the word "GREAT" on the Principal Register. In addition, as noted earlier, the Examining Attorney points out that one of the registrations relied upon by applicant includes a claim of acquired distinctiveness, and another includes a disclaimer of the word "great."

It is well settled that a term is considered to be merely descriptive of services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes a quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the

properties or functions of the services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the services for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The word "great" is defined as "superior in quality or character; very good; first rate." The term "floors" means "the surface of a room on which one stands." The American Heritage Dictionary of the English Language (3rd ed. 1992). There can be no dispute that "great" is a laudatory term which attributes superior quality or excellence to a product. The involved mark combines this laudatory term with the generic and disclaimed name of the goods and, accordingly, we find that the mark as a whole is merely descriptive. Applicant's mark would be immediately perceived by consumers as nothing more than the name of the goods which is modified by a laudatory adjective indicating the superior quality of its goods. As such, GREAT FLOORS merely describes applicant's goods. See, e.g.: Quaker State Oil Refining Corp. v. Quaker Oil Corp., 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972)[SUPER BLEND held merely descriptive of "motor oils" as designating "an allegedly

superior blend of oils"]; In re U.S. Steel Corp., 225 USPQ 751 (TTAB 1985)[SUPEROPE viewed as merely descriptive of wire rope since "combination of the word 'SUPER' with the apt descriptive term 'ROPE' results in a term which would be perceived as nothing more than the name of the goods modified by a laudatory adjective indicating the superior quality of appellant's wire rope"]; In re Carter Wallace, Inc., 222 USPQ 729, 730 (TTAB 1984)[SUPER GEL held merely descriptive of a "lathering gel for shaving" because term "would be perceived as nothing more than the name of the goods modified by a laudatory adjective indicating the superior quality of applicant's shaving gel"]; In re Samuel Moore & Co., 195 USPQ 237, 241 (TTAB 1977)[SUPERHOSE! found merely descriptive of "hydraulic hose made of synthetic resinous materials" since term "would be understood as the name of the goods modified by a laudatory adjective which would be taken to mean that applicant's hose is of superior quality or strength"].

Although we have considered the third-party registrations showing that "GREAT" formative marks have issued on the Principal Register, they do not compel a different result herein. In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to

[applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court."]. We recognize that the competing registration evidence submitted by applicant and the Examining Attorney show the Office's somewhat inconsistent treatment of "GREAT" marks. However, while uniform treatment under the Trademark Act is an administrative goal, our task in this appeal is to determine, based on the record before us, whether applicant's particular mark sought to be registered here is merely descriptive. As is often stated, each case must be decided on its own merits. See, e.g.: *In re Best Software Inc.*, 58 USPQ2d 1314 (TTAB 2001).

We find that the mark GREAT FLOORS, when used in connection with a variety of floor coverings and floor products, is laudatorily descriptive thereof as contemplated by Section 2(e)(1) of the Act.

Decision: The refusal to register is affirmed.