

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB

Mailed: July 13, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Indek Corporation**

Serial No. 76335229

Joseph L. Strabala of Law Offices of Joseph L. Strabala for **Indek Corporation**.

Idi Aisha Clarke, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before **Hanak, Walters and Holtzman**, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Indek Corporation has appealed from the final refusal of the
trademark examining attorney to register the mark shown below for
the following goods, as amended: "Non-chemical silicon rubber
treatments for thermal management of computer parts" in Class 4.¹

¹ Application Serial No. 76335229, filed November 7, 2001, based upon
an assertion of a bona fide intention to use the mark in commerce. The
application includes applicant's claim of ownership of Registration No.
2247270 for the mark THERM-A-PIPE for "electronic cooling apparatus,
namely, a heat pipe for use in conveying heat away from the central
processing unit or other areas in a computer."

Therm-A-Pad

The Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the basis of Registration No. 1417454 for the mark THERMAPAD for goods identified as "silicone [sic] rubber press pads for use with electronics manufacturing equipment" in Class 17.²

When the refusal was made final, applicant appealed. Briefs have been filed. An oral hearing was not requested.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098,

² Issued November 18, 1986; affidavits under Sections 8 and 15 accepted and acknowledged, respectively.

In the first Office action, the examining attorney also refused registration on the basis of Registration No. 1777088 (issued to EMC Technology, Inc.) for the mark THERMOPAD for "temperature variable attenuators," and cited an earlier-filed application, Serial No. 75612480 (filed by Thermal Corporation) for the mark THERMAPAD for "components and parts for the cooling and heating of equipment - namely, heat pipes and heat exchangers." In addition, the examining attorney requested that applicant submit information about its goods, if available. In response to the Office action, applicant submitted printouts of pages from its own website as well as information obtained from the websites of EMC Technology, Inc. and Thermal Corporation. Both the refusal and the cited reference were subsequently withdrawn by the examining attorney.

192 USPQ 24 (CCPA 1976). The factors deemed pertinent in this proceeding are discussed below.

We turn first to the marks. Applicant acknowledges that its mark, THERM-A-PAD (and design), and registrant's typed mark, THERMAPAD, while not identical, are similar. In fact, the marks are identical in several significant respects. The marks are identical in sound, both consisting of the identical word, "thermapad." In addition, the marks convey the same meaning and create the same commercial impressions.

There are visual differences in the marks. The lettering in applicant's mark is slightly stylized, the syllables are hyphenated, and a barely discernable geometric figure forms the cross bar in the letter "A." However, these differences are insignificant and are not sufficient to distinguish the marks or the commercial impressions the marks create. When the marks are viewed as a whole, it is the similarities that are striking, not the differences.

Moreover, registrant's mark, as the typed word THERMOPAD, could reasonably be displayed in the same stylized format as applicant uses thereby rendering the marks visually almost identical. See *Phillips Petroleum v. C.J. Webb*, 442 F.2d 1376, 170 USPQ 35 (CCPA 1971); and *INB National Bank v. Metrohost*, 22 USPQ2d 1585 (TTAB 1992).

While registrant's mark THERMAPAD is suggestive of its identified goods, there is no evidence that the mark is weak or entitled to anything less than a relatively broad scope of protection.

We turn then to a consideration of the goods. Applicant's goods are "non-chemical silicon rubber treatments for thermal management of computer parts" Registrant's goods are "silicone rubber press pads for use with electronics manufacturing equipment."

The Examining Attorney argues that the goods are related in that "they are both silicon rubber materials for use in electrical components in the same industry." (Brief, unnumbered p. 4.) Continuing, the examining attorney states:

The registrant's goods are used during the manufacturing process of circuit boards. (Applicant's Brief page 7). The applicant's goods are used in the thermal management or cooling or insulating of finished electronic components. Circuit boards are electronic components. *Id.* The applicant claims its goods are used on finished computer parts, but not on finished computers. Therefore, both parties' goods are the type used in the building or assembly of electronics, such as computers. (Brief, unnumbered p.4.)

Applicant, on the other hand, argues that "[p]ress pads, used in the manufacture of circuit boards and the like, serve an entirely different purpose than the *goods* of the applicant" (Brief, p. 6, italics in original); that while registrant's goods are used in the manufacture of electronic components, applicant's

goods "are employed for thermal management of finished computer parts after the manufacture of these electronic components are completed" (Brief p. 7, parentheses omitted); that registrant's goods "are used to distribute mechanical pressure in a manufacturing process for electronic components" (Reply Brief, p. 3); and that press pads are used at the beginning of manufacture and thermal control in computers is not necessary until after the manufacture is complete. (Reply Brief, p .6.)

To support its position that the goods are not related, applicant submitted, for the first time with its appeal brief, an exhibit consisting of pages from registrant's website containing information about registrant's THERMAPAD product.³ While the examining attorney objected to this evidence as untimely, at the same time, the examining attorney relied in its own brief on information applicant obtained from these materials (i.e., that registrant's goods are used in the manufacture of circuit boards). Under the circumstances, the examining attorney's objection is waived and the evidence will be considered.

It is not necessary that the goods of the applicant and registrant be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the respective

³ A copy of this exhibit was submitted by fax at the Board's request on June 25, 2004 as the original exhibit was missing from the application file.

goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from or are associated with the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Generally, the greater the degree of similarity between the marks, the lesser the degree of similarity required in the respective goods to support a finding of likelihood of confusion. See *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001). Where, as here, the marks are highly similar, with identical words and identical commercial impressions, it is only necessary that there be a viable relationship between the goods in order to support a holding of likelihood of confusion. See *In re Wilson*, *supra*; and *In re Concordia International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983).

We find that there is a viable relationship between these goods. Registrant's "silicon rubber press pads" and applicant's "silicone rubber treatments" are both silicone rubber products.⁴ Both of these silicone products are used during the manufacture

⁴ We must assume the word "treatment" in applicant's identification refers to a product rather than a process or technique because a term designating a process or technique would not be registrable. We also note that applicant had originally described its goods as "silicone rubber composite products... ."

of computer parts.⁵ Registrant's silicone product is used with the equipment that makes the computer parts and applicant's silicone product is installed on the computer parts during the manufacturing process.

Applicant claims that its product is only used on "finished" computer parts and that the product is not "employed" until after the manufacturing process is complete. However, as identified, applicant's goods are not restricted to "finished" computer parts. Moreover, it would seem that a computer part would not logically be considered "finished" until the heat control mechanism is installed. Finally, it appears from applicant's literature that this type of product would, in fact, be installed or applied on the computer part during the manufacturing or assembly process.

Applicant's counsel argues, without support, that thermal control in computers is not necessary until after the manufacture is complete. In fact, registrant's website materials indicate that along with uniformity in applied pressure, heat control during the manufacturing process is a critical function of

⁵ Electronics manufacturing obviously includes the manufacture of computer parts and registrant's product literature confirms this. Relying on registrant's website materials, however, applicant claims that registrant's press pad is "a very narrow product used in manufacturing of laminates" (Brief, p. 9). Applicant cannot use extrinsic evidence to limit the scope of registrant's goods. See *In re Trackmobile Inc.*, 15 USPQ2d 1152 (TTAB 1990). The identification of registrant's goods is broad enough to encompass the manufacture of all computer parts.

registrant's goods. These two functions of registrant's goods are variously described in its materials as follows: "Thermapad presspads [provide uniform] cushioning and heat rise, time after time"; "Uniform heat rise - use after use"; and "Thermapads provide uniform cushioning and more precise control over heat-rise."

Applicant's and registrant's goods may not be identical or even competitive products, but a viable relation exists between them. Both are silicone rubber products, both have heat management functions, and both are used during the manufacture of the same products, computer parts, albeit at different stages of the manufacturing process.

Moreover, the goods would be sold in the same channels of trade, including the Internet, to overlapping classes of purchasers. Both products would be directed to manufacturers of computers and computer parts.

It is reasonable to assume that the purchasers for applicant's and registrant's goods would be sophisticated and knowledgeable about those products. However, even such persons would be susceptible to source confusion, particularly under circumstances where, as here, the goods are related and are sold under substantially similar marks. See *In re Total Quality Group Inc.*, 51 USPQ2d 1474 (TTAB 1999).

In view of the above, we find that purchasers familiar with registrant's goods provided under its THERMAPAD mark, would be likely to believe, upon encountering applicant's mark THERM-A-PAD (and design) for related goods, that the goods originated with or are associated with or are sponsored by the same entity.⁶

To the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must be resolved in favor of the prior registrant. In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

Decision: The refusal to register is affirmed.

⁶ Applicant's apparent claim of an alleged family of "THERM-A- X" marks (Response, March 17, 2003) is of no persuasive effect since applicant has not established any such family and because, in any event, the "family" name would do nothing to prevent consumers from mistakenly assuming that registrant is associated with applicant or that there is at least some relationship between them.