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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re On-Guard Pool Products

Serial No. 78289411

LaValle D. Ptak for On-Guard Pool Products.

Fred Mandir, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Hanak, Hohein and Hairston, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

On-Guard Pool Products (applicant) seeks to register in
standard character form POOL TERRAZZO for "materials for
sidewalk, patio and swimming pool construction, namely
aggregate material composed of natural stone pebbles." The
intent-to-use application was filed on August 19, 2003.
Subsequently, applicant filed an Amendment to Allege Use on
February 2, 2004. This Amendment was accepted by the PTO on
September 14, 2004.

Citing Section 2(e)(1) of the Trademark Act, the Examining Attorney refused registration on the basis that applicant's mark is merely descriptive or deceptively misdescriptive of applicant's goods. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

We will consider first the refusal to register on the basis that applicant's mark is merely descriptive of its goods. A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality, characteristic, component or function of the relevant goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). Of course, it need hardly be said that the mere descriptiveness of a mark is judged not in the abstract, but rather is judged in relationship to the goods or services for which the mark is sought to be registered. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 216 (CCPA 1978). Finally, a mark need describe only one significant quality, characteristic, component or function of the

relevant goods or services in order to be held merely descriptive. In re Gyulay, 3 USPQ2d at 1010.

The second word in applicant's mark is "terrazzo." This word is found in all dictionaries consulted by this Board. Webster's New World Dictionary (1996) defines "terrazzo" as follows: "Flooring of small chips of marble set in cement and polished." Other dictionaries contain essentially the same definition. Merriam Webster's On-Line Dictionary defines "terrazzo" as follows: "A mosaic flooring consisting of small pieces of marble or granite set in mortar and given a high polish."

In view of the forgoing definition of the word "terrazzo," it is obvious that consumers seeing the mark POOL TERRAZZO used in connection with "materials for sidewalk, patio and swimming pool construction, namely aggregate material composed of natural stone pebbles," would understand that the natural stone pebbles are in fact marble and/or granite, and that the materials can function to create a terrazzo flooring. In other words, applicant's mark POOL TERRAZZO immediately identifies a significant component and function of applicant's goods. Accordingly, we find that applicant's mark is merely descriptive of applicant's goods.

Indeed, at pages 15 and 16 of its brief, applicant states that its "product may be used by contractors to create a terrazzo-like finish (as well as other types of finishes)." Moreover, the Examining Attorney has made of record various articles and advertisements demonstrating that "rustic terrazzo surfacing is excellent to reduce slip-and-fall accidents around swimming pools." Other articles and advertisements show that terrazzo surfacing can be used for sidewalks.

At pages 7 and 8 of its brief, applicant attempts to explain why its mark POOL TERRAZZO is not descriptive of its aggregate material composed of natural stone pebbles in the following manner: "The Examining Attorney submitted attachments to both the original Office Action and the final Office Action to show the use of 'terrazzo material' in relation to areas in and around swimming pools. ... All of the various [uses], however, describe terrazzo in finished form or a completed product such as (by way of example) ... curb terrazzo as being curbs made of decorative mosaic material ... The attachments to the original Office Action also refer to a finished surface as being terrazzo surfacing. None of the attachments to the Office Actions which were included by the Examining Attorney as support for the refusals of

registration, refer to bulk building materials, but rather to finished surfaces."

It appears that applicant's argument is that "terrazzo" is a generic word used to name a finished flooring material made of marble or granite chips set in mortar. Of course, as previously noted, this is the very definition of the word "terrazzo." However, applicant's argument is misplaced. The Examining Attorney did not refuse registration on the basis that the mark POOL TERRAZZO is a generic term for applicant's goods. Rather, the Examining Attorney refused registration on the basis that as applied to construction materials composed of natural stone pebbles (applicant's goods), the mark is merely descriptive in that it immediately identifies the type of natural stone pebbles, namely, that they are marble and/or granite, and the function of the construction materials, namely, that they can be used to create a terrazzo flooring. The presence of the word POOL in applicant's mark does not cause it to be other than merely descriptive. Given that the evidence shows that terrazzo flooring is excellent for use in and around swimming pools, the word POOL merely reinforces the mere descriptiveness of the mark POOL TERRAZZO.

Having affirmed the refusal on the basis that applicant's mark is merely descriptive of applicant's goods, we elect not to consider the Examining Attorney's claim that, in the alternative, applicant's mark POOL TERRAZZO is deceptively misdescriptive of applicant's goods.

Decision: The refusal to register is affirmed.