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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re ACO Severin Ahlmann GmbH & Co.

Serial No. 79001299

John A. Clifford of Merchant & Gould P.C. for ACO Severin Ahlmann GmbH & Co.

D. Beryl Gardner, Trademark Examining Attorney, Law Office 112 (Angela Wilson, Managing Attorney).

Before Quinn, Drost, and Wellington, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On January 12, 2004, applicant, ACO Severin Ahlmann GmbH & Co., applied to register the mark MULTILINE (in standard character form) on the Principal Register for goods ultimately identified as:

Ingots of common metals and their alloys for further manufacturing; metal building materials, namely, metal gutters, metal gullies, metal shafts, and metal coverings and metal parts for the aforesaid goods in Class 6

Rubber and gum for use in the manufacture of a surface drainage systems; plastic composite material in the form of profiles, boards, sheets, blocks, rods, powder, and pellets for use in manufacturing; extruded

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plastic in the form of bars, blocks, pellets, rods, sheets and tubes for use in manufacturing; packing material for forming seals; non-metal seals for use in insulating and stopping; non-metallic tubes, namely, rubber, synthetic plastic tubes, and paper tubes in Class 17

Non-metallic building materials, namely, gutters, gullies, shafts, and parts and coverings therefore [sic] all made of concrete, plastic concrete, and plastic in Class 19

This application, Serial No. 79001299, has been filed under the provision of Section 66, 15 U.S.C. § 1141f, of the Trademark Act, which provides:

(a) *Requirement for Request for Extension of Protection.* – A request for extension of protection of an international registration to the United States that the International Bureau [IB] transmits to the United States Patent and Trademark Office shall be deemed to be properly filed in the United States if such request, when received by the International Bureau, has attached to it a declaration of bona fide intention to use the mark in commerce that is verified by the applicant for, or holder of, the international registration.

Because the application (request for extension of protection) was filed under the provision of Section 66(a), it is entitled to an earlier priority date. As a result of its International Registration No. 0820229, applicant is entitled to a priority date of July 25, 2003.

The examining attorney has finally refused to register applicant's mark on the ground that it would likely cause confusion (15 U.S.C. § 1052(d)) with the mark MULTILINER and design shown below



for the following goods and services:

Fiberglass fabrics for use as inner-lining, relining and insulating of conduits; fiberglass fabric for leakproofing buildings or conduits; fiberglass sealants for buildings or conduits in Class 17

Repair, maintenance, lining, relining and sealing of conduits in Class 37.¹

The registration is lined for "the color green, and the colors green and black are claimed as features of the mark."

The examining attorney argues that "the overall commercial impression of the marks is the same with or without the R. The marks both refer to liners with multiple uses." Brief at 4. Regarding the goods, the examining attorney maintains that:

These terms ... all relate to the management of water drainage by means of using sealants and leak proofing materials. In this case, the applicant provides raw materials that are used to manufacture gullies, gutters and shafts that allow running water on a building to drain away from the structure and repel leaks. Moreover, the applicant provides the packing materials and non-metal seals that insulate or prevent the transfer of water from the outside to the inside of the building. The applicant's use of rubber or gum

¹ Registration No. 2094229 issued September 9, 1997, Section 8 affidavit accepted.

to manufacture these seals is to allow the seals to adhere to the openings and block out surface water... Likewise, the registrant is also providing building materials to prevent water leaks. The registrant's goods are made of fiberglass and expressly seal building apertures and conduits, like shafts, from water run-off. The registrant also repairs, maintains and lines the same conduits with water proofing sealants.

Brief at 5-6.

In response, applicant submits that the marks' appearances and meanings are distinctly different.

"Applicant's mark, MULTILINE, is intended to suggest a product that contains *many layers*, or pipe like devices. Registrant's mark, on the other hand, is composed in part of the term MULTILINER and suggests that the goods are made up of *many liners* or barriers." Brief at 6.

Regarding the goods, applicant maintains that they are dissimilar.

Registrant's goods are impregnated fiberglass fabric liners used in manholes whereas Applicant's goods are primarily gutters, gullies, shafts and packing and insulating materials related thereto. Furthermore, Registrant's goods are primarily impregnated *fabric* liners and barriers while Applicant's goods are made of *metal, rubber, plastic and concrete*. As previously mentioned, these goods are used for different purposes - the Registrant's goods are used to line manholes and Applicant's goods are metal, rubber, plastic and concrete gutters, gullies, shafts and related parts used primarily for drainage.

Brief at 9.

After the examining attorney made the refusal final, applicant filed this appeal.

In a case involving a refusal under Section 2(d), we look to the factors set out in *In re E. I. du Pont de Nemours & Co.* 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) to determine if there is a likelihood of confusion. See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003) and *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In considering the evidence of record on these factors, we must keep in mind that "[t]he fundamental inquiry mandated by § 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).

Initially, we look to the marks to determine their similarities and dissimilarities. Applicant's mark is the single term MULTILINE depicted without any stylization or design. Registrant's mark is also for a single word, MULTILINER in the following design.



Because applicant's mark is depicted in standard character form, we must assume that there is no difference in the stylization of the words in the marks. *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983) ("[T]he argument concerning a difference in type style is not viable where one party asserts rights in no particular display").

Therefore, the term in each mark, MULTILINE and MULTILINER, are legally identical except for the fact that registrant's mark adds an additional letter "R" at the end of the term. In this case, the additional letter is not a significant difference. *Accord Mobil Oil Corporation v. Mobile Mechanics, Inc.*, 192 USPQ 744, 747 (D. Conn. 1976) ("Here the marks are so similar that confusion is not only likely but practically inevitable. The mark "mobile" differs from "Mobil" only by the addition of one letter and by the absence of an initial capital"). Both applicant's and registrant's marks would look and sound similar. Many consumers who are familiar with registrant's mark may not

notice that applicant's mark is spelled without an "R" and even those that do notice the difference are unlikely to attribute great significance to it. While applicant points out that registrant's mark refers to liners, the term "line" can have a similar meaning of "to fit a covering to the inside surface of" and "to cover the inside surface of." *Webster's II New Riverside University Dictionary* (1984).² Indeed, one of applicant's suggested meanings, "many layers," is very similar to applicant's suggested meaning of registrant's mark, "many liners." Both meanings would suggest that the products have several layers. Furthermore, while registrant's mark has a triangle and circle design and it is lined for color, nonetheless the word MULTILINER would be the dominant element of the mark. It would be the term that purchasers would use to refer to the products and the geometric design is less memorable. *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983) ("[M]inor design features do not necessarily obviate likelihood of confusion arising from consideration of the marks in their entireties. Moreover, in a composite mark comprising a design and words, the verbal portion of

² We take judicial notice of this definition. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

the mark is the one most likely to indicate the origin of the goods to which it is affixed"). Also, because both marks are dominated by the very similar terms MULTILINE or MULTILINER, their commercial impressions would also be similar. When we consider the similarities and dissimilarities of the marks, we ultimately conclude that the marks are similar in sound, appearance, meaning, and commercial impression. *See Wella Corp. v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT and surfer design likely to be confused with CONCEPT for hair care products)

Next, we will consider whether the goods and services of applicant and registrant are related. Applicant's goods are:

Ingots of common metals and their alloys for further manufacturing; metal building materials, namely, metal gutters, metal gullies, metal shafts, and metal coverings and metal parts for the aforesaid goods in Class 6

Rubber and gum for use in the manufacture of a surface drainage systems; plastic composite material in the form of profiles, boards, sheets, blocks, rods, powder, and pellets for use in manufacturing; extruded plastic in the form of bars, blocks, pellets, rods, sheets and tubes for use in manufacturing; packing material for forming seals; non-metal seals for use in insulating and stopping; non-metallic tubes, namely, rubber, synthetic plastic tubes, and paper tubes in Class 17

Non-metallic building materials, namely, gutters, gullies, shafts, and parts and coverings therefore [sic] all made of concrete, plastic concrete, and plastic in Class 19

Registrant's goods and services are fiberglass fabrics for use as inner-lining, relining and insulating of conduits; fiberglass fabric for leakproofing buildings or conduits; fiberglass sealants for buildings or conduits and repair, maintenance, lining, relining and sealing of conduits services. Registrant's goods include fabrics for lining and insulating conduits and leakproofing buildings. Applicant argues that "Registrant's goods are used to line manholes" and applicant's goods are "used primarily for drainage." Brief at 9. However, these limitations do not appear in the identifications of goods or services and, therefore, they are not relevant to our likelihood of confusion analysis and registrant's goods are not limited to use to "line manholes" as applicant argues. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular

channels of trade or the class of purchasers to which the sales of goods are directed").

Regarding registrant's goods, we take judicial notice of the definition of a "conduit" as "a channel or pipe for conveying fluids, as water." *Webster's II New Riverside University Dictionary*. Applicant's goods, including metal and non-metal gutters, gullies, shafts, and non-metal tubes, are within the definition of, or very similar to, channels or pipes for conveying fluids. Thus, registrant's goods could be used in association with applicant's goods to prevent leaking or to insulate the fluids in applicant's goods from weather such as to prevent freezing. Furthermore, registrant's repair, maintenance, lining, relining and sealing of conduits services could use applicant's packing material for forming seals and non-metal seals for use in insulating and stopping leaks. The examining attorney also included several registrations³ that show that the same entity has registered a common mark for a building product and a sealing or protective product used with the product. See, e.g., Registration Nos. 2,701,606 (roof sealants and coatings and roofing tiles); 2,971,523 (non-metal casting forms and waterproofing membranes); and

³ We have only considered the use-based registrations that the examining attorney submitted.

2,715,777 (protective floor coverings and anti-slip sealants for floor coverings). These registrations provide some evidence that the applicant's and registrant's goods are related. *In re Infinity Broadcasting Corp. of Dallas*, 60 USPQ2d 1214, 1217-18 (TTAB 2001).

Consumers seeking to install applicant's conduit-like products and further insulate or leakproof these products are likely to encounter both applicant's and registrant's goods. Furthermore, consumers familiar with registrant's services are likely to conclude that applicant's goods are also associated with the same source. We add that even if the purchasers of these products were careful purchasers, "even careful purchasers are not immune from source confusion." *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1477 (TTAB 1999). In addition, applicant's and registrant's identifications of goods are broad and these goods could travel in the same channels of trade such as stores where building materials are sold. Therefore, we conclude that applicant's and registrant's goods and services are related.

[It] has often been said that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which

could give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services.

In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991).

See also *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002).

Applicant has also submitted several registrations and applications and argues that the "relatively large number of MULTILINE and MULTILINER marks indicates that each mark is entitled to a relatively narrow scope of protection." Brief at 11. We note that several of these references are to trademark applications, which are not entitled to any weight on this issue. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1049 n.4 (TTAB 2002) ("While applicant also submitted a copy of a third-party application ..., such has no probative value other than as evidence that the application was filed"). The registrations are for much less similar, if not dissimilar, goods, e.g., furnaces, air conditioning dampers, automatic machines for metering liquids used in printing machines, and medical apparatus for neurographic measurements. In addition, even if these registrations were for goods that were more closely related, they would not justify the

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registration of a confusingly similar mark. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987).

When we consider that the marks are both dominated by the term MULTILINE or MULTILINER and the goods and services are related, we conclude that there is a likelihood of confusion.

Decision: The examining attorney's refusal to register applicant's mark MULTILINE for the identified goods because of the cited registration on the ground that it is likely to cause confusion is affirmed.