

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE
TTAB

May 1, 1997

Paper No. 12
GDH/gdh

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

The Stiffel Company

v.

Mustaki, S.A.

Cancellation No. 23,845

Ik Hyun Seo and Gerald T. Shekleton of Welsh & Katz, Ltd. for The
Stiffel Company.

Claudia Cantarella of Fried, Frank, Harris, Shriver & Jacobson
for Mustaki, S.A.

Before Seeherman, Hohein and Walters, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

The Stiffel Company has petitioned to cancel the
registration owned by Mustaki, S.A. for the mark "STIFEL" for
"rugs, carpets and other textile floor coverings; namely, mats and
scatter rugs, linoleum floor coverings, tapestries not of textile,

and wallpaper not made of textiles".¹ As grounds for cancellation, petitioner alleges that for many years, it has engaged in the business of designing, manufacturing and selling of lamps; that it is the owner of registrations for the marks "STIFFEL"² and "STIFFEL" and design,³ as reproduced below,



which have each been continuously used, from a long time prior to the September 3, 1990 date of first use anywhere alleged in respondent's registration, for "electric portable lamps--namely, table, floor and pendant"; that petitioner has expended large sums of monies in advertising and promoting its "STIFFEL" marks for lamps and has enjoyed extensive sales of its goods under such marks; that by reason of its advertising, promotion and sales, petitioner's "STIFFEL" marks have become well-known to the public; that respondent's products "are marketed, or are likely

¹ Reg. No. 1,880,269, issued on February 21, 1995 from an application filed on the Principal Register on September 15, 1993 and amended to the Supplemental Register on July 22, 1994, and which sets forth a date of first use anywhere of September 3, 1990 and a date of first use in commerce of December 20, 1991.

² Reg. No. 1,078,331, issued on November 29, 1977 from an application filed on the Principal Register on February 2, 1977, and which sets forth dates of first use of 1934; combined affidavit §§8 and 15.

³ Reg. No. 1,180,021, issued on December 1, 1981 from an application filed on the Principal Register on January 7, 1981, and which sets forth dates of first use of August 1, 1979; combined affidavit §§8 and 15.

to be marketed[,] under the term 'STIFEL' to the identical class of customers to whom Petitioner markets its products under its STIFFEL mark[s]"; and that respondent's registration should be canceled because its "STIFEL" mark, when used on or in connection with respondent's goods, so resembles petitioner's previously registered "STIFFEL" marks for lamps as to be likely to cause confusion, mistake or deception.

Respondent, in its answer, has denied the salient allegations of the petition to cancel.

The record consists of the pleadings; the file of the involved registration; and, pursuant to its timely filed notice of reliance thereon, certified copies of petitioner's pleaded registrations showing that the registrations are subsisting and owned by petitioner. Neither party took testimony or introduced any other evidence. Only petitioner filed a brief. An oral hearing was not requested.

Priority is not in issue since the record shows that the filing dates of the applications which matured into petitioner's pleaded registrations for its "STIFFEL" marks are earlier than the filing date of the application which resulted in respondent's involved registration for its "STIFEL" mark. Petitioner, therefore, has priority vis-a-vis the respective marks of the parties. See, e.g., *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, 1428-29 (TTAB 1993) at n. 13; and *American Standard Inc. v. AQM Corp.*, 208 USPQ 840, 842 (TTAB 1980). Thus, the only issue to be determined is whether respondent's "STIFEL" mark, when used in connection with

"rugs, carpets and other textile floor coverings; namely, mats and scatter rugs, linoleum floor coverings, tapestries not of textile, and wallpaper not made of textiles", so resembles petitioner's "STIFFEL" marks for its portable electrical table, floor and pendant lamps that confusion is likely as to the source or sponsorship of the parties' products.

Upon consideration of the pertinent factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, we find that, on this record, petitioner has failed to satisfy its burden of demonstrating that confusion as to source or sponsorship is likely to occur. Here, the sole *du Pont* factor in petitioner's favor is the similarities in the respective marks. Specifically, we agree with petitioner that, as argued in its brief, the literal portions of the respective marks are "nearly identical" and that the only difference therein, namely, the single letter "F" in respondent's mark instead of the double letter "F" in petitioner's marks, simply does not sufficiently serve to differentiate and distinguish the respective marks in sound, appearance, or overall commercial impression. Nevertheless, this record contains no evidence (such as sales figures, advertising expenditures and/or length of use) to support the allegation in the petition to cancel that petitioner's marks are well known and thus would be entitled to "a wide latitude of legal protection." See, e.g., *Kenner Parker Toys Inc. v. Rose Art Industries Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992), *cert. denied*, 113 S.Ct. 181 (1992).

Moreover, with respect to whether any of respondent's goods are so related to petitioner's products as to be likely, when sold under the nearly identical marks "STIFEL" and "STIFFEL," to cause confusion or mistake or deception, there is no evidence in the record to support petitioner's contentions in its brief that "[i]t is common for the types of home furnishings at issue in the present case to be displayed together in groupings at retail stores" and that "[t]his common display practice further increases the likelihood that a consumer seeing a **STIFFEL** lamp displayed so closely with a **STIFEL** rug would be confused as to the origin of the goods" (**emphasis in original**).

In any event, even if we were to assume that the respective goods may broadly be considered as "home furnishings" which would be sold through the same channels of trade to the same classes of purchasers, the mere fact that a term may be found which encompasses the parties' products does not mean that customers will view the goods as related in the sense that they will assume that they emanate from or are associated with a common source. See, e.g., General Electric Co. v. Graham Magnetics Inc., 197 USPQ 690, 694 (TTAB 1977) and Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd., 188 USPQ 517, 520 (TTAB 1975). Here, respondent's goods are various kinds of floor and wall coverings, such as rugs, carpets, linoleum flooring, tapestries and wallpaper, while petitioner's products are electrical lighting apparatus. Merely because such items are subsumed under the broad rubric of decorative "home furnishings" does not mean, absent supporting evidence, that such diverse products as floor

and wall coverings, on the one hand, and portable electrical lamps, on the other, would be regarded by prospective purchasers as coming from or sponsored by the same source.

Accordingly, and in the absence of proof of the alleged strength of petitioner's "STIFFEL" marks, the fact that respondent's "STIFEL" mark is nearly identical thereto does not mean that petitioner has met its burden of demonstrating that contemporaneous use of such marks, in connection with goods which on their face are so plainly different in nature as portable electrical lamps and floor and wall coverings, is likely to cause confusion, mistake or deception as to origin or affiliation.

Decision: The petition to cancel is denied.

E. J. Seeherman

G. D. Hohein

C. E. Walters
Administrative Trademark Judges,
Trademark Trial and Appeal Board