

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

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CEW

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Michigan Discount Jewelers, Ltd.

Serial No. 74/578,489

Daniel H. Bliss of Bliss & McGlynn for applicant.

Kathleen Cooney-Porter, Trademark Examining Attorney, Law
Office 107 (Thomas Lamone, Managing Attorney).

Before Quinn, Hairston and Walters, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Michigan Discount Jewelers, Ltd. has filed a trademark
application to register the mark GREENS KEEPER for "sporting
goods, namely, a divot repair tool for golfers."¹

The Trademark Examining Attorney has finally refused
registration under Section 2(d) of the Trademark Act, 15
U.S.C. 1052(d), on the ground that applicant's mark so
resembles the mark GREENSKEEPER, previously registered, in

¹ Serial No. 74/578,489, in International Class 28, filed September 26,
1994, based on an allegation of a bona fide intention to use the mark in
commerce.

pertinent part, for "spikes for golf shoes,"² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

In a likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Considering the marks, we agree with the Examining Attorney that the marks are substantially similar. The appearance of the two marks differs slightly as registrant's mark is a compound word, GREENSKEEPER, while applicant's mark appears as two words, GREENS KEEPER. The pronunciation of the two marks is identical and the connotation is the same. Regarding the meaning or connotation of the marks, we take notice of the following dictionary definitions:³

green: 22. grassy land; a plot of grassy ground
24. also called **putting green**. *Golf*. the area of closely cropped grass surrounding each hole.

keeper: 4. a person who is responsible for the maintenance of something (often used in combination): *a zookeeper; a groundskeeper*.

groundskeeper: 1. a person who is responsible for the care and maintenance of a particular tract of

² Registration No. 864,920 issued February 18, 1969, to Genesco, Inc., in International Class 25. While not a basis for the refusal herein, the registration also includes in the identification of goods "soles for golf shoes." (Renewed for a term of twenty years as of February 18, 1989; Section 15 affidavit filed.)

³ *The Random House Dictionary of the English Language*, 2d ed., 1987.

land, as an estate, a park or a cemetery 2. a person in charge of maintaining a football field, baseball diamond, etc.

We conclude that, in the context of the game of golf, both GREENSKEEPER and GREENS KEEPER clearly connote the person responsible for maintaining the greens on a golf course. Applicant does not explain or support its contentions that the two marks would be subject to different pronunciations and connotations.⁴ Further, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall commercial impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). In this case, we conclude that registrant's and applicant's marks create substantially the same overall commercial impression.

Turning to the goods, the Examining Attorney contends that applicant's goods, a divot repair tool for golfers, and registrant's goods, spikes for golf shoes, are related because both products are sold in the same type of stores to the same class of purchasers, golfers. In support of her contentions, the Examining Attorney has submitted copies of three third-party registrations (two of which are owned by

⁴ Applicant referred to a definition of the term GREENSKEEPER, but did not submit a copy of such definition so that it cannot be considered of record. Further, we note that the aforementioned dictionary did not include a separate entry for the compound word GREENSKEEPER or for the term GREENS KEEPER.

the same registrant) of marks registered in connection with both golf spikes and divot repair tools;⁵ copies of brochures from three golf supplies retailers, advertising both golf spikes and divot repair tools on the same pages;⁶ photographs described by the Examining Attorney as showing golf spikes and divot repair tools being offered for sale in the same retail store;⁷ and excerpts from five articles in the LEXIS/NEXIS database, each containing both the terms "divot" and "spikes."⁸

Applicant contends that there is "a subtle but significant difference" between the goods of the parties, characterizing registrant's golf spikes as clothing apparel and applicant's divot repair tool as a sporting good and noting that the goods are classified by the PTO in different

⁵ Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988). Each of the third-party registrations in this case is based on use in commerce.

⁶ Each of the brochures includes advertisements for golf spikes and divot repair tools on the same page. One of the three brochures indicates on its cover that it issued in the winter of 1984 and, thus, is significantly less persuasive of current channels of trade. However, one of the recent brochures includes an advertisement for divot repair tools immediately below an advertisement for golf spikes and advertises a "divot fixer" that also functions as a spike wrench to attach spikes to golf shoes.

⁷ While the subject matter of the photographs is not entirely clear, applicant does not contest the Examining Attorney's explanation that these photographs depict goods of the type at issue herein on display at the same store. Therefore, we accept this evidence as offered.

⁸ Four of the five stories include the terms "golf spike" and "divot" in different contexts, yet all of the stories are about golf. One of the stories includes both terms in the same reference as follows: "The grass

classes;⁹ that the goods are marketed differently and appeal to different golfers; and that "such consumers are invariably serious golfers who are highly sophisticated and discriminating in selecting such important specialized and often expensive equipment" (applicant's brief, p. 5). Applicant submitted no evidence in support of its contentions.

Despite applicant's contentions to the contrary, the evidence of record leads us to the further conclusion that these goods are closely related, as they are marketed similarly and are sold through the same channels of trade to the same class of purchasers, golfers; that both parties' goods are used while playing the game of golf; and that both parties' goods are relatively inexpensive items. We also find no support for applicant's statement that substantial care is involved in the purchasing of these items.¹⁰

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, GREENS KEEPER, and registrant's mark, GREENSKEEPER,

is finely manicured, with little evidence of golf spikes and divots." (*The Seattle Times*, August 20, 1991.)

⁹ The classification of applicant's and registrant's goods by the PTO is not relevant to the question of likelihood of confusion; rather, classification is solely for the administrative ease of the PTO. Section 30 of the Trademark Act, 15 U.S.C. 1112, authorizes the Commissioner to "establish a classification of goods and services, for convenience of [PTO] administration, but not to limit or extend the applicant's or registrant's rights." See, *National Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, 1216 n.5 (TTAB 1990).

¹⁰ There is no need for us to determine whether golfers are sophisticated purchasers, as sophistication does not necessarily obviate likelihood of confusion with respect to trademarks.

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their contemporaneous use on the closely related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

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Decision: The refusal under Section 2(d) of the Act is affirmed.

T. J. Quinn

P. T. Hairston

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