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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Metaltec Steel Abrasive Company

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Serial No. 74/582,029

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Andrew R. Basile of Young & Basile for applicant.

Jeffrey Dalton Martin, Trademark Examining Attorney, Law  
Office 107 (Thomas Lamone, Managing Attorney).

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Before Cissel, Hanak and Walters, Administrative Trademark  
Judges.

Opinion by Walters, Administrative Trademark Judge:

Metaltec Steel Abrasive Company has filed a trademark  
application to register the mark METALTEC STEEL ABRASIVE CO.  
for "abrasive polish compositions used in connection with  
shot peening and blasting, for general industrial  
purposes."<sup>1</sup>

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<sup>1</sup> Serial No. 74/582,029, in International Class 3, filed October 4,  
1994, based on an allegation of use in commerce, asserting January 31,  
1980, as applicant's date of first use and first use in commerce. The  
application includes a disclaimer of STEEL ABRASIVE CO. apart from the  
mark as a whole.

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 METAL-TECH, previously registered for "protective coatings, namely, compounds used for repairing, patching or sealing surfaces subject to abrasion, erosion or corrosion,"<sup>2</sup> 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 reverse the refusal to register.

We begin our consideration of likelihood of confusion in this case by noting that applicant acknowledges that both marks contain the identical term METALTEC and that "there really can be no question that the actual marks could have a tendency to be associated if they were placed on similar goods." (Applicant's response of September 25, 1995, p. 2.) We agree with applicant and the Examining Attorney that the commercial impressions of the marks herein are substantially similar. Registrant's mark, METAL-TECH, is similar in appearance, sound and connotation to METALTEC, which we find to be the dominant portion of applicant's mark in view of

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<sup>2</sup> Registration No. 1,545,964 issued July 4, 1989, to Postle Industries, Inc., in International Class 2. [Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

the generic nature of STEEL ABRASIVE CO. in connection with applicant's identified goods.

Thus, the question of likelihood of confusion herein turns principally on the nature and extent of any similarities between the goods and channels of trade. In this regard, applicant contends that the goods of the parties are unrelated and travel in distinctly different trade channels. Applicant describes the parties' goods, respectively, as follows:

The registered mark is placed on compounds used for repairing or patching surfaces subject to abrasion, erosion or corrosion. The owner of the cited registration is in the welding business and these compounds are used in connection with the welding and abrasive trade to repair, patch and seal. The goods are a protective coating and are in the classification (002) dealing with paints and coatings.

The goods on which the Applicant has been using its mark since 1980 are abrasive polish compositions. These are small balls or steel shots used in peening and blast cleaning processes most often used for the new parts manufactured in plants. At first blush, this may appear to sound like a repair or sealing coating but in reality, it is not this at all. The Applicant's goods are used to clean new parts by a sand blasting type of method. It is not any type of protective coating and is sold mainly to the original manufacturing market to clean parts before they ship them to buyers. It is not sold or used in the welding trade. As previously noted, if the welding trade did offer or use a blast cleaning operation, it would utilize a machine and not the steel shot which is manufactured in a specific process by the Applicant. It would not be reasonable, or likely, that these goods would ever be associated with each other.

In support of its position, applicant has submitted a promotional brochure which describes its products. While not evidence of the truth of the statements contained therein, descriptions and statements in the brochure are indicative of the market targeted by applicant in this promotional brochure. On a page entitled "Shot Peening and Blast Cleaning Applications," the brochure includes the following statement:

Metaltec provides its abrasive and technical expertise to companies involved in numerous and diverse industries. For example, in shot peening applications, [Metaltec] Bainite shot is used to impart compressive surface stress and relieve residual tensile stresses in ferrous and non-ferrous components, including aerospace parts like jet engine turbine blades, as well as automotive springs, shafts, and gears.

In surface preparation, . . . [c]ustomers include steel bar drawers, heat treaters, pipe manufacturers, ship builders, drum reconditioners, automotive manufacturers, farm implement manufacturers, and the forging industry.

The Examining Attorney, arguing that the goods are closely related, contends that the same manufacturers produce both industrial polishing compositions and industrial coatings; and that both parties' products are in the surface preparation industry and are likely to be encountered by the same prospective purchasers. In particular, the Examining Attorney contends that the welding market and the blast cleaning and shot peening markets are not distinct; that welds are blast cleaned before and after

welding; that shot peening is used to remove residual surface tensile stresses from welds; that shot peening is used to prevent or delay metal fatigue cracking and stress corrosion cracking, much like the purpose for registrant's protective coatings and, thus, the two methods represent alternative choices to purchasers wishing to clean and protect metal parts and items; and that applicant's alleged primary market, new parts manufacturers, is not distinct from the welding industry as welding is often an integral part of the manufacturing process.<sup>3</sup>

The Examining Attorney submitted copies of third-party registrations and excerpts of articles from the LEXIS/NEXIS database<sup>4</sup> in support of his position. The excerpts of articles submitted establish that many different industrial processes and manufactured products involve, as part of the manufacturing and finishing process, welding, a form of metal fastening, shot peening, a method for cleaning metallic surfaces to prevent or delay cracking or stress corrosion, and the application of various kinds of

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<sup>3</sup> While both applicant and the Examining Attorney have compared the products of the parties specifically in connection with the welding trade, we note that the registration is not so limited. In fact, the identification of goods in the cited registration is very broad and it is in this broad context that we consider the issue of likelihood of confusion.

<sup>4</sup> While the LEXIS/NEXIS evidence was submitted with the Examining Attorney's brief and is, therefore, untimely, we have considered this evidence as applicant, in its reply brief, did not object to the late submission and, in fact, specifically addressed the merits of the material submitted.

protective coatings. In fact, shot peening may be a necessary precedent to applying protective coatings and may be used on welds. However, while it is clear that both the application of protective coatings and shot peening and blasting are integral parts, and possible sequential, in the manufacturing processes in many industries, there is no evidence in these excerpts from which we can conclude that the manufacturers purchasing shot peening and blasting products or protective coatings would believe that such goods emanate from the same source. It would be a gross overstatement to conclude that goods are related for purposes of determining likelihood of confusion simply because both types of goods are used, generally, in manufacturing. Thus, we find that the Examining Attorney has not established that applicant's and registrant's goods are related or that such goods travel in the same channels of trade.<sup>5</sup>

Further, as we have noted herein, registrant's goods are broadly identified and, as such, are not limited in scope to industrial use. Goods encompassed by the identification could include protective coatings sold to all

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<sup>5</sup> Additionally, in the absence of any evidence regarding the care or knowledge involved in the purchase of either party's goods, we believe that, in view of the use described in the record for these types of products in the manufacturing context, both protective coatings and abrasive polish compositions are likely to be purchased in large quantities by knowledgeable purchasing agents of the manufacturers. We believe that these factors would mitigate against any likelihood of confusion in the industrial context.

types of consumers for both home and business use.

Applicant's goods and the channels of trade therefor are clearly distinct from the consumer goods included within the scope of registrant's identification.

We are not persuaded otherwise by the Examining Attorney's submission of seven third-party registrations. Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, may 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). We find two of the registrations of little evidentiary value as they are not based on use in commerce. The five registrations submitted which are based on use in commerce include both abrasive compounds and materials and protective coatings. However, at least four of the five registrations also include a broad range of other products. These registrations are not, therefore, useful evidence of the extent to which any of such products may be related. Further, we do not find such a small number of registrations to be sufficient to establish that the goods herein are related for the purpose of determining likelihood of

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confusion in the absence of additional evidence in the record that establishes such a relationship between these goods.

Therefore, we conclude that despite the similarity in the commercial impressions of applicant's and registrant's marks, the Examining Attorney has not established that the goods involved herein are related such that the contemporaneous use of the parties' marks on or in connection with such goods is likely to cause confusion as to source or sponsorship.

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

R. F. Cissel

E. W. Hanak

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