

Hearing:  
November 19, 1996

Paper No. 16  
RLS/LCB

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

JULY 8, 1997

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Diamond Rug & Carpet Mills, Inc.

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Serial No. 74/661,908

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Edward J. Kondracki of Kerkam, Stowell, Kondracki & Clarke,  
PC for applicant.

Odette Bonnet, Trademark Examining Attorney, Law Office 109  
(Debbie Cohn, Managing Attorney)

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Before Rice, Simms and Hanak, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Diamond Rug & Carpet Mills, Inc. (applicant), a Georgia corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark PET-PROOF for textile carpet.<sup>1</sup> The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC

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<sup>1</sup> Application Serial No. 74/661,908, filed April 17, 1995, based upon applicant's bona fide intention to use the mark in commerce. In its application, applicant has claimed ownership of Registration No. 1,868,917, for the mark KID-PROOF. During the prosecution of this case, applicant filed an amendment to allege use, asserting use since February 2, 1996. The amendment was accepted by the Examining Attorney.

§1052(e)(1), arguing that applicant's mark is merely descriptive of a characteristic, feature or purpose of applicant's goods. Applicant and the Examining Attorney have submitted briefs and an oral hearing was held.

The Examining Attorney has relied upon numerous excerpts from computerized databases demonstrating descriptive use of the phrase "pet proof" and such other similar phrases as "animal proof," "cat proof" and "dog proof." Some dictionary definitions have also been made of record. Webster's II New Riverside University Dictionary (1994) defines "proof" as, among other things, "impervious to; able to withstand" and "fully or successfully resistant." Among the thirty-three excerpts made of record by the Examining Attorney are the following:

... prevent Fido or Tabby from smelling up or tearing up the house when no one is home? Can a home be made pet proof?

"I'm turned off by the words 'pet proof,'" says Maureen MacNamara of the Delta Society of Renton, Wash. "They imply that pets are naturally destructive, which they are not."  
Star Tribune, September 9, 1991

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... leather version could wear from 20 to 30 years and never require slipcovering or reupholstering. They know it will be reasonably childproof and petproof, although leather, too, can be cut or torn by rough treatment or clawed to shreds by insistent cats.  
The Christian Science Monitor, August 3, 1983

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... yards of wall-to-wall carpeting. It's like a town house the size of a football field down here, padded and pet-proof, in beautiful decorator colors -- blood-lust rose, dawn-patrol cerulean, command-decision fawn, and the smell is the gunk they ...  
The Washington Post, September 16, 1981

\* \* \* \* \*

... cats that dig up wood floors, and dogs that shred Naugahyde sofas and rugs. Decorators, architects and others have improvised in pet-proof designing. The improvisations assume that an animal will almost always win out in the affections of its owner, even over ...

... smooth-surfaced or tightly woven fabrics. One of the currently favored decorator fabrics is chintz, but it is not always pet proof.  
The New York Times, February 19, 1981

\* \* \* \* \*

... I love that word [eclectic]," Andrea Pruitt says. "It covers everything." She says the couple's main concern was that everything be "dog-proof." The house has a southern exposure at the rear. Pink-gold brick floors in the kitchen and sun porch were chosen as ...  
The Atlanta Constitution, August 12, 1994

\* \* \* \* \*

When cats attack, when they rip up your furniture, eat your plants, spray your walls and fertilize your carpets, that's not funny.

But we love our cats and they love us. They really do, despite appearances, say they experts. So let's see if we can't ...

To cat-proof our homes, we have to understand cats. This is not impossible. The subject of human-cat (and other pet) relationships is being studied at the University of ...  
The Houston Chronicle, June 25, 1994

\* \* \* \* \*

... fantasy, whether it's to create a ravishing bedroom on a budget, or to discover a handsome upholstery fabric that's also kid- and dog-proof. The only rule is to please yourself. After all, you're not going to be visited by the design police."  
The San Francisco Chronicle, June 1, 1994

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... 1/2-year-old daughter, Lauren Margaux, and a roly-poly pug, Contessa Cassandra -- so the scheme had to be dog-proof, too.  
The San Francisco Chronicle, November 17, 1993

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If anyone has a dog-proof floor, the Handyman - and Christine Trenz - would like to hear about it. But don't suggest declawing the dogs or getting rid of them ...  
The Boston Globe, April 12, 1992

It is the Examining Attorney's position that the dictionary definition and the excerpts from printed publications demonstrate that applicant's asserted mark would be recognized by the average purchaser, when used in connection with applicant's goods, to mean that applicant's textile carpets are impervious to or able to withstand pets.

According to the Examining Attorney, this feature of applicant's goods could be attained through a number of qualities of the carpet, including that the carpet may be resistant to staining or that it may withstand destruction or damage by virtue of use of certain materials. The Examining Attorney also argues (as more fully discussed below) that applicant has admitted that its asserted mark could mean that the carpet was immune from or resistant to damage by pets.

Applicant, on the other hand, argues that, at most, the mark is suggestive. Essentially, applicant argues that some of the excerpts made of record by the Examining Attorney (many of which have not been reproduced above) have a meaning different from that which the Examining Attorney ascribes to the term "pet proof." More particularly, applicant argues that the meaning attributable to the term "pet proof" varies from article to article and may have a different meaning from that argued by the Examining Attorney. Some of the articles made of record by the Examining Attorney show the term "pet proof" being used to refer to the protection of animals from potential dangers. For example, applicant refers to the following article from the PR Newswire:

"Pets are as innocent as young children around chemicals," Strother said. "The best way to prevent a poisoning is to 'pet-proof' accessible areas."

Another article talks about pet-proofing the house to prevent a pet from chewing on cords of appliances. Other articles talk about "pet-proof containers" and "petproof liners" in the context of preventing pets from gaining access to hazardous materials. In fact, applicant points out that most of the excerpts made of record by the Examining Attorney use the term "pet proof" as signifying protection of pets from danger, rather than being resistant to damage caused by pets. Applicant argues, therefore, that because the term "pet proof" has different meanings in different contexts, this term is not descriptive of applicant's goods. Applicant argues, brief, 10, 13:

...Applying this age old test, one readily recognizes that PET-PROOF does not forthwith conjure up in one's mind any particular product, let alone a characteristic associated with the product. It does not identify any specific product nor does it impart any direct information about a significant function or characteristic of the product. It could refer to texture or type of fabric, treatment or use of non-toxic dyes for protection of a pet. It could, of course, also refer to stain protection, protection from clawing or chewing. Obviously, it requires a great deal of imagination and mental gymnastics on the part of the consumer to determine from the mark the type and character of the product in connection with which the mark is used...

As hereinbefore stated, the mark PET-PROOF, could just as easily signify a product which is non-toxic to pets as well as one which is immune to staining. It could also refer to a product immune from destruction or damage by virtue of

use of certain materials which are not subject to clawing. To hastily assume that the words when used together immediately describe to consumers some magic characteristic of the product is simply unfounded. Practically speaking, PET-PROOF as used in connection with carpets is likely to suggest one of many purely arbitrary connotations such as, for example, freedom from toxicity, safe for pets, protection against pulls or unraveling, or protection against stains, but it cannot be said with any degree of certainty that it identifies immediately a specific laudatory characteristic of the product.

Finally, applicant points to its ownership of a registration of the mark KID-PROOF and argues that any doubt as to the registrability of applicant's mark should be resolved in favor of publication for opposition purposes. It is applicant's position, Amendment, filed September 29, 1995, p. 7:

[I]t is respectfully submitted that PET-PROOF is at best only suggestive of an attribute of Applicant's carpet products. The mark is certainly not merely descriptive of the product, because it does not convey any immediate information regarding such products or significant attributes thereof. The mere suggestion of a product being capable of resisting some form of damage from pets is too remote and speculative to support a merely descriptive connotation for the mark when other equally plausible connotations are attributable to the term.

Whether or not a term is merely descriptive must be considered in relation to the specific goods for which registration is sought, the context in which an asserted mark is used on labels, packages or advertising material,

the possible significance of the term in relation to the goods and the likely reaction thereto of the average purchaser as he or she encounters the goods in the marketplace. In re Abcor Development Corporation, 588 F.2d 811, 200 USPQ 215, 216 (CCPA 1978).

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that applicant's mark, as applied to applicant's carpets, is merely descriptive. The dictionary definition of record indicates that the term "proof" may mean "resistant" or "able to withstand." Also, applicant concedes that, while many, if not most, of the uses of this term made of record by the Examining Attorney are in the sense of protecting pets from harmful objects or substances, some of them do show the term to be used in the context of meaning that a certain material, such as rugs, fabrics and textiles, may be resistant to damage from pets. Of course, the fact that a term may have a different meaning in another context is not controlling on the issue of mere descriptiveness. See In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). We must examine the meaning of the term in relation to the goods with which it is used. Indeed, the specimens of record, which may be looked at to determine the

**PET PROOF**™ *carpet*

**OUR BEST WARRANTY\* PROTECTION**

- 20 Year Stain Warranty**  
Pet-proof carpets are more than stain resistant—they're stain proof. No exclusions!
- 20 Year Color Warranty**  
Our beautiful colors won't fade because the color is actually built into the fiber.
- 20 Year Static Warranty**  
An added benefit to virtually eliminate annoying static shock.

**20 20 20**

\*See Limited Warranties For Specific Details  
NOTE: Warranties Apply Only to Owner-Occupied Residences.

**STYLE:**  
**COLOR:**  
**PILE:**  
**WIDTH:**  
**BACK:**

**Unique Technology**  
Combats Growth of Bacteria and Fungus

**Extra Insulation and**  
Warmth Underfoot

**Tackless Installation**  
Factory Attached Pads

**Buffers**  
Damage & Noise

**Protects**  
Against Steps and Falls

**Cleans With**  
Bleach Solution

**Treated to**  
Reduce Odor  
Build-up

**DRYBAC™**  
Barrier Prevents  
Spills from Soaking Through to Backing

**Diamond Carpets**

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meaning that an asserted mark may have to prospective purchasers, show that the term "Pet-proof" is used in the sense of being resistant to stains. While it may be true, as argued by applicant, that applicant's mark in the abstract does not reveal the specific feature or characteristic (such as color, texture, type of fabric, treatment, etc.) to which the mark may refer, such specific information need not be conveyed by a mark in order for it to be merely descriptive.

Decision: The refusal to register is affirmed.

J. E. Rice

**Ser. No.** 74/661,908

R. L. Simms

E. W. Hanak  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

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