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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Imperial Wallcoverings, Inc.*

Serial No. 75/092,656

F. Michael Sajovec of Myers Bigel Sibley & Sajovec for *Imperial Wallcoverings, Inc.*

Jeffery C. Coward, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before *Sams, Hohein* and *Hairston*, Administrative Trademark
Judges.

Opinion by *Hohein*, Administrative Trademark Judge:

Imperial Wallcoverings, Inc. has filed an application
to register the phrase "COLOR OPTIONS" as a trademark for
"wallcovering sample books"¹ in International Class 16.²

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis

¹ Ser. No. 75/092,656, filed on April 16, 1996, which alleges a bona fide intention to use such phrase in commerce.

² Applicant also seeks registration of such phrase for "modular display racks" in International Class 20; "fabric shower curtains and valences" in International Class 24; and "plastic and vinyl wallcoverings" in International Class 27.

that, when used in connection with applicant's goods, the phrase "COLOR OPTIONS" is merely descriptive of them.³

Applicant has appealed. Briefs have been filed,⁴ but an oral hearing was not requested. We affirm the refusal to register.

Applicant, while conceding in its brief that "the descriptive use of the term 'color options' might suggest a wallcovering sample book with many choices of colors," argues that such "is not the nature of Applicant's goods." Referring, in this regard, to the promotional flyer which accompanies its brief, applicant asserts that:

The concept underlying Applicant's wallcovering sample books is the presentation of wallcoverings to the consumer in completely coordinating groups of patterns. The patterns within each group have a common color theme and are chosen so that any pattern can be mixed or matched with any other pattern in that group. Each grouping is also specifically designed to inter-coordinate with a companion grouping (e.g., Hunter green and Burgundy) to provide a greater number of choices for the consumer. Within each grouping are a wide variety of patterns (such as stripes, dots, florals and plaids) in a number of different styles (e.g., Country, Traditional, Bath, Mensware).
....

³ Although, on the same ground, the Examining Attorney also initially refused registration of such phrase with respect to the goods set forth in the other three classes of the application, he subsequently withdrew the refusal as to the goods in those classes.

⁴ Applicant, with its brief, submitted for the first time a copy of a promotional flyer for its goods. While the submission is untimely under Trademark Rule 2.142(d), the Examining Attorney has not objected thereto and has, instead, treated such evidence as being of record by discussing it in his brief. In view thereof, the promotional flyer furnished by applicant is deemed to form part of the record in this appeal and has therefore been considered.

....

Applicant's wallcovering books have been carefully arranged by professionals, such that all of the patterns shown within each grouping (*i.e.*, Navy/Primary and Hunter/Burgundy) will coordinate together. For example, a consumer might choose a striped pattern from the Hunter group to cover a wall below a chair rail and a small print pattern and floral border from the Burgundy group for above the chair rail. The average consumer may not feel comfortable choosing such disparate wallcovering patterns and colors on his/her own. Applicant's wallcovering sample books assist consumers in confidently mixing and matching a variety of patterns within and across color groups, so as to achieve a more professional effect.

Thus, according to applicant, it is not the case that its "COLOR OPTIONS mark would immediately and only convey Applicant's mix and match concept of coordinating wallcoverings to the average consumer using wallcovering sample books." Instead, applicant urges that "the ordinary understanding of the term 'color options' would be a wallcovering book offering many choices of wallcovering colors." Specifically, applicant insists that:

Applicant's wallcovering sample books do not simply offer the consumer a choice of many colors. Indeed, the choice of colors is intentionally limited. The wallcovering patterns grouped together in the sample books have been chosen so that they can be mixed and matched among themselves and a companion group. Not all of Applicant's wallcoverings are compatible with this concept because of the strict requirement that all patterns ... in the COLOR OPTIONS sample books must coordinate across that color group and the companion color group. The term 'color options' ... does not convey Applicant's complete mix and match concept at all to the ordinary consumer.

Applicant therefore maintains that the phrase "COLOR OPTIONS" is only suggestive rather than merely descriptive of its goods.

The Examining Attorney, on the other hand, contends that such phrase "merely describes the primary feature or purpose of the applicant's wallcovering sample books." In support of his position, the Examining Attorney has made of record and relies upon the definition of the term "option," which the Random House Unabridged Dictionary (2d ed. 1993) at 1360 defines in relevant part as "something that may be or is chosen; choice." When combined with the word "color," the Examining Attorney argues that "the resulting term 'COLOR OPTIONS' quite literally means a 'choice of colors,'" which is what applicant's wallcovering sample books provide to prospective customers.

In addition, the Examining Attorney points to representative excerpts, of which we find the following to be particularly pertinent, from his searches of the "NEXIS" database as "evidence that the proposed mark is used extensively to describe the choices of color that potential consumers are presented with when purchasing a variety of products including wallcoverings" (**emphasis added**):

"'I thought of Corian as a top-of-the-line countertop, but there were only six **color options**, which didn't add a lot of pizzazz to a kitchen,' said Turner." -- Washington Post, September 7, 1996;

The designers specified vinyl composition tile ... for its maintenance, durability and varied **color options**" -- Chain Store Age, September 1, 1996;

"May 30: The St. Martins return from vacation with questions for the designers,

including a request for different **color options** for the **wall coverings**." -- San Francisco Chronicle, August 9, 1995;

"[Y]ou enter the dining room, which, along with the rest of the apartment (except the bathrooms), is carpeted in a pale brown. (There are other **color options**, including blue, beige and gray.)" -- Chicago Tribune, June 11, 1993;

"I would recommend neutrals - not necessarily beige - for the tile, tub, countertops and other surfaces. They allow more **color options** for the **wallcoverings**, window treatments and towels." -- Atlanta Journal and Constitution, January 20, 1991;

"[J]ohnson was one of the first homebuilders to try EIFS. The idea of putting a continuous layer of insulation on the outside of the wall framing appealed to him, as did the ease of installation, the **color options** and the potential for incorporating innovative three-dimensional trim elements into his houses." -- Custom Builder, July 1990);

"Carpeting and wall colors are keyed to three **color options** - beige, green, and plum - that work well with most tenants' furnishings." -- Restaurant-Hotel Design International, August 1989; and

"Cement Finish USG Durock, an exterior finish with the appearance and texture of stucco, is part of the manufacturer's complete exterior wall system. Twenty **color options** and several textured effects are illustrated in this brochure, which includes details and specifications." -- Progressive Architecture, October 15, 1988.

The following excerpt, we note, is also especially relevant (**emphasis added**):

"Vreeland's patterns come in pearl, blue, teal, indigo, ruby and rose, and her **wallcovering book** is organized according to **color**, so that each section contains all the patterns and solids that can be bought in that color." -- Arkansas Democrat-Gazette,

January 23, 1987 (article headlined in part: "Wallpaper explodes into prints").

The Examining Attorney, in view of such evidence, maintains that "color options" is a term which "is used extensively to describe the choices of color that potential customers are presented with when purchasing a variety of products including wallcoverings." The mere descriptiveness of the phrase "COLOR OPTIONS," the Examining Attorney accordingly concludes, "is particularly clear when used in connection with wallcovering sample books because the primary, if not only, purpose of a wallcovering sample book is to allow customers to select colors, patterns and textures from among various options."

It is well settled that a phrase or term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a phrase or term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the phrase or term describes a significant attribute or idea about them. Moreover, whether a phrase or term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible

significance that the phrase or term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

In the present case, it is our view that, when applied to applicant's "wallcovering sample books," the phrase "COLOR OPTIONS" immediately describes, without conjecture or speculation, a significant feature or primary purpose of applicant's goods, namely, that they inform prospective purchasers of the color options available for applicant's wallcoverings. Such phrase is not vague, ambiguous or otherwise so indefinite that it fails to describe precisely the choices of colors presented by applicant's wallcovering sample books. Nor is there anything in the combination of the words "COLOR" and "OPTIONS" into the phrase "COLOR OPTIONS" which is incongruous or otherwise subject, in the context of applicant's goods, to a myriad of possible meanings. Instead, the "NEXIS" excerpts and the dictionary definition of record of the word "option" unambiguously demonstrate that the phrase "COLOR OPTIONS" is a common or ordinary term for a variety of products, including wallcoverings, which are offered to consumers in a choice of colors. Consequently, as applied to books providing samples of wallcoverings, the phrase "COLOR OPTIONS" would forthwith convey only a merely descriptive significance.

Moreover, even though applicant asserts that its wallcovering sample books provide the consumer with choices of coordinated patterns, such patterns--as applicant has admitted--"have a common color theme". It is thus clear, as persuasively argued by the Examining Attorney, that (footnotes omitted; **emphasis in original**):

[E]ven assuming *arguendo* that the identification of goods did specifically identify the nature of applicant's wallcovering sample books as described throughout the applicant's appeal brief, the descriptive nature of the mark would not be minimized. In this case, it is clear from the record that the applicant's wallcovering sample books offer "options" or "choices" between different colors and/or color groups. As conceded by the applicant, "to the average consumer the term 'color options[,]'" when used in a merely descriptive ... sense, means a choice of colors Therefore, the fact that the applicant's wallcovering [sample] books may intentionally limit the consumer's options is irrelevant. In fact, it is likely that all wallcovering sample books narrow the consumer's options in some manner (i.e., by style, theme, color, etc.). However, as long as the consumer is allowed to choose between two colors, a "color option" still exists. Accordingly, while the applicant asserts ... that the choice of colors is intentionally **limited**, the applicant does not assert that the choice of colors is **eliminated**. Therefore, the applicant's [particular] type of wallcovering [sample] books has not eliminated "color options" as a feature of its goods, it has simply removed what it considers "bad color options" from the wallcovering sample books.

There is simply nothing in the phrase "COLOR OPTIONS" which requires that consumers who consult applicant's goods utilize imagination, cogitation or mental processing, or gather further

information, in order to perceive readily and precisely the merely descriptive significance of such phrase.

Accordingly, because the phrase "COLOR OPTIONS" conveys forthwith a significant feature or primary purpose of applicant's wallcovering sample books, it is merely descriptive of such goods within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.

J. D. Sams

G. D. Hohein

P. T. Hairston
Administrative Trademark Judges,
Trademark Trial and Appeal Board