

THIS DECISION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

April 17, 1997

Paper No. 18
TJQ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Michigan Discount Jewelers, Ltd.

Serial No. 74/455,521

Daniel H. Bliss of Bliss McGlynn for applicant.

Andrew D. Lawrence, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Sams, Simms and Quinn, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Michigan Discount
Jewelers, Ltd., doing business as Michigan Jewelers, Ltd.
and MDJ Sports Jewelry, to register the mark THE POCKET
LOCKER for "cases for holding credit cards, money and
personal ID cards."¹ Applicant claims ownership of
Registration No. 1,815,424 (issued January 4, 1994) for the

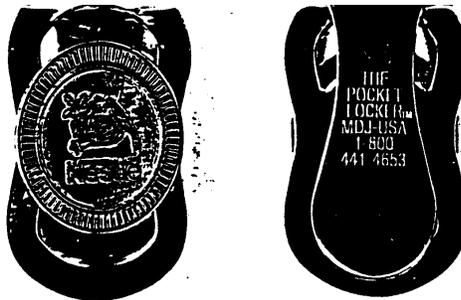
¹Application Serial No. 74/455,521, filed November 1, 1993,
based on a bona fide intention to use the mark in commerce.
Applicant subsequently filed a statement of use alleging dates
of first use of November 1993.

mark THE POCKET VAULT for "cases for holding credit cards, money and personal identification cards."

The Trademark Examining Attorney has refused registration on the ground that the specimens do not show use of the mark on the goods identified in the application.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.

The mark of this intent-to-use application was published in the Official Gazette and, with no opposition filed, a notice of allowance issued. Applicant subsequently filed a statement of use, supported by specimens (photocopies of the goods) showing the mark as used on the goods. A copy of the specimen is reproduced below.



Upon examination of the statement of use, the Examining Attorney made the refusal which forms the basis of this appeal. The Examining Attorney has submitted dictionary definitions of the terms "case" and "money clip", as well as the terms "contain", "container", "enclose" and "receptacle." Simply stated, it is the Examining Attorney's position that "the goods depicted in the applicant's

specimens are money clips, not some form of case." (brief, p. 2) Thus, according to the Examining Attorney, the specimens show use of the mark on goods which are not the goods identified in the application. With respect to the issuance of applicant's prior registration, the Examining Attorney contends that the acceptance of the specimens in the underlying application was in error, and that such acceptance does not justify perpetuation of the error in the present application.

Applicant's principal argument is based on its ownership of a prior registration (brief, pp. 2-3):

U.S. Registration No. 1,815,424 for the mark THE POCKET VAULT was based on an application filed on July 10, 1992 and identified the goods as devices for holding credit cards, money and other similar items. When applicant explained the goods to Examining Attorney Edward Nelson, he amended the identification of goods to "cases for holding credit cards, money and personal identification cards." Applicant filed a Statement of Use under Section 2.88 on August 3, 1993 which was accepted on November 27, 1993. The U.S. Patent and Trademark Office accepted the identification of "cases" as including a device for holding paper currency, credit cards and the like as in U.S. Patent No. 5,249,437.

In the present application, the Examining Attorney approved the identification of the goods as "cases for credit cards, money and personal ID cards" in the Notice of Allowance dated November 1, 1994. The specimens filed with the Statement of Use on January 4, 1995 show the mark used on the device for holding paper currency, credit cards and the like. Since the goods are the

same in the present application as in U.S. Registration No. 1,815,424, the Examining Attorney should accept the Statement of Use and specimens filed January 4, 1995. It is respectfully submitted that the U.S. Patent and Trademark Office characterized the goods in the prior U.S. Registration No. 1,815,424 and accepted the specimens therefor and this characterization and specimens in the present application should also be accepted.

Applicant further points to the listing of "cases" in the Acceptable Identification of Goods and Services Manual wherein "cases" are listed as "holders or wallets." Applicant contends that its "cases" fall within the listing of "holders" and that, therefore, the specimens should be accepted as supporting use of the mark on the goods as identified in the application. Applicant has submitted a certified copy of its prior registration, a copy of the specimens submitted with the statement of use in the underlying application for that registration, a copy of the patent covering applicant's goods and page G-22 of the aforementioned identification of goods manual.

The specific nature of applicant's goods sold under the mark THE POCKET LOCKER is readily ascertained from a review of the evidence of record, including a patent and an advertisement. The patent's abstract describes the product as follows:

A device for holding articles includes a base member, a spring member extending outwardly and away from the base member, and a clamping member for engaging and disengaging articles, the clamping

member having an open position for disengaging articles and a closed position for engaging articles and holding the articles between the clamping member and the base member.

The patent reveals that the product essentially is an improvement on the conventional money clip. This patented product has several advantages over traditional money clips, with the main advantage of holding not only paper currency, but other articles as well, such as credit cards, a driver's license and the like. One of the main objects of the invention, as stated in the patent, is "to provide a device for holding articles which eliminates the need for both a wallet and money clip to store or hold the articles." Applicant touts this advantage in its advertisements.

After reviewing the entire record, we conclude that the Examining Attorney has viewed too narrowly applicant's identification of goods. Inasmuch as applicant's product is a patented device which differs from conventional money clips and which apparently has no well-understood generic designation, we find that the term "case" is probably as good as any to identify the goods. The Examining Attorney who approved the issuance of applicant's prior registration so found and we disagree with the present Examining Attorney that his colleague was "in error" when he recommended the term "case" as an acceptable identification of the goods. And we find it not only reasonable but logical for applicant to have relied on the prior identification in identifying its goods in the present application. We say this

recognizing, of course, the dictionary definition of "case" submitted by the Examining Attorney. But we also take judicial notice of another dictionary listing of "case" which shows that the term encompasses "a decorative or protective covering or cover." The American Heritage Dictionary of The English Language (3rd ed. 1992).

Finally, a comment is in order regarding these types of refusals. When there is a perceived discrepancy between the goods as shown in the specimens and the goods as identified in the application, and the Examining Attorney believes that an acceptable amendment to the identification of goods may solve the problem, then the Examining Attorney should suggest an appropriate amendment. Thus, the Office and applicant could work together to fashion, if at all possible, an acceptable identification of goods that is accurate and falls within the scope of the original identification. This application is a prime example of a case in which such an effort might have avoided an appeal, and resulted in quicker issuance of a registration to applicant. When the Examining Attorney was not satisfied with the term "cases" in the identification of goods, a slight variation of the identification, giving a clear description of the goods, might have mollified the Examining Attorney. By way of example, we suspect that the Office would have accepted "cases in the nature of holders with springing and clamping mechanisms for credit cards, money and personal ID cards." Be that as it may, we conclude that

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the identification as it presently reads is sufficiently consistent with the goods indicated by the specimens and other evidence of record.

Decision: The refusal to register is reversed.

J. D. Sams

R. L. Simms

T. J. Quinn
Administrative Trademark Judges
Trademark Trial and Appeal Board

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