Commissioner of Patents and Trademarks
Patent and Trademark Office (P.T.O.)

IN RE MANCO, INC.
Serial Nos. 74/020,176; 74/020,187; 74/020,199; 74/020,235
July 30, 1992

Thomas E. Young of Body, Vickers & Daniels for applicant.

David C. Reihner

Trademark Examining Attorney

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(Deborah S. Cohn, Managing Attorney)

Before Rooney, Seeherman and Hohein

Commissioners

Opinion by Hohein

Member

Applications have been filed by Manco, Inc. to register the marks "THINK GREEN" and "THINK GREEN" and design, as reproduced below,

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for, in the case of each mark, "mailing and shipping cardboard boxes, padded envelopes, photo mailers, wrapping paper, tissue paper, paper labels, and adhesive tape for household use" [FN1] and "weatherstripping, namely, plastic and rubber foam tapes, door seals, window seals, plastic storm window kits, plastic air conditioner covers, rubber and plastic caulk and insulating tapes." [FN2]

Following publication and issuance of a notice of allowance with respect to each application, applicant submitted statements of use which allege, in each instance, a date of first use anywhere of October 27, 1989 and a date of first use in interstate commerce of November 26, 1990. In light of the manner of use shown by the specimens furnished by applicant, registration in each case has been finally refused under Sections 1, 2 and 45 of the Trademark Act, 15 U.S.C. § § 1051, 1052 and 1127, on the basis that the designation sought to be registered "does not act as a trademark" to identify and distinguish applicant's goods but, instead, functions as "merely an informational expression" which denotes the need for ecological or environmental awareness.

Applicant, in each instance, has appealed. Briefs have been filed but an oral hearing was not requested. Because the issue in each appeal is the same, the cases have been treated in a single opinion. We affirm.

Of record in support of the Examining Attorney's position are several excerpts from a search of Mead Data Central, Inc.'s NEXIS data base, [FN3] the most pertinent of which are the following: [FN4]

["]CHILDREN STILL HAVE THIS PASSION for the earth and the things that live on it," says Randi Hacker. "Instinctively they are connected to the planet in a way we adults are not." With partner Jackie Kaufman, Hacker has proved her point with P3, a children's environmental magazine that ranks among the fastest growing publications around. ....

P3 (the name is code for Earth, the third planet from the sun) appears six times yearly and aims to engage and inform readers from ages 6 to 12 on environmental issues--the dwindling supply of fossil fuels, for example. ....--People, May 27, 1991, § EARTH, at 54 (containing an article headlined: "FOR PRETEENS WHO THINK GREEN; Two Vermont editors create an environmental magazine for kids");

PETER JENNINGS: ... On the American Agenda tonight, the environment: business learning to think green....--ABC News, May 22, 1991 (broadcast of television show: World News Tonight with Peter Jennings);

***2** Stars of show business--and show--business businesses--joined forces Thursday in urging ad agencies to think green.

At a luncheon in New York, celebrities and execs associated with Time Warner Inc. announced "The Environmental Challenge." The contest, by Time magazine, asks agencies to create ads on environmental themes.--USA Today, April 20, 1990, § MONEY, at 28;

Dorfman says the biodegradable bags are more costly, do not accept ink dyes as well as their counterparts, have a less desirable opacity, may tear more easily and could create infestation problems. Yet consumers still consider them environmentally beneficial. This may be one instance where bakers will want to respond to the public perception, Dorfman suggests, noting that in the baking business consumer perception is reality.

"The baking industry is already considered by the public to be a clean industry," he says, noting that any positive action in the packaging area would enhance that image.

Preserving that clean image without spending tremendous amounts of money remains a big challenge for bakers. In many cases, thinking "green" or formulating a sound economic program requires spending money that, as Brinkhorst says, won't make a better loaf of bread.--Bakery Production and Marketing, February 24, 1990, at 58 (discussing, in addition, the economics of the environmental issue of bakers switching their vehicles to run on "alternative fuels"); and

To encourage Hong Kong people to "think Green," Chau cofounded Green Power in 1988 to campaign against the deterioration of the environment.--Christian Science Monitor, January 16, 1990, at 4.

In light of such evidence, and given the manner of use shown by the specimens, which are utilized as displays associated with the goods, the Examining Attorney maintains in essence that:

Applicant has appropriated as a source indicator for its goods a well-known expression used in relation to the environmental movement. The wording "Think Green" has been shown to be a catch phrase for "concern for the environment" or that people and industries should be aware of the ecological consequences of their actions. The displays associated with the goods submitted as specimens show the wording "Think Green" prominently displayed in an embellishing design but not used as a mark to identify goods to source but, rather, as part of an environmental policy statement directed to its purchasers indicating

how applicant and its customers may keep the country clean, beautiful, and environmentally safe. The wording "Think Green [,]" ... with [and without] the design[,] is not used as a trademark and may not be registered as one.

Applicant's specimens consist of two separate brochures, the front panel of each of which is shown below: [FN5]

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According to applicant, the brochures prominently feature its "THINK GREEN" marks and are "displayed on shelves in close proximity to Applicant's goods," thereby serving as displays associated with the goods. The front covers of the brochures are printed primarily in green ink and, as noted by applicant, because the brochures are folded, only the front panels thereof will be visible to prospective purchasers of applicant's products. [FN6] Applicant also points out that, as shown by the full-color "Sea of Green" brochure which it made of record herein, it "prominently uses the color green in packaging its products".

***3** In consequence of the above, applicant argues that the term or slogan "THINK GREEN," both by itself and in combination with a surrounding design, indicates a common source of origin for its goods. [FN7] In particular, applicant urges that the "informational nature" of the slogan or term "THINK GREEN" does not preclude its registration, citing In re E. Kahn's Sons Co., 343 F.2d 475, 145 USPQ 215 (CCPA 1965) [holding that slogan "THE WIENER THE WORLD AWAITED" functioned as a trademark for bacon] and In re First Union National Bank, 223 USPQ 278 (TTAB1984) [finding that slogan "TAKE A CLOSER LOOK" functioned as a service mark for banking services]. Moreover, applicant insists that in the circumstances of these cases, "a double meaning is present because of the prominent use of the color green on Applicant's goods". [FN8] In view thereof, and in light of the desirable qualities and correspondingly positive connotation suggested to prospective purchasers by the designation "THINK GREEN," applicant asserts that:

> Applicant uses the mark THINK GREEN with its products to suggest that its products are environmentally responsible--a quality likely to make Applicant's products more desirable to purchasers. But Applicant also uses the mark to ask consumers to look for Manco products, which are packaged in green. This [sic] Applicant not only uses THINK GREEN to identify goods to a common source, but also uses it to make its products more desirable to purchasers--two classic trademark usages. Therefore, knowing that the color green is associated with applicant, applicant insists that prospective purchasers will more readily associate the slogan "THINK GREEN" with applicant and regard such term as identifying and distinguishing the source of its goods.

Applicant, in addition, argues that the informational content of the specimens of record is unrelated to the trademark function of the words "THINK GREEN". Although conceding that the "brochures also contain much material that does not function as a trademark," applicant contends that "this information does not detract from the trademark usage of THINK GREEN" since most of the information "will not even be visible to prospective purchasers at the time they first notice Applicant's mark". Consequently, and inasmuch as, when read by customers for the goods, "the contents of the brochure[s] serve to strengthen the association [among] ... Applicant, Applicant's mark, and Applicant's goods,"

applicant maintains that in light of the trademark usage of the designation "THINK GREEN" on the front panels of the specimens, the informational content of the brochures should not bar registration of the matter it seeks to register.

As stated by the court in In re Bose Corp., 546 F.2d 893, 192 USPQ 213, 215 (CCPA1976): "The Trademark Act is not an act to register mere words, but rather to register trademarks. Before there can be registration, there must be a trademark, and unless words have been so used they cannot qualify. In re Standard Oil Co., 47 CCPA 829, 275 F.2d 945, 125 USPQ 227 (1960)." [FN9] The court, noting that "the classic function of a trademark is to point out distinctively the origin of the goods to which it is attached," further indicated that (footnote omitted):

***4** An important function of specimens in a trademark application is, manifestly, to enable the PTO to verify the statements made in the application regarding trademark use. In this regard, the manner in which an applicant has employed the asserted mark, as evidenced by the specimens of record, must be carefully considered in determining whether the asserted mark has been used as a trademark with respect to the goods named in the application. In re Griffin Pollution Control Corp., 517 F.2d 1356, 186 USPQ 166 (CCPA1975); [and] In re E. Kahn's Sons [Co.], 52 CCPA 1201, 343 F.2d 475, 145 USPQ 215 (1965).

Id. at 215-16. Moreover, as pointed out by the Board in In re Remington Products Inc., 3 USPQ2d 1714, 1715 (TTAB1987):

[T]he mere fact that applicant's slogan appears on the specimens, even separate and apart from any other indicia which appear on them, does not make it a trademark. To be a mark, the term, or slogan, must be used in a manner calculated to project to purchasers or potential purchasers a single source or origin for the goods in question. Mere intent that a term function as a trademark is not enough in andof itself, any more than attachment of the trademark symbol would be, to make a term a trademark.

A critical element in determining whether a term is a trademark is the impression the term makes on the relevant public. In this case, the inquiry becomes would the term be perceived as a source indicator or merely an informational slogan?

We agree with the Examining Attorney that the record in these appeals demonstrates that the term "THINK GREEN," irrespective of whether it appears along with a background design, would be perceived by applicant's customers and potential purchasers as merely an informational slogan devoid of trademark significance. The NEXIS excerpts establish that the slogan "THINK GREEN" is used to signify the need for environmental sensitivity and/or ecological concern in one's actions, including the selection and use of products which benefit or otherwise facilitate the conservation of the earth's limited resources. Thus, rather than being regarded as an indicator of source, the term "THINK GREEN" would be regarded simply as a slogan of environmental awareness and/or ecological consciousness, particularly as applied to applicant's paper and weatherstripping products. [FN10] Moreover, we believe that instead of creating a "double meaning" which is indicative of source, the use of the color green on the packaging for applicant's goods, as well as its use as the predominant color on the front panels of the brochures submitted as specimens, would merely reinforce the environmental theme conveyed by the slogan "THINK GREEN". [FN11]

Furthermore, unlike the slogans in the cases chiefly relied upon by applicant, we think that the slogan "THINK GREEN" is instead analogous to the slogans in the decisions in In re Tilcon Warren, Inc., 221 USPQ 87 (TTAB1984) [finding slogan "WATCH THAT CHILD" for construction material, namely, crushed stone and other aggregates and asphaltic and ready-mixed concrete, does not function as a trademark] and In re Remington Products Inc., supra [holding slogan "PROUDLY MADE IN USA" for electric shavers and parts thereof would not be recognized as source indicator]. Such slogans respectively expressed a general concern for child safety and preference for American-made products, and thus would not be regarded, due to their general informational nature, as signifying the source or origin of the goods in connection with which they were used. Likewise, because applicant's slogan broadly conveys the ecological concerns of the expanding environmental movement, we believe that only the informational significance imparted by the term "THINK GREEN" would be impressed upon purchasers and prospective customers for applicant's goods. Consequently, they would not recognize or regard such term as denoting source. We therefore are of the opinion that the slogan "THINK GREEN" does not function as a trademark for applicant's goods.

***5** Decision: The refusal to register under Sections 1, 2 and 45 is affirmed in each case.

L.E. Rooney

E.J. Seeherman

G.D. Hohein

Members, Trademark Trial and Appeal Board

FN1. Respectively, Ser. Nos. 74/020,235 and 74/020,176, each filed on January 18, 1990 on the basis of a bona fide intention to use the particular mark in commerce.

FN2. Respectively, Ser. Nos. 74/020,187 and 74/020,199, each filed on January 18, 1990 on the basis of a bona fide intention to use the specific mark in commerce.

FN3. Specifically, a search of the OMNI file on June 24, 1991 using the following search request retrieved 425 stories: THINK PRE/1 GREEN. Copies of portions of eight stories were made of record.

FN4. We note that one of the excerpts is a story from a wire service and, thus, is of limited probative value in assessing the likely reaction of the public to the phrase applicant seeks to register since evidence from a proprietary news service is not presumed to have circulated among the general public and, consequently, is not assumed to have influenced the attitudes of prospective customers. See In re Appetito Provisions Co. Inc., 3 USPQ2d 1553, 1555 (TTAB1987) at n. 6 and In re Men's Int'l Professional Tennis Council, 1 USPQ2d 1917, 1918

(TTAB1986) at n. 5. Nevertheless, the following excerpt seems indicative that "think green" is a term signifying environmental and/or ecological consciousness:

Many teenage school children will be denied the opportunity of learning about the environment in their science lessons if recommendations for the National Curriculm are adopted.--Universal News Services Limited, February 7, 1989 (reporting on a news item headlined: "EDUCATION SECRETARY URGED TO THINK 'GREEN' ").

FN5. The cover reproduced on the left is representative of the specimens submitted in connection with Ser. Nos. 74/020,235 and 74/020,176, while that depicted on the right is illustrative of the specimens filed in connection with Ser. Nos. 74/020,187 and 74/020,199.

FN6. Although the back cover of the specimens filed in connection with Ser. Nos. 74/020,187 and 74/020,199 features, under the caption "7 simple things you can do to make a big difference in your community," the manner of use shown below, there understandably is no contention by applicant that such use would constitute a display associated with the goods since potential customers would not see the words "THINK GREEN" unless they picked up the brochure and turned to the back panel thereof:

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FN7. Although applicant also stresses that its marks are "capable of functioning as a trademark," capability is the standard used to determine registrability on the Supplemental Register. Specifically, Section 23(a) of the Trademark Act, 15 U.S.C. § 1091(a), provides in relevant part for the registration of "[a]ll marks capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under subsections (a), (b), (c), and (d) of section 2 of this Act...." All of applicant's applications, however, seek registration on the Principal Register.

FN8. While counsel for applicant represents that applicant "has sold its goods in predominantly green packaging for at least ten years," there is no affidavit or other evidence of record to support applicant's contention. Similarly, with respect to applicant's "Sea of Green" brochure, which was submitted with its August 29, 1991 requests for reconsideration, the assertion by applicant's attorney that such brochure "has been used by applicant for several years" is unsupported. Nevertheless, and inasmuch as the Examining Attorney has not challenged the representations by applicant's attorney, we will assume for purposes of these appeals that applicant has used, and continues to use, a predominantly green trade dress for the packaging of its goods even though, of course, a merchandising scheme is subject to change at any time.

FN9. In this regard, Section 45 of the Trademark Act, 15 U.S.C. § 1127, presently defines the term "trademark" in relevant part as

including "any word, name, symbol, or device, or any combination thereof--(1) used by a person ... to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown".

FN10. Applicant's brochures indicate that, with the exception of its adhesive tape, its paper goods are either made from recycled material or are recyclable and that its weatherstripping products promote energy conservation.

FN11. Except for the use of the symbol "TM" on some of applicant's brochures, there is nothingin the specimens to indicate that applicant promotes the term "THINK GREEN" as a trademark for its goods. Use of the symbol "TM," however, does not make unregistrable matter a trademark. See, e.g., In re General Foods Corp., 177 USPQ 403, 404 (TTAB1973) at n. 1 and In re Nosler Bullets, Inc., 169 USPQ 62, 64 (TTAB1971).

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