

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
May 3, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board

—
In re Manchester Cigarette Tobacco Limited

—
Serial No. 85260060

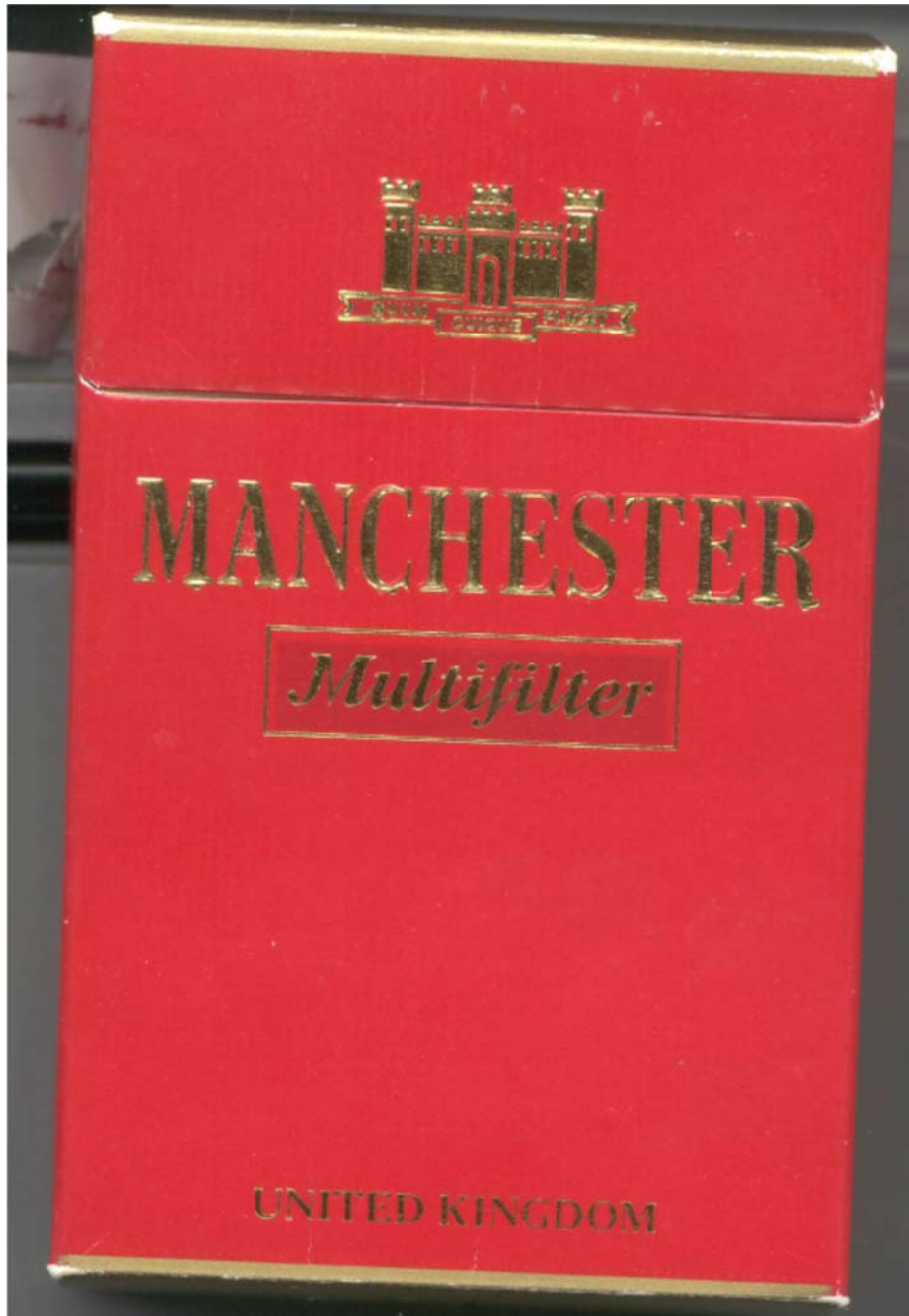
James H. Walters, Esq. for Manchester Cigarette Tobacco Limited.

Khanh M. Le, Trademark Examining Attorney, Law Office 113 (Odette Bonnet,
Managing Attorney).

—
Before Kuhlke, Bergsman and Adlin, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Manchester Cigarette Tobacco Limited (“applicant”) filed a use based application for the mark MANCHESTER SUUM CUIQUE PLACET, in standard character form, for “cigarettes, cigars, cigarillos, cheroots; matches; ashtrays not made of precious metals; and cigarette lighters not made of precious metals and parts therefor,” in International Class 34. The English translation of SUUM CUIQUE PLACET is “One’s own possessions pleases one.” The specimen showing use of the mark is displayed below.



The Trademark Examining Attorney refused to register applicant's mark because the specimen does not display the mark sought to be registered as required by Sections 1 and 45 of the Trademark of 1946, 15 U.S.C. §§ 1051 and 1127. *See also* Trademark Rule 2.51(b).

Section 1 of the Trademark Act requires that a trademark application include a drawing of the mark; in this case, MANCHESTER SUUM CUIQUE PLACET. Trademark Rule 2.51(b) provides that “the drawing of the mark must be a substantially exact representation of the mark as intended to be used on or in connection with the goods ... specified in the application ...”

The objection to the specimen is that the word MANCHESTER and the term SUUM CUIQUE PLACET create two separate commercial impressions rather than a unitary commercial impression. On the other hand, applicant argues that MANCHESTER and SUUM CUIQUE PLACET form a unitary commercial impression because they are typed words appearing on a uniform red background thereby tying the words together.¹

The issue presented is whether the specimen of use accurately depicts a single, unitary mark engendering a unique and distinct commercial impression, or whether the specimens depict two separate marks. *See In re Jordan Industries, Inc.*, 210 USPQ 158, 159 (TTAB 1980). *See also In re Walker-Home Petroleum*, 229 USPQ 773, 775-76. The issue is resolved by comparing the specimen to the drawing, and our analysis is necessarily subjective. *See In re Jordan Industries*, 210 USPQ at 159. The specimen of use presumably shows how the average purchaser will encounter the mark under normal marketing conditions and therefore suggests the average purchaser’s likely perception of this display of the mark. *In re Magic Muffler Service, Inc.*, 184 USPQ 125, 126 (TTAB 1974). When

¹ Applicant’s Brief, p. 5.

“the specimens disclose that applicant seeks to register two marks in one application, refusal of registration is proper.” *In re Audi NSU Auto Union AG*, 197 USPQ 649, 651 (TTAB 1977).

Simply by reviewing the specimen and comparing it to the drawing, it is evident that the specimen is not a “substantially exact representation” of the drawing. The specimen displays the word MANCHESTER and the term SUUM CUIQUE PLACET as separate and distinct elements. The word MANCHESTER appears on the lower portion of the package in large block letters. As shown below, the term SUUM CUIQUE PLACET appears in a banner underneath the drawing of a castle on the upper lid of the package.



The spatially separate and distinct manner of presentation of these elements creates separate commercial impressions for MANCHESTER and SUUM CUIQUE PLACET in contrast to the unitary phrase applicant seeks to register in standard character form.

Our analysis comports with other cases in which the Board has addressed a similar question. For example, in *Jordan Industries*, we affirmed the refusal to

Serial No. 85260060

register JORDAN JIF-LOK (stylized), finding that the presentation of the terms in the following specimen did not make a unitary impression:



Instead, the Board found that

the manner in which “JORDAN” is presented separates the commercial impression created by that name from the impression created by “JIF-LOK,” especially when the latter is seen, as it naturally would be observed by the average customer, as part of the complete expression “JIF-LOK ‘MIRACLE’ FASTENER.”

210 USPQ at 159.

The Board reached similar results where specimens did not display unitary marks in *In re Audi NSU Auto Union* (refusing registration of AUDI FOX and design) and *In re Magic Muffler Service, Inc.*, 184 USPQ 125 (refusing registration of the stylized mark MAGIC MUFFLER SERVICE).

Decision: The refusal to register is affirmed.