

TTAB
JUL 22 2002

7-29-2002

IN THE UNITED STATES PATENT TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1,919,917
Date Registered: September 19, 1995

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)
)
Milliken & Company,
Petitioner,)

) Cancellation No. 31,706
)
)

v.)
)

Armstrong World Industries, Inc.,
Respondent.)



07-29-2002

U.S. Patent & TMO Trial and Appeal Board

TRADEMARK TRIAL AND
APPEAL BOARD
JUL 16 AM 8:44

BOX TTAB - NO FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

STIPULATED MOTION TO DISMISS

In accordance with paragraph 11 of the Consent Agreement between the parties, Petitioner and Respondent, by and through counsel, hereby move the Board to dismiss the above-captioned opposition without prejudice. A copy of the aforementioned Consent Agreement is attached hereto as Exhibit A.

Respectfully submitted,

Thomas L. Moses, Esq.
Attorney for Petitioner

CONSENT TO BY:

ADAMS, SCHWARTZ & EVANS, P.A.

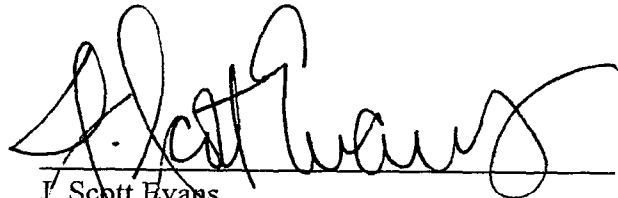
J. Scott Eyars
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, STIPULATED MOTION TO DISMISS, was duly served upon the Petitioner by delivering copies thereof first class mail, postage prepaid and properly addressed to the following attorney of record:

Thomas L. Moses
Milliken & Company
PO Box 1927
Spartanburg, South Carolina 29304

This 19th day of July, 2002.



J. Scott Evans
Attorney for Respondent

Of Counsel:

J. Scott Evans
ADAMS, SCHWARTZ & EVANS, P.A.
2180 Two Wachovia Center
301 South Tryon Street
Charlotte, NC 28282
(704) 375-9249
Our File No. 2248/4

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Consent Agreement

THIS AGREEMENT is made, entered into, and is effective this 17th day of June, 2002, is by and between MILLIKEN & COMPANY, a Delaware corporation having a mailing address of P.O. Box 1927, Spartanburg, South Carolina 29304 ("Milliken"), and ARMSTRONG WORLD INDUSTRIES, INC., a Pennsylvania corporation having a mailing address at P.O. Box 3001 Liberty and Charlotte Streets, Lancaster, Pennsylvania 19604, ("Armstrong").

WHEREAS, Milliken has long used and is using the trademark EXPLORE! in association with carpet in the form of carpet tile for commercial use, and is the owner of U.S. Trademark application serial number 75/730,992 ("Application"); and

WHEREAS, Armstrong has long used and is using the trademark EXPLORER in association with resilient hard surface covering for floors, walls, and other surfaces, and is the owner of U.S. Trademark registration number 1,919,917 ("Registration"); and

WHEREAS, the parties, by virtue of their substantial mutual knowledge of the characteristics, application, marketing and trade channels for their respective products, are confident that no likelihood of confusion, mistake or deception will result by their concurrent use of the marks EXPLORE! And EXPLORER on their respective products; and

WHEREAS, the parties wish to formalize an arrangement by which both parties agree to assist each other in securing and maintaining trademark registrations for their respective marks to cover their respective above-described products in various trademark jurisdictions throughout the world, and the parties hereto recognize that it is in their best commercial interest to avoid future conflicts between the uses of their respective marks as identified above;

NOW THEREFORE, in consideration of their mutual promises, and intending to be legally bound, the parties hereto agree as follows:

1. Armstrong consents to the use and registration by Milliken, its affiliated companies, successors, licensees or customers, anywhere in the world, of the EXPLORE! mark, represented in any typography, except the typography used by Armstrong, as used in association with carpet in the form of carpet tile for commercial use ("Milliken's Products"), and will not object to the registration or use or oppose any Milliken application to register the mark EXPLORE! for Milliken's Products, nor will it petition to cancel any Milliken registration for the EXPLORE! mark for Milliken's Products.
2. Milliken consents to the use and registration by Armstrong, its affiliated companies, successors, licensees or customers, anywhere in the world, of the EXPLORER mark, represented in any typography, except the

typography used by Milliken, used in association with resilient hard surface covering for floors, walls, and other surfaces (“Armstrong Products”), and will not object to the registration or use or oppose any Armstrong application to register the EXPLORER mark for Armstrong Products, nor will it petition to cancel any Armstrong registration for the EXPLORER mark for Armstrong Products.

3. Armstrong will not extend its use of the EXPLORER mark to any goods or services other than Armstrong Products in any manner that would be likely to cause confusion with Milliken’s use of the EXPLORE! mark in connection with Milliken’s Products, and Armstrong specifically will not use the EXPLORER mark on or in connection with Milliken’s Products.
4. Milliken will not extend its use of the EXPLORE! mark to any goods or services other than Milliken’s Products in any manner that would be likely to cause confusion with Armstrong’s use of the EXPLORER mark in connection with Armstrong’s Products, and Milliken specifically will not use the EXPLORE! mark on or in connection with Armstrong’s Products.
5. Either party may file a copy of this Agreement in the trademark office of any jurisdiction in order to overcome the rejection of a trademark application based on the citation of the other party’s registration for or use of the mark. This provision only applies conflicts between the EXPLORE!

mark owned by Milliken, and the EXPLORER mark owned by Armstrong. To the extent that this Agreement fails to overcome the citation, then each party agrees, upon the request of the other, to execute and file such letters of consent to register or such other documents as are necessary to overcome the citation; provided, however, that all reasonable expenses connected with such execution and filing shall be borne by the party requesting the letters of consent or other documents.

6. The parties are presently unaware of any instance of actual confusion caused by their concurrent uses of the marks EXPLORE! And EXPLORER, and do not believe that confusion between the use of the respective marks is likely, but should instances of confusion between the trademarks of the respective parties arise in the future, the parties agree to cooperate in efforts to eliminate such confusion. In the event that either of the parties hereto engages in the future in any new or expanded form of advertising or marketing activity or takes any other action that causes confusion, and the parties are unable to agree to steps sufficient to eliminate such confusion, the party whose advertising or marketing activity or other action has caused the confusion will cease the advertising or marketing activity or other action in question.

7. Neither party will in any way attempt to associate itself with the other party or with the other party's products without the express written consent of the other party.
8. This agreement is limited to its terms and does not relate to any other mark that is or may be owned or used by either of the parties hereto.
9. This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto and to their legal representatives, successors, assigns, and licensees.
10. Milliken shall use its best efforts to obtain a U.S. trademark registration for EXPLORE! on its Application Serial Number 75/730,992. If, however, the Application is finally rejected by the U.S. Patent and Trademark Office based on the Registration, then Milliken reserves the right to rescind this Agreement, and neither party will have any further obligation hereunder.
11. Within ten (10) business days of executing this Consent Agreement, the parties will execute and file a Consent Motion to Dismiss Cancellation Action No. 31,706 with the Trademark Trial and Appeal Board without prejudice.

12. This Agreement contains the entire agreement between the parties concerning the subject matter hereof, and it supersedes all preexisting agreements, whether oral or written, between them respecting its subject matter. Any representation, promise, or condition in connection with any such subject matter that is not incorporated in the Agreement shall not be binding upon either party. No modification, renewal, extension, or waiver, and no termination of this Agreement or of any of its provisions shall be binding upon the party against whom enforcement of such modification, renewal, extension, waiver, or termination is sought, unless made in writing and signed on behalf of such party by an authorized official thereof. As used herein, the word "termination" includes any and all means of bringing to an end prior to its expiration by its own terms this Agreement or any provision thereof, whether by release, discharge, abandonment, or otherwise.

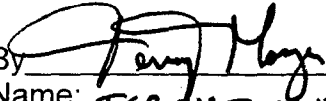
IN WITNESS HEREOF, the parties, through their authorized representatives, have hereunto set their hands, effective as of the date above first written.

Milliken & Company

Date:

June 7, 2002

By


Name: TERRY TIMOYER
Title: VICE PRESIDENT

Armstrong World Industries, Inc.

Date: June 19, 2002

CPA
By Walter T. Gungl
Name: Walter T. Gungl
Title: Assistant Secretary