



Pattishall Prevails Before Trademark Trial and Appeal Board

March 25, 2020



Pattishall waged a successful appeal before the USPTO Trademark Trial and Appeal Board on behalf of Medline Industries, Inc. to obtain a registration for a particular shade of green, Pantone 2274C, for medical gloves. Janet Marvel, Seth Appel and Jacquelyn Prom represented Medline.

The Examining Attorney had refused registration based on likelihood of confusion with another mark for medical gloves, identified as Pantone 7488U. In a precedential decision, <http://ttabvue.uspto.gov/ttabvue/v?qs=87680078>, the TTAB reversed the Examining Attorney's refusal. It determined that the registrant's rights did not encompass all shades of green gloves, and it would be improper for a single entity to claim rights to the entire world of greens. The TTAB found the current situation distinguishable from *Cook Medical*, the only prior precedential Board decision on the issue of likelihood of confusion between two single-color marks in the 25 years since *Qualitex*, the Supreme Court's landmark decision on color marks. The Board explained:

We agree with Applicant that [the Examiner's] position is untenable. Beyond being inconsistent with the application and registration, it would in essence result in a *per se* rule, the effect of which would be to remove the color green entirely from the supply of colors available for potential use as marks for medical gloves, even if a particular shade of green is unlikely to cause confusion with the registered mark.

Taking into account the many other green gloves on the market, the TTAB explained, the differences between the parties' marks are significant enough to make confusion unlikely, even when used on identical goods sold through the same channels to the same customers.