

Keywords: Trademarks, advertisement, use in commerce

General: A webpage has to show sufficient information to enable a purchase to demonstrate a use in commerce.

In Re: Siny Corp.

United States Court of Appeals for the Federal Circuit

No. 2018-1077

Nonprecedential opinion issued: January 14, 2019

Precedential opinion issued: April 10, 2019

I. Background

On September 11, 2015, Siny Corporation (“Siny”) filed trademark application Serial No. 86754400 to register the mark CASALANA for a fabric under 15 U.S.C. § 1051(a), which requires that the mark is used in commerce. To provide evidence of a use in commerce, an applicant is to submit a specimen showing that the mark is “placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto.” Siny initially submitted a webpage to show the mark as used in commerce, but the examining attorney refused registration because the webpage was an advertisement of products, and did not show a use in commerce, such as a “means for ordering goods.” Thus, Siny submitted a substitute specimen that had additional text for making a purchase. The examining attorney maintained refusal because the additional text merely showed contact information, which does not present sufficient information to make a purchase.

Siny appealed to the Board. Siny argued that the webpage satisfied the “display associated with the goods” criterion to show use in commerce. However, the Board cited precedent to show that the display must be a “point of sale” and not merely an advertisement. In this case, the Board asserted that the webpage did not display vital information, such as a price, methods of payment, or shipping information, to enable a customer to make a purchase. The customer must acquire such information outside of the webpage, such as by contacting Siny’s sales personnel. The Board contended that “if virtually all important aspects of the transaction must be determined from information extraneous to the web page, then the web page is not a point of sale.” Further, if the applicant and the examining attorney were to disagree with the submitted specimen, then the applicant can show evidence of transactions made via the webpage. Siny did not provide such evidence and, thus, the Board affirmed with the examining attorney. Siny appealed again.

II. Issue

Did the Board err in its assertion that the webpage did not provide evidence of use in commerce?

III. Discussion

No. The Federal Circuit determined the webpage does not show sufficient purchasing information to satisfy the “display associated with the goods” criterion. The Federal Circuit reiterated that an advertisement is not enough to be interpreted as a display under 15 U.S.C. §

1051(a). However, a display at a point-of-sale location can be interpreted as such a display. Thus, the Federal Circuit determined the point-of-sale nature of the webpage.

In its evaluation, the Federal Circuit also observed a lack of information to enable a purchase, such as the prices, the quantity to be ordered, shipping information, etc. The only information related to sales is contact information. Thus, the Federal Circuit agreed with the Board that aspects of purchasing must be made outside of the webpage. A customer would have to use the provided contact information to reach out to, presumably, a sales associate, who would then enable the transaction. An invitation, which in case is the contact information, to acquire additional information, including setting up an order, does not provide the “means for ordering the goods” that the examining attorney originally pointed out. That is, the goods are not “available through purchase through the webpage.” Furthermore, Siny failed to provide evidence of “how sales are actually made,” including what has to occur via the webpage to make a purchase.

Siny had argued that the Board’s requirements were overly rigid, and should not be evaluating the webpage using a bright-line rule. The Federal Circuit disagreed and determined that the Board did not apply a bright-line rule. Rather, the Board determined, based on the provided evidence, that the webpage was mere advertisement, and did not show “an acceptable display associated with the goods.”

The Federal Circuit issued a nonprecedential opinion on January 14, 2019. On March 14, 2019, the USPTO requested that the Federal Circuit reissue a precedential opinion, because the Federal Circuit had interpreted the statutory definition of a use in commerce regarding “displays associated” with goods. Such interpretation will help evaluate future trademark applicants on what constitutes a use in commerce. On April 10, 2019, the Federal Circuit issued its precedential opinion.

IV. Conclusion

A webpage merely showing that sales can be made is not enough to provide evidence of use in commerce. While there still is no bright-line rule, at a minimum, the webpage must provide enough information to enable a purchase or to show that purchases were made.

V. Appendix

5/16/2016

Glenoit Fabrics is a division of Monterey Mills - Silver Knit Pile Fabrics - Fake Fur

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GLENOIT FABRICS

Glenoit Fabrics is affiliated with Monterey Mills



A sample of Glenoit Fabrics' super soft comfort knit pile fabric

Masters of Comfort Knit Pile Fabrics

Founded over 50 years ago in Beaver, Wisconsin, Glenoit Fabrics is the largest manufacturer of silver knit pile fabrics in North America. Together with its flexible workforce and short turnaround period, it supplies a major share of the comfort and performance pile fabrics produced in the world.

Glenoit Fabrics takes pride in partnering with each manufacturing customer to develop and supply the right fabric with "just in time" production for the right end product. Offering services rarely found elsewhere, a strong network of design and engineering facilities at both Glenoit Fabrics and Monterey Mills produces unique comfort knit pile fabrics made with the finest fibers that meet exacting specifications. Glenoit Fabrics also provides assistance with cutting and sewing and other production and finishing services, to aid further in the success of the final end product should customers require them.

'Fabrics Made from Fiber'

Glenoit Fabrics' comfort knit pile products are described as 'Fabrics Made from Fiber' because of the process by which they are made.

Glenoit Fabrics' special silver (ny-vee) knitting process locks individual fibers directly into a lightweight knit backing allowing each fiber to stand upright, free from the backing to form the soft pile on the face of the fabric. This makes Glenoit Fabrics' comfort knit pile fabrics softer, warmer, more drapable and more resilient than fabrics made from yarns.

Features and Benefits of Glenoit Fabrics' Comfort Knit Pile

Glenoit Fabrics' silver knit pile is made like no other fabric. (For more information on how Glenoit Fabrics' comfort knit fabrics are made, go to [Fabrics Made from Fiber](#).)

Because Glenoit Fabrics' special silver (ny-vee) knitting process locks individual fibers directly into a lightweight knit backing allowing each fiber to stand upright, free from the backing, this special construction creates a fabric with extraordinary performance and tactile appeal. 'Fabrics Made from Fiber' offer:

- **Light Weight** Not twisted into dense yarns, pile's fibers along with the fine denier filament backing yarn, yield a fabric that seems nearly weightless for its volume.
- **Multi-season comfort** The billions of tiny air pockets created between pile's fibers act as tiny air conditioners to maintain an even temperature. The result is multi-season comfort.
- **Easy Care** With the exception of Glenoit Fabrics' artificial fur styles, pile's non-shrink construction and select fibers make it washable.
- **Non-shrink** Because of the stability of its knit backing yarn, pile's shrinkage is virtually nonexistent. Though individual fibers may shrink slightly, there is no effect on the fabric itself.
- **Soft, Drapability** The flexibility of pile's filament knit backing yarns and lightweight loose fibers, delivers an appealing softness, drape and hand every time.
- **A nearly endless array of textures and patterns** Patterning from computerized jacquard knitting machines and expert finishing techniques make Glenoit Fabrics' totally unique.
- **Rich colors** Glenoit Fabrics' fibers are pre-dyed before construction (environmentally advantageous over yarn or fabric dyeing). They can then be blended for an exceptional depth of color and subtle variations within one fabric and pattern.

Some Of Our Most Popular Fabrics:



<http://www.glenoitfabrics.com/>

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All-purpose
comfort



**Furelle®/Petite
Furelle**
Luxuriously
'unreal' fauxs

Rich and
melton-like



Mystique™
The velvety
pile

Silky textured
pile



MiniMicro®
Versatile
lightweight
pile

The
cashmere of
pile



**Popcorn
Sherpa**
Boldly
comfortable
pile

Glenoit
The 'Original'
pile



Luxaire
Faux furs to
truly rival the
originals

The washable
wool



Selected fibers hold in backing path

Click here to find
out more about:

[HOW SILVER KNOT PILE
FABRICS ARE MADE](#)



Close-up of Glenoit silver knot pile construction.

Or, For More Information

For sales information:

(608) 373-2955

ysand@montereymills.com

For press information and materials:

hirkhoff@montereymills.com

**GLENOIT
FABRICS**

3001 North Main Street, Tarboro, NC 27886

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Glenoit Fabrics Corporation is a premium pile fabrics manufacturer.