

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed: January 24, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Brasstech, Inc.

Serial No. 77810266

Edgar A. Zarins of Masco Corporation for Brasstech, Inc.

Priscilla Milton, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney).

Before Grendel, Cataldo, and Lykos, Administrative Trademark
Judges.

Opinion by Lykos, Administrative Trademark Judge:

Brasstech, Inc. ("applicant") filed an application to register the mark READYSHIP, in standard character format, for the services, as amended, of "expedited product shipment services, namely shipment of plumbing products and bathroom accessories" in International Class 39.¹

The Trademark Examining Attorney refused registration of applicant's mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's mark so

¹ Application Serial No. 77810266, filed August 21, 2009, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a *bona fide* intent to use the mark in commerce.

resembles the registered mark SHIPREADY, also in standard character format, for "transportation services, namely, transportation of documents, goods and parcels by land, sea, and air; packaging of goods for transportation and storage; storage and delivery of goods; courier services; shipping and freight forwarding; freight brokerage and forwarding of cargo" in International Class 39,² that when used on or in connection with applicant's identified services, it is likely to cause confusion or mistake or to deceive.

Upon final refusal of registration, applicant filed a timely appeal and request for reconsideration. Upon the examining attorney's denial of the request for reconsideration, proceedings herein were resumed. The examining attorney and applicant filed briefs. For the reasons discussed below, the Board affirms the refusal to register.

We base our determination under Section 2(d) on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion

² Registration No. 3545158, issued December 9, 2008 on the Principal Register.

analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks"). We discuss each of the *du Pont* factors as to which applicant or the examining attorney submitted argument or evidence.

First, we consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. The question is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Jack B. Binion*, 93 USPQ2d 1531 (TTAB 2009); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Applicant's mark consists of a transposition of the identical terms comprising registrant's mark - the words "ready" and "ship." It is well established that confusion is likely

between two marks consisting of reverse combinations of the same elements if they convey the same meaning or create substantially similar commercial impressions. See, e.g., *In re Wine Soc'y of Am. Inc.*, 12 USPQ2d 1139, 1142 (TTAB 1989) (holding THE WINE SOCIETY OF AMERICA and design, for "wine club membership services including the supplying of printed materials, sale of wines to members, conducting wine tasting sessions and recommending specific restaurants offering wines sold by applicant," likely to be confused with AMERICAN WINE SOCIETY 1967 and design, for a newsletter, bulletin and journal of interest to members of the registrant); *In re Nationwide Indus. Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (holding RUST BUSTER, with "RUST" disclaimed, for a rust-penetrating spray lubricant likely to be confused with BUST RUST for a penetrating oil). In this instance, the transposed marks engender the same commercial impression. The examining attorney made of record the following dictionary definitions from the online version of Merriam-Webster:

Ready "immediately available <had ready cash>,"

Ship "to be sent for delivery <the order will ship soon>."

When combined, in either order, the terms convey the same meaning of immediate shipping or delivery services. Therefore, we find that the similarities of applicant's and registrant's marks outweigh the differences as to their sight, sound,

connotation, and commercial impression. Thus, this *du Pont* factor weighs in favor of finding a likelihood of consumer confusion.

Next, we consider the services and channels of trade. Applicant contends that it is a "home products company specializing in the manufacture and sale of plumbing products and bathroom accessories;" that expedited shipping services are offered as a convenience to its customers; and that applicant itself "does not make the actual delivery." While this may be true, we are constrained to decide this case based on the recitation of services provided by applicant and recited in the registration. *See, e.g., Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *In re Shell Oil Co.*, 992 F.2d 1204, 1208 n.4, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993).

Because "transportation services, namely, transportation of documents, goods and parcels by land, sea, and air; packaging of goods for transportation and storage; storage and delivery of goods; courier services; shipping and freight forwarding; freight brokerage and forwarding of cargo" is recited broadly in registrant's recitation without any limitation as to the type of products shipped, it necessarily encompasses applicant's "expedited product shipment services" more specifically restricted to "shipment of plumbing products and bathroom

accessories." As such, registrant's services necessarily encompass applicant's services and are therefore legally identical. Moreover, because the services are legally identical and unrestricted, they are presumed to move in the same channels of trade and to be sold to the same classes of consumers. See *Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). See also *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because there are no limitations as to channels of trade or classes of purchasers in either the application or the cited registration, it is presumed that the services in the registration and the application move in all channels of trade normal for those services, and that the services are available to all classes of purchasers for the listed services).

In addition to the above, the examining attorney has made of record of a number of third-party marks registered for use in connection with both shipment and delivery services. This evidence is probative to the extent that it shows that the services listed therein are of a kind that may emanate from a single source under a single mark. See *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).

U.S Registration No. 288603, B&G DELIVERY SYSTEM and Design for "transportation and **delivery services**, namely, **same day shipment services**, courier services, freight transportation by truck, or air, **express delivery of goods by truck, or air, less-than-truck load (LTL) delivery services**, truck load delivery services, contract carriage services by truck, or air, common carriage services by truck, or air, messenger services, **scheduled pick-up and delivery services, on-demand pick-up and delivery services, contract delivery services by truck, or air**, warehousing services, storage, transportation and delivery of documents, packages, raw materials, and other freight for others by air, or truck;"

U.S Registration No. 3237019, SPACE ACCESS for "... supply chain, logistics and reverse logistics services, namely, storage, transportation and delivery of documents, packages, raw materials, and other freight for others by air, rail, ship or truck; tanker transport; taxi transport; taxi transport for people in wheelchairs; Tram transport; Transport by surface transportation, aircraft, suborbital rockets, aerospacecraft, launch vehicles, orbital transfer craft, craft for operation beyond earth orbit; Transport of goods; Transport of passengers; Transportation and **delivery services, namely, same day shipment services...**"

U.S Registration No. 3654805, GOIN' POSTAL for "**transportation services, namely, arranging and managing shipping and delivery of goods and parcels for others by air and motor vehicle**; packing of goods for others for transport by air and motor vehicle; arranging and managing postal services, namely, arranging and managing mail and parcel delivery; **arranging delivery of documents, packages, and other freight for others by air or motor vehicle**; **transportation and delivery services, namely, arranging and managing same day shipment services**; private mailbox rental."

Thus, these *du Pont* factors of the similarity of the services and channels of trade weighs in favor of finding a likelihood of confusion.

Lastly, to the extent that there are any other relevant *du Pont* factors, we treat them as neutral.

After considering all of the evidence of record and argument pertaining to the *du Pont* likelihood of confusion factors, we conclude that there is a likelihood of confusion between applicant's READYSHIP mark and the registered mark SHIPREADY when used in connection with their identified services.

Decision: The Section 2(d) refusal is affirmed.