

From: Rossman, William

Sent: 8/5/2012 3:46:02 PM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 85144490 - PRESTIGE
CONCRETE PRODUCTS - N/A - EXAMINER BRIEF

Attachment Information:

Count: 1

Files: 85144490.doc

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

APPLICATION SERIAL NO. 85144490

MARK: PRESTIGE CONCRETE PRODUCTS



CORRESPONDENT ADDRESS:

ANGELA ALVAREZ SUJEK
BODMAN PLC
201 S DIVISION ST STE 400
ANN ARBOR, MI 48104

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

TTAB INFORMATION:

<http://www.uspto.gov/web/offices/dcom/ttab/index.html>

APPLICANT: VCNA Prestige Material Holdings,
Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

asujek@bodmanlaw.com

EXAMINING ATTORNEY'S APPEAL BRIEF

I. STATEMENT OF THE CASE

Applicant has appealed the Trademark Examining Attorney's Final Refusal to register the Trademark PRESTIGE CONCRETE PRODUCTS (standard character) Application No. 85144490 for, "CONCRETE, NOT INCLUDING ARCHITECTURAL MASONRY UNITS, NAMELY, GLAZED CONCRETE BLOCKS USED FOR INTERIOR WALLS" on the grounds of likelihood of confusion, mistake or deception under Trademark Act Section 2(d), 15 U.S.C. §1052(d), with the mark in Registration No. 3044687, PRESTIGE SERIES (also standard character) for, "ARCHITECTURAL MASONRY UNITS, NAMELY, GLAZED CONCRETE BLOCKS USED FOR INTERIOR WALLS". The examining attorney respectfully requests that the Trademark

Trial and Appeal Board (TTAB) uphold the refusal based on the likelihood of confusion with Registration No. 3044687 for the reasons and authorities cited below.

II. STATEMENT OF FACTS

Applicant filed this application on October 4, 2010 applying to register on the Principal Register the mark PRESTIGE CONCRETE PRODUCTS (standard character) for, “Concrete” in international class 019 with the wording “CONCRETE PRODUCTS” disclaimed. In the Initial Office Action dated January 20, 2011 registration was refused under Trademark Act Section 2(d), 15 U.S.C. §1052(d) on the grounds that the mark, when used in connection with the recited goods, so resembles the mark in Registration No. 3044687 as to cause confusion, to cause mistake, or to deceive.

In an amendment received on July 20, 2011 the applicant argued that the goods were not related and the 2(d) refusal should be withdrawn. It is applicant’s contention that the wording “PRESTIGE” is diluted in class 019, that their goods would not be marketed in such a way as to be encountered by the same consumers and there are distinct differences in appearance between the marks. Applicant submits that due to these factors there would be no confusion with Registration No. 3044687. Applicant failed to submit proper evidence of any weakness of the wording “PRESTIGE” in the nature of attached copies of the third party registrations used in their July 20, 2011 response. To make third-party registrations part of the record, an applicant must submit copies of the actual registrations or printouts of the registrations from the USPTO’s database. *In re Ruffin Gaming LLC*, 66 USPQ2d 1924, 1925 n.3 (TTAB 2002);

The examining attorney sent a subsequent office action dated August 11, 2011 where he objected to the lack of third party evidence in the form of the attached registrations in applicant's response.

On August 11, 2011 applicant submitted a second response that contained the third party registrations but consisted of no new arguments as to the 2(d). On September 23, 2011 the refusal of registration under §2(d) was maintained and made final. On March 23, 2012 applicant submitted a request for reconsideration and an appeal to the board. The applicant amended their identification of goods to read "concrete, not including architectural masonry units, namely, glazed concrete blocks used for interior walls" merely excluding the registrant's exact goods. The Request for Reconsideration was denied by the examining attorney as the applicant's arguments remained the same and thus unpersuasive. On June 20, 2012 the appeal was instituted and jurisdiction was returned to the examining attorney.

III. ARGUMENT: ISSUE PRESENTED

The only issue presented on appeal is whether applicant's mark, when used in connection with the recited goods, so resembles the mark in Registration No. 3044687 as to be likely to cause confusion, to cause mistake, or to deceive under Trademark Act §2(d).

(A). LIKLIHOOD OF CONFUSION: APPLICABLE LEGAL PRINCIPLES

Trademark Act Section 2(d) bars registration where an applied-for mark so resembles a registered mark that it is likely, when applied to the goods and/or services, to cause confusion, mistake or to deceive the potential consumer as to the source of the goods and/or services. TMEP §1207.01. The Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to consider when determining whether there is a likelihood of confusion. Among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the relatedness of the goods and/or services. The overriding concern is to prevent buyer confusion as to the source of the goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

In any likelihood of confusion determination, two key considerations are similarity of the marks namely, “PRESTIGE” as the dominant portion of the marks and similarity or relatedness of the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); TMEP §1207.01; *see also In re Dixie Rests. Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357,

1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels.

(B). LIKLIHOOD OF CONFUSION: SIMILARITY BETWEEN THE MARKS

I. EXAMINING ATTORNEY'S ARGUMENT: THE MARKS OF THE APPLICANT AND REGISTRANT ARE CONFUSINGLY SIMILAR IN SOUND, APPEARANCE AND CONNOTATION AS TO THE DOMINANT PORTION OF THE MARKS

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. Nevertheless, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. *See In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751.

In this instance, the dominant portion of both marks is the wording "PRESTIGE" as the additional wording in applicants mark, namely, "CONCRETE PRODUCTS" and "SERIES" in registrant's mark are descriptive in nature and both disclaimed. Although a disclaimed portion of a mark cannot be ignored, disclaimed matter is typically less significant or less dominant when comparing marks. Therefore the descriptive wording added to the wording "PRESTIGE" has little if any trademark significance *See In re*

Dixie Rests., Inc., 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Purchasers are not aware of disclaimers that reside only in the records of the Office.

In addition, consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark making the wording “PRESTIGE” the dominant part of the mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *see also Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions).

The examining attorney further finds that both marks are phonetically equivalent as to the dominant wording “PRESTIGE” and are thus similar sounding. Similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *RE/MAX of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469 (TTAB 1975); *In re Cresco Mfg. Co.*, 138 USPQ 401 (TTAB 1963); TMEP §1207.01(b)(iv). The examining attorney submits that the marks are identical in appearance and sound as to the wording “PRESTIGE” and therefore have the same commercial impression indicating high grade or highly desired concrete goods.

Applicant argues that the marks are different in sound because applicant's mark is comprised of three words whereas registrant's mark is comprised of two words. The examining attorney disagrees as noted above because the dominant wording here is "PRESTIGE" and would be focused on by the consumer. Further, applicant argues that the commercial impressions are different and is giving quite a bit of weight to the meaning of the disclaimed terms in the mark which is not consistent with the case law listed above. The examining attorney agrees however, with applicant's arguments as to the suggestive meaning of the wording "PRESTIGE" indicating in their brief that the goods from the applicant and registrant are "top of the line" and "high quality concrete products". This supports the contention of the examining attorney above, that due to the similarities in appearance and sound, the marks have overall the same connotation and commercial impression.

Additionally, the applicant argues that the word "PRESTIGE" is not a strong mark and has included third party registrations incorporating the wording for use on non-metallic building materials in class 019 to support the argument that this wording is weak, diluted, or so widely used that it should not be afforded a broad scope of protection. The weakness or dilution of a particular mark is generally determined in the context of the number and nature of similar marks *in use in the marketplace* in connection with *similar* goods and/or services. *See Nat'l Cable Television Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973).

Evidence of weakness or dilution consisting solely of third-party registrations, such as those submitted by applicant in this case, is generally entitled to little weight in determining the strength of a mark, because such registrations do not establish that the registered marks identified therein are in *actual use* in the marketplace or that consumers are accustomed to seeing them. *See AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1204 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009); *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 USPQ 989, 992 (TTAB 1982).

Furthermore, the goods and/or services listed in the third-party registrations submitted by applicant are different from those at issue and thus do not show that the relevant wording is commonly used in connection with the concrete goods. The third party registrations offered by the applicant make no mention of concrete products except for Registration No. 3222626 (for grave markers) and therefore do not show the mark “PRESTIGE” as inherently weak in relation to the goods at issue. Furthermore, there is no evidence that the wording “PRESTIGE” is laudatory, as applicant has claimed, as the wording is not disclaimed or listed under section 2(f) or on the supplemental register in any of the submitted third party registrations.

Finally, applicant argues that there has been concurrent use of the applicant’s mark and the cited registration for almost three years without evidence of actual confusion. However, the test under Trademark Act Section 2(d) is whether there is a likelihood of confusion. It is unnecessary to show actual confusion in establishing likelihood of confusion. TMEP §1207.01(d)(ii); *e.g.*, *Weiss Assocs. Inc. v. HRL Assocs. Inc.*, 902 F.2d 1546, 1549, 14

USPQ2d 1840, 1842-43 (Fed. Cir. 1990). The Trademark Trial and Appeal Board stated as follows:

Applicant's assertion that it is unaware of any actual confusion occurring as a result of the contemporaneous use of the marks of applicant and registrant is of little probative value in an ex parte proceeding such as this where we have no evidence pertaining to the nature and extent of the use by applicant and registrant (and thus cannot ascertain whether there has been ample opportunity for confusion to arise, if it were going to); and the registrant has no chance to be heard from (at least in the absence of a consent agreement, which applicant has not submitted in this case). *In re Kangaroos U.S.A.*, 223 USPQ 1025, 1026-27 (TTAB 1984).

Regarding the issue of likelihood of confusion, the question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 54 USPQ2d 1894, 1890 (Fed. Cir. 2000); *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190

USPQ 106 (TTAB 1975); TMEP §1207.01(b). Accordingly, the marks are similar in sound, appearance and commercial impression.

If the marks of the respective parties are identical or highly similar, the examining attorney must consider the commercial relationship between the goods or services of the respective parties carefully to determine whether there is a likelihood of confusion. *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

(C). LIKLIHOOD OF CONFUSION: COMPARISON OF GOODS AND SERVICES

I. EXAMINING ATTORNEYS ARGUMENT: APPLICANT'S GOODS ARE CLOSELY RELATED TO THE REGISTRANT'S GOODS AND APPEAR TO HAVE COMPLEMENTARY USES

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

As listed above in the Statement of Facts, the applicant's recited goods/services are, "CONCRETE, NOT INCLUDING ARCHITECTURAL MASONRY UNITS, NAMELY, GLAZED CONCRETE BLOCKS USED FOR INTERIOR WALLS" in International Class 019. The registrant's identified goods are, "ARCHITECTURAL MASONRY UNITS, NAMELY, GLAZED CONCRETE BLOCKS USED FOR INTERIOR WALLS" also in International Class 019. In this instance, the applicant's concrete goods and registrant's glazed concrete blocks could be offered through the same channels of trade by the very same manufacturers. This is because items made of concrete are often sold in the same retail or wholesale environments and manufactured by the same producers for similar and or complementary uses in the building industry.

The examining attorney has attached Internet evidence illustrating that "CONCRETE" and "CONCRETE BLOCKS" are offered through the same channels of trade and by the same manufacturer. For example, on pages 2-3 of the examining attorney's Final Office Action dated September 23, 2011 the evidence shows that the COUNTY MATERIALS CORPORATION {the cited registrant} manufactures and offers for sale to the public both concrete masonry units and other types of related concrete products such as brick and veneers through the same channels of trade. Further evidence, namely, websites attached from the Final Office Action dated September 23, 2011 listing WATKINS CONCRETE BLOCK COMPANY shows that the company manufactures or offers packaged concrete, concrete block and veneers (page 4), CRANESVILLE BLOCK (pages 5-6) indicating that the company offers concrete block and ready mix concrete and

AUGUSTA CONCRETE BLOCK COMPANY (pages 7-8) offers both a full line of concrete as mix, block and most specifically, architectural block in a variety of colors. The evidence clearly shows that the goods here, namely, concrete and concrete blocks, are related in nature and have complementary uses as concrete mix would be used in the preparation of concrete block.

When the evidence shows that the goods at issue have complementary uses, and thus are often used together or otherwise purchased by the same purchasers for the same or related purpose, such goods have generally been found to be sufficiently related such that confusion would be likely if they are marketed under the same or similar marks. *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272 (TTAB 2009) (finding medical MRI diagnostic apparatus and medical ultrasound devices to be related, based in part on the fact that such goods have complementary purposes because they may be used by the same medical personnel on the same patients to treat the same disease); *In re Vienna Sausage Mfg. Co.*, 230 USPQ 799, 799-800 (TTAB 1986) (finding sausage and cheese to be complementary goods, and thus related, because they may be used together in recipes, sandwiches, and hors d'oeuvres);

Applicant first argues that just because the goods are made of concrete does not necessary mean the goods are related. Applicant contends that the use of the cited mark is architectural in nature while the use of applicant's mark is structural. However, applicant has only provided minimal evidence that there is any difference in the channels of trade or that the goods are not similar or related. The applicant has submitted a link from the

registrant's web site {actual website was attached by the examining attorney and not by the applicant) indicating the registrant's Prestige Series units are "often used for accents or banding". The examining attorney objects to this evidence because applicant did not submit attached copies of the website and the examining attorney is unable to open the link in a variety of web browsers to view the evidence. The particular wording that the registrant allegedly uses on their website concerning use for accents or banding is not shown in the parts of the Registrant's website offered and actually attached as evidence by the examining attorney. There is no evidence of record offered by the applicant to support their argument that registrant's goods do not provide any structural purpose. In fact, registrant's website, attached as page 2 of the 9/23/11 Final Office Action, indicates that the registrant produces load bearing block

The applicant further contends that the evidence offered by the examining attorney is not relevant. However, all of the evidence offered from the Internet by the examining attorney lists concrete block which appears in nature to cover all types of block both structural and architectural. Applicant admits in their appeal brief (page 5) that the applicant's focus is not solely on ready mix concrete but also concrete block. In addition, the Augusta Concrete citation attached in the Final Office Action specifically references architectural block while both Watkins Concrete and County Materials Corporation (the cited registrant) reference a full line of concrete decorative specialty products and veneers which are esthetic and not solely structural in nature. Applicant's contention that it is not common for the goods at issue to be sold by the same source is not supported by evidence. Applicant has submitted no evidence that glazed concrete block is a specialty

item made by a few companies. The argument that applicant does not bid on jobs requiring glazed concrete blocks does not weigh heavily on the issue of confusion. Applicant's identification, although specifically excluding the goods of the registrant, lists concrete which is broad and would encompass all forms of concrete submitted by the examining attorney in the attached evidence.

Thirdly, applicant argues that the goods are not competitive in nature and serve distinct sectors of the market place. The applicant suggests in their brief that their goods are used in connection with standard concrete blocks for exterior walls while the registrant's are used for interior walls. Applicant does not list this exclusion in their identification and only excludes the registrant's actual goods. In addressing applicant's channel of trade argument above, it must be noted that the registrant's identification of goods does not contain a restriction to retail trade channels. The question whether the goods are related and have complimentary uses is based on the on the description of the goods set forth in the application and registration at issue, not on extrinsic evidence of actual use. *See Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); The presumption is that the registrant operates in all normal channels of trade and reaches all classes of purchasers of the identified goods. *In re Melville Corp.*, 18 USPQ2d 1386, 1389 (TTAB 1991); *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1899 (TTAB 1989); *RE/MAX of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964-5 (TTAB 1980).

Lastly, applicant argues that the third party registrations from the First Office Action are not relevant as they only reference concrete and concrete block but no glazed concrete blocks for interior walls. It is the examining attorneys finding from the culmination of evidence submitted that concrete and concrete block, whether glazed or not, are related and will be offered in all normal channels of trade and reach all classes of purchasers of the identified goods. In the First Office Action dated January 20, 2011, the examining attorney provided Third Party Registrations illustrating that “CONCRETE” and “CONCRETE BLOCK” are frequently offered to the consumer by the same seller. These Third Party Registrations that were predicated on applicant’s identification at the time, namely, “CONCRETE”. For example, the attached Registration Nos. 2566725, 2993920 (for concrete mix and block) and 3410225 (for ready mix concrete and design architectural concrete) indicate that concrete and concrete block both for structural and esthetic use are offered to the consumer by the same manufacture and/or seller. (*see First Office Action attachments pages 4-5, 6-8 and 27 respectively*).

It is applicant’s separate contention that consumers would exercise careful, sophisticated purchasing decisions with concrete products. However, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see In re Cynosure, Inc.*, 90 USPQ2d 1644 (TTAB 2009); *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). Moreover, when the relevant consumer includes both professionals and the general public, the standard of care for purchasing the goods is that

of the least sophisticated purchaser. Applicant has submitted no evidence that the general public would not be a direct purchaser of their products only that their products are sold through direct customer contact. *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004).

The examining attorney finds that applicant's goods will nonetheless be encountered by the same class of purchasers in the same channels of trade. Both the applicant's and registrant's goods, as identified, can be offered in the same trade channels, including retail trade channels, and since the registrant's goods do not have a trade channel restriction, they can be offered in the same retail trade channels being occupied by the applicant. Therefore, the examining attorney has no alternative but to conclude from the evidence attached that the applicant's goods will be offered to the same consumers and through the same channels of trade as the registrant's goods thus creating a likelihood of confusion as the source of the goods.

IV. CONCLUSION

The applicant's mark PRESTIGE CONCRETE PRODUCTS (standard character) is likely to be confused with the registered mark PRESTIGE SERIES (also standard character) where the applicant's mark creates a highly similar visual impression and a nearly identical commercial impression as the registrant's mark PRESTIGE CONCRETE PRODUCTS and is used on substantially goods. As such, it is highly likely that the applicant's mark will cause consumer confusion with the registered mark. For the

foregoing reasons, it is respectfully submitted that the refusal of registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d) be upheld.

Respectfully submitted,

/wrossman/
William M. Rossman
Trademark Examining Attorney
Law Office 109
William.Rossman@USPTO.GOV
571-272-9029

Dan Vavonese
Managing Attorney
Law Office 109