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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Cable Lock, Inc.

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Serial No. 85174666

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John S. Egbert of Egbert Law Offices PLLC for Cable Lock, Inc.

Deborah Lobo, Trademark Examining Attorney, Law Office 109 (Dan Vavonese,
Managing Attorney).

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Before Bergsman, Lykos and Greenbaum, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Cable Lock, Inc. (“applicant”) filed a use based application to register the
mark CRAWLSAFE, in standard character form, for “repair or maintenance of
home and building foundations,” in Class 37.

The Trademark Examining Attorney refused registration under Section 2(d)
of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that applicant’s
mark so resembles the previously registered mark on the Supplemental Register
SAFE CRAWL, in standard character format, for “waterproofing and encapsulation,

namely, installation of protective barriers and sealing of the crawl spaces of residential buildings,” in Class 37, as to be likely to cause confusion.¹

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of 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 analysis, two key considerations are the similarities between the marks and the similarities between the 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”).

At the outset, we note that a mark registered on the Supplemental Register is “a mark registered in the Patent and Trademark Office” within the meaning of Section 2(d). *In re Clorox Co.*, 578 F.2d 305, 198 USPQ 337, 339 n.4 (CCPA 1978).

No reason exists however, for the application of different standards to registrations cited under §2(d). The level of descriptiveness of a cited mark may influence the conclusion that confusion is likely or unlikely (citing *Sure-Fit Products*),² but that fact does not preclude citation under §2(d) of marks on the Supplemental Register.

Id. at 341.

¹ Registration No. 3797740, issued June 1, 2010.

² *Sure-Fit Products Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 117 USPQ 295 (CCPA 1958),

- A. The similarity or dissimilarity and nature of the services described in the application and registration, the established likely-to-continue channels of trade and classes of consumers.

In determining whether the services are related, it is not necessary that the services of the applicant and registrant be similar or competitive in character to support a holding of likelihood of confusion; it is sufficient for such purposes that the services are related in some manner and/or that conditions and activities surrounding marketing of these services are such that they would or could be encountered by the same persons under circumstances that could, because of similarities of the marks used with them, give rise to the mistaken belief that they originate from or are in some way associated with the same producer. *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010); *Schering Corporation v. Alza Corporation*, 207 USPQ 504, 507 (TTAB 1980); *Oxford Pendaflex Corporation v. Anixter Bros. Inc.*, 201 USPQ 851, 854 (TTAB 1978).

The Trademark Examining Attorney relied on the following evidence to show that applicant's services – “repair or maintenance of home and building foundations” – are related to the services in the cited registration - “waterproofing and encapsulation, namely, installation of protective barriers and sealing of the crawl spaces of residential buildings.” The website evidence discussed below shows that homes and buildings with water intrusion issues often have foundation issues and vice versa. Accordingly, companies offer a complete package of services to fix all the problems they encounter, including foundation repair and waterproofing and encapsulation services.

1. Applicant's specimen of record comprising a webpage from its website (*cablelock.com*) identifies its services as including, *inter alia*, "foundation repair," "waterproofing," and "crawl space recovery." In fact, applicant's webpage touts applicant's "crawl space encapsulation" services.

2. In its March 14, 2012 response, applicant submitted excerpts from its webpage, including "Crawl Space Recovery" that explains that the CrawlSafe system is a comprehensive solution that includes "adjustable foundation support columns" as "the surest way of creating a sound structure and cleaner environment both under and inside your home." The adjustable foundation supports are part of the CrawlSafe encapsulation process.



* * *

Adjustable Foundation Support Columns

A complete crawl space recovery with Olshan's CrawlSafe™ System begins with identification and repair of failing supports using SafeAdjust™ Adjustable Support Columns .



THE SAFEADJUST™ SYSTEM
CLICK FOR A CLOSE-UP VIEW

Encapsulation

A complete crawl space recovery with Olshan's CrawlSafe™ System begins with identification and repair of failing supports using SafeAdjust™ Adjustable Support Columns .

Other crawl space repair methods may have been adequate for their time but they don't compare with what is available from Olshan today .Olshan's complete CrawlSafe™ System is the surest way of creating a sound structure and cleaner environment both under and inside your home .

For more information that may help you to improve your existing crawl space or to design and install a properly-closed new crawl space, please visit: www.crawlspaces.org .



COMPLETE CRAWLSAFE™ SYSTEM
CLICK FOR A CLOSE-UP VIEW

Applicant also included an excerpt from “The Busy Dog Blog” explaining the “Crawl Space Waterproofing Solution - Safe Crawl.” According to the blog, “Safe Crawl, the crawl space specialists, specializes in solving this dangerous health and structural concern.” At the end of the piece there is an invitation to the reader to ask for more information.

Want to learn more about Safe Crawl? [Click Here](#)

Let Us Solve Your Basement Waterproofing Problems:

[Crawl Space Waterproofing
Dehumidifiers](#)

3. An excerpt from the *Americrawl.com* website stating that “Americrawl is a basement waterproofing, crawl space repair, and foundation repair contractor.”³ The company advertises basement waterproofing services, concrete and dirt crawl space solutions, and settling foundation repair services.

Americrawl is a family owned and operated basement waterproofing, crawl space repair, foundation repair, drainage, and basement wall crack repair company. We provide innovative solutions for your homes water and structural problems.

4. An excerpt from the *AmericanBasementSolutions.com* website.⁴ The company holds itself out as

“The Waterproofing Experts”
Waterproofing Crawl Space, Foundations & Basements

The company renders crawl space encapsulation services, waterproofing services and foundation repairs.

³ September 30, 2011 Office action.

⁴ September 30, 2011 Office action.

5. An excerpt from the *TCHaffordBasementSystems.com* website advertising the company's basement waterproofing services, crawl space repair and encapsulation services, and foundation repairs.⁵

Vapor Barriers, Support Jacks, & Other Products For A Dry, Healthier Space

Your home is a system, and every part of that system plays a role that affects the rest of the structure. If your crawl space begins to rot, grow mold, or experience structural problems, this will extend to every part of your home.

6. An excerpt from the *PremaDryWaterproofing.com* website advertising the company's basement waterproofing services, crawl space drainage services, foundation and wall crack repair, and foundation footing drain services.⁶ The company specifically advertises that its crawl space solutions include crawl space encapsulation and foundation repair.

7. An excerpt from the *AffordableBasementWaterproofing.com* website advertising the company's basement waterproofing services, crawl space encapsulation services, and structural foundations repair services.⁷

Our company is devoted to every detail in planning your future investment in basement waterproofing, crawl space encapsulation, mold remediation and structural foundation repair needs.

8. Excerpts from the *NVWaterproofing.com* website advertising the company's "One Stop Shopping for Basement Waterproofing, Moisture Control, and

⁵ September 30, 2011 Office action.

⁶ September 30, 2011 Office action.

⁷ September 30, 2011 Office action.

Drainage Systems” and foundation repair.⁸ The foundation repairs include foundation excavation, structural repairs using epoxy resins, through-wall penetration repairs, and repairs for honeycomb and wall ties.

9. Excerpts from the *ValueDryWaterproofing.com* website.⁹ The company advertises that it offers foundation and structural repairs, as well as basement waterproofing services and crawl space encapsulation.

Solve your basement water problems once and for all! Value Dry, the basement waterproofing expert, offers a full range of efficient – and highly effective – waterproofing services for basements.

* * *

Foundation Repair

Value Dry can repair all your foundation problems from cracks, leans, bulges, and bowing to building new foundation walls. Expansive soils will retain water and by doing so they will expand and contract. During the winter months, expansive soils will absorb water, freeze and expand, while during the summer months the soil will lose water and contract. When the soil expands and contracts your foundation will begin to crack which will lead to more problems with your foundation in the future.

Crawl Space Encapsulation

Rarely are crawl spaces friendly environments for the people living above them. They are havens for mold, bacteria, odors, insects and rodents. Whether your crawl space has a dirt floor or concrete, wet or dry, we have a solution for you.

⁸ March 20, 2012 Office action.

⁹ March 20, 2012 Office action.

10. Excerpts from the *JESWORK.com* website advertising the company's foundation repair services, basement waterproofing services, and crawl space repair services.¹⁰

We understand that a foundation crack, damp crawl space and wet basement are stressful. We're here to help you find the best solution for your home's foundation repair, basement waterproofing and crawl space repair needs. We'll work with you – every step of the way – to create an economical solution for all your home's structural and waterproofing repair needs.

11. Excerpts from the *FrontierBasementSystems.com* website advertising the company's basement waterproofing, basement finishing, foundation and crawl space repair services.¹¹

Frontier Basement Systems is an expert contractor for basement waterproofing, basement finishing, crawl space repair, and foundation repair.

* * *

We provide innovative solutions for your home water and structural problems.

12. Excerpts from the *DryProSystems.com* website advertising the company's foundation repair services, basement waterproofing services, and crawl space repair services.¹²

Dry Pro Foundation and Crawlspace Specialists ... has a full range of patented products available to meet your foundation, crawl space, basement waterproofing and mold removal needs ...

¹⁰ March 20, 2012 Office action.

¹¹ March 20, 2012 Office action.

¹² March 20, 2012 Office action.

No matter what type of foundation, leaky basement, or damp crawl space you have, Dry Pro Foundation and Crawlspace Specialists can develop permanent waterproofing and ***encapsulation*** solution to keep your home dry.” (Emphasis added).

13. Excerpts from the *BasementSystems.com* website advertising that company’s basement waterproofing, foundation repair, and crawl space repair services.¹³ Basement Systems uses the “CleanSpace Crawl Space Encapsulation System to control humidity, moisture and pests.”

14. The Trademark Examining Attorney has submitted numerous use-based, third-party registrations for products listed in both the application and registration at issue. Third-party registrations which individually cover a number of different services that are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed services are of a type which may emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-1786; *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). The registrations listed below are representative.¹⁴

Mark	Reg. No.	Services
THE SMART CALL	3561004	Repair and maintenance in the field of waterproofing basements and crawl spaces; foundation repair services
THE CRAWLSPACE GUYS	3746511	Basement waterproofing; foundation contractor services

¹³ March 20, 2012 Office action.

¹⁴ We have not included the entire recitation of services for each of the registrations. Only the services in both applicant’s application and registrant’s registration are listed.

Mark	Reg. No.	Services
DRYOTTER BASEMENT WATERPROOFING	3921868	Basement waterproofing; maintenance and repair of foundations
DRY-TEC	3014969	Foundation repair and basement waterproofing services
TROTTER COMPANY	2962429	Foundation repair and basement waterproofing services
YOURCRAWL SPACE.COM	3457737	Installation, maintenance and repair of crawl space areas of buildings and crawl space encapsulation systems

The “repair or maintenance of home and building foundations” and “waterproofing and encapsulation, namely, installation of protective barriers and sealing of the crawl spaces of residential buildings” are closely related services as shown by the evidence that most of the companies noted above provide not only repair services for home and building foundations but also render waterproofing and encapsulation services. In fact, applicant uses its CRAWLSAFE mark to identify all of those services.

The same evidence also demonstrates that the services move in the same channels of trade and will be encountered by the same classes of consumers because homes and buildings with foundation issues often also have problems with water intrusion and, therefore, companies will advertise, market and sell all of those services to consumers with foundation or water intrusion issues.

Applicant argues that because applicant’s services apply to repairing and maintaining a building’s foundation and the registrant’s services apply to the installation of waterproof protective barriers, consumers will not believe that the

services are related, “nor will they encounter marketing or advertising that will give rise to the mistaken belief that the parties’ respective services originate from or in some way are related.”¹⁵ This argument stretches credulity as applicant itself advertises that its CRAWLSAFE Crawl Space Recovery Systems includes foundation repairs and crawl space encapsulation. Further, it ignores the evidence discussed above where companies sell their waterproofing and foundation repair services as complete solutions for homeowners and building owners.

In view of the foregoing, we find that the services are related, move in the same channels of trade and are sold to the same consumers.

B. The strength of the registered mark.

As noted above, the mark in the cited registration has been registered on the Supplemental Register. Registration on the Supplemental Register is *prima facie* evidence that, at least at the time of registration, the registered mark was merely descriptive. *In re Central Soya Co., Inc.*, 220 USPQ 914, 917 (TTAB 1984). In *In re Hunke & Jochheim*, 185 USPQ 188, 189 (TTAB 1975), the Board provided the following explanation regarding the strength of a mark on the Supplemental Register:

[R]egistration on the Supplemental Register may be considered to establish *prima facie* that, at least at the time of registration, the registered mark possessed a merely descriptive significance. (Citation omitted.) This is significant because it is well established that the scope of protection afforded a merely descriptive or even a highly suggestive term is less than that accorded an arbitrary or coined mark. That is, terms falling within

¹⁵ Applicant’s Brief, pp. 4-5.

the former category have been generally categorized as “weak” marks, and the scope of protection extended to these marks has been limited to the substantially identical notation and/or to the subsequent use and registration thereof for substantially similar goods.

See also In re Texas Instruments Inc., 193 USPQ 678 (TTAB 1976) (COPPERCLAD and design for composite metal wire for use in electric conductors is not likely to cause confusion with COPPERCLAD, registered on the Supplemental Register, for copper-coated carbon electrodes for use in electric arc cutting and gouging). Therefore, unlike a situation involving an arbitrary or fanciful mark,

It seems both logical and obvious to us that where a party chooses a trademark which is inherently weak, he will not enjoy the wide latitude of protection afforded the owners of strong trademarks. Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights. The essence of all we have said is that in the former case there is not the possibility of confusion that exists in the latter case.

Sure-Fit Products Company v. Saltzson Drapery Company, 254 F.2d 158, 117 USPQ 295, 297 (CCPA 1958). Accordingly, the mark SAFE CRAWL for “waterproofing and encapsulation, namely, installation of protective barriers and sealing of the crawl spaces of residential buildings” is entitled to a narrow scope of protection.

Applicant submitted 23 registrations containing the word “Crawl” and 324 registrations containing the word “Safe” in Class 37 and argued that “such data is probative to demonstrate that the terms ‘CRAWL’ and ‘SAFE,’ in their various forms and permutations, have been adopted by a number of other users as a goods

or services designation and is not distinctive of the cited registration.”¹⁶ This evidence and argument has limited probative value. First, none of the marks submitted by applicant are as close to the mark in the cited registration as applicant’s mark. In this regard, applicant’s and registrant’s marks are the only marks to share the words “Crawl” and “Safe.”

Second, many of the registrations submitted by applicant do not cover the services rendered by the registrant. *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009) (the third-party registrations are of limited probative value because the goods identified in the registrations appear to be in fields which are far removed from the goods at issue). *See also Key Chemicals, Inc. v. Kelite Chemicals Corp.*, 464 F.2d 1040, 175 USPQ 99, (CCPA 1972) (“Nor is our conclusion altered by the presence in the record of about 40 third-party registrations which embody the word “KEY”. The great majority of those registered marks are for goods unrelated to those in issue, and there is no evidence that they are in continued use. We, therefore, can give them but little weight in the circumstances present here”).

Third, insofar as the third-party registrations are concerned, “[t]he existence of [third-party] registrations is not evidence of what happens in the market place or that consumers are familiar with them nor should the existence on the register of confusingly similar marks aid an applicant to register another likely to cause confusion, mistake or to deceive.” *AMF Inc. v. American Leisure Products, Inc.*, 474

¹⁶ Applicant’s Brief, pp. 9-10.

F.2d 1403, 177 USPQ 268, 269 (CCPA 1973); and *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010).

Finally, while third-party registrations may be used in the manner of a dictionary to show that a mark or a portion of a mark is descriptive or suggestive of goods and services, that fact has been established by the registration of the cited mark on the Supplemental Register.

C. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987). In comparing the marks, we are mindful that where, as here, the services are closely related, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the services. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enterprises Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Products Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007).

Further, the test 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 terms of their overall commercial impression so that confusion as to the source of the goods offered under the respective marks is likely to result. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Since the services at issue are “repair or maintenance of home and building foundations” and “waterproofing and encapsulation, namely, installation of protective barriers and sealing of the crawl spaces of residential buildings,” the average consumers will encompass a wide variety of home owners including those who may not be that knowledgeable or sophisticated.

Applicant’s mark is CRAWLSAFE and the mark in the cited registration is SAFE CRAWL. The most significant difference between the marks is that the word elements are reversed. When marks comprise “reverse combinations of the same elements, the primary concern is that ordinary prospective purchasers, not being infallible in their ability to recall trade designations, may transpose the elements in their minds and, as a result, mistakenly purchase the wrong products or engage the wrong services.” *In re Best Products Co., Inc.*, 231 USPQ 988, 989 (TTAB 1986),

citing Bank of America National Trust and Savings Association v. American National Bank of St. Joseph, 201 USPQ 842, 845 (TTAB 1978) (BANKAMERICA v. AMERIBANC, both for banking services) and *In re General Tire & Rubber Co.*, 213 USPQ 870, 871 (TTAB 1982) (SPRINT STEEL RADIAL v. RADIAL SPRINT, both for tires).

The Board has found marks comprising the transposition or reversal of words to be similar where the transposition evokes the same or substantially the same commercial impression as the mark from which the transposition was derived. *See In re Best Products Co., Inc.*, 231 USPQ at 989. *See also Carlisle Chemical Works, Inc. v. Hardman & Holden Limited*, 434 F.2d 1403, 168 USPQ 110 (CCPA1970) (COZIRC drivers for paints and varnishes v. ZIRCO catalytic agents used in the manufacture of drier compositions; thought to be complementary products composed of cobalt and zirconium); *Royal Crown Cola Co. v. Bakers Franchise Corp.*, 150 USPQ 698 (TTAB 1966), *aff'd*, 404 F.2d 985, 160 USPQ 192 (CCPA 1969) (RITE DIET for low fat milk v. DIET-RITE for low calorie soft drinks; identical commercial impressions suggesting the same characteristic of the related goods). *Compare, e.g., In re Mavest, Inc.*, 130 USPQ 40 (TTAB 1961) (SQUIRETOWN for man's sport clothes v. TOWN SQUIRES for men's shoes; different commercial impressions, albeit resulting from the reversal of nearly identical elements); *McCallum-Legaz Fish Co. v. Frozen Food Forum, Inc.*, 118 USPQ 178 (Com'r Pats. 1958) (FROSTY SEAS for frozen sea food products, including deviled crabs, fish sticks, shrimp, skinless haddock, cod, flounder, ocean perch and ocean catfish v. SEAFROST for

frozen salmon and halibut and frozen whole halibut, whole salmon, and steaks and fillets therefrom; different commercial impressions -- cold sea water versus white frost crystals).

In this case, we find that the marks convey the same connotation and commercial impression, and that the word reversal is not sufficient to distinguish them. Applicant argues that its mark CRAWLSAFE “when viewed in light of its use in relation to ‘repair or maintenance of home and building foundations,’ implies to the consumer that, as a result of the services provided by Applicant, the entire building is safe.”¹⁷ Whereas the mark in the cited registration SAFE CRAWL “when viewed in light of its use in ‘waterproofing and encapsulation, namely, installation of protective barriers and sealing of crawl spaces of residential buildings,’ imparts a sense that the registrant’s services will result in the consumer’s ability to safely crawl within the treated crawl space of the consumer’s house.”¹⁸ We disagree. First, applicant bases its interpretation of the marks on the false premise that the repair or maintenance of home and building foundations and waterproofing and encapsulation services are separate and distinct services. However, as discussed above, these services are complementary, rendered in the same channels of trade and sold to the same classes of consumers. Specifically, consumers encountering water intrusion issues also encounter foundation issues requiring both foundation repairs and waterproofing or encapsulation services.

¹⁷ Applicant’s Brief, p. 4.

¹⁸ Applicant’s Brief, p. 4.

Second, we find that both marks suggest that the services provide a safe crawlspace and, therefore, the marks have the same meaning and commercial impression. In fact, even applicant's explanation of the meaning and commercial impression engendered by the marks is similar: "the entire building is safe" vs. the "ability to safely crawl within the treated crawl space."

Thus, although the marks have certain differences, when we compare them in their entireties we find that on the whole they are similar in appearance, sound, connotation and commercial impression, and that the word reversal is not sufficient to distinguish them when used in connection with closely related services.

D. The degree of consumer care.

"Applicant argues that the class of consumers seeking its services are comprised of sophisticated homeowners and commercial building owners, who exercise extra care when deciding whether to purchase such services."¹⁹ Further, applicant contends that because "[b]oth the services of the cited registrant and the Applicant are rather expensive," "customers will exercise the utmost care in choosing who will perform these services."²⁰

First, applicant's customers are not limited to "sophisticated homeowners." Applicant's customer base encompasses all homeowners, including the ignorant, the unthinking, and the credulous.

Second, even assuming that purchasers exercise extra care when it comes to their buying decisions, it is settled that even sophisticated purchasers are not

¹⁹ Applicant's Brief, p. 6.

²⁰ Applicant's Brief, pp. 8-9.

immune from source confusion, especially in cases such as this appeal involving similar marks and closely related services. *See In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986), *citing Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) (“Human memories even of discriminating purchasers...are not infallible.”). *See also In re Decombe*, 9 USPQ2d 1812, 1814-1815 (TTAB 1988) (being knowledgeable and/or sophisticated in a particular field does guarantee that one knows the range of products of the parties with whom one is dealing).

Nevertheless, we acknowledge that foundation repair services and waterproofing and encapsulation services are unusual, one-time purchases that are expensive and will generally involve weighing several estimates. We do not deny the deliberation that would go into deciding whether to engage a company to fix a foundation and/or water intrusion problem. Accordingly, we find that degree of care weighs against finding that there is a likelihood of confusion.

E. Balancing the factors.

Despite the fact that the mark in the cited registration is a weak mark, entitled only to a narrow scope of protection, we find that because the marks are similar, the services are closely related, the services move in the same channels of trade and are sold to the same classes of consumers, applicant’s mark CRAWLSAFE for “repair or maintenance of home and building foundations” is likely to cause confusion with the registered mark SAFE CRAWL for “waterproofing and encapsulation, namely, installation of protective barriers and sealing of the crawl spaces of residential buildings.”

We find that the similarities between the marks and the services sold thereunder outweigh any sophisticated purchasing decision. *See HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (similarities of goods and marks outweigh sophisticated purchasers, careful purchasing decision, and expensive goods).

Decision: The refusal to register is affirmed.