

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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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 All-Ways Forwarding Int'l Inc.*  
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Serial No. 85554445  
Serial No. 85555607  
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Dara L. Onofrio of Onofrio Law for All-Ways Forwarding Int'l Inc.

Kathy de Jonge, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

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Before Bucher, Bergsman and Gorowitz, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

All-Ways Forwarding Int'l Inc. (“applicant”) filed use-based applications for the marks ALL-WAYS, in standard character form (Serial No. 85554445), and ALL-WAYS FORWARDING INT'L INC. and design, shown below (Serial No. 85555607).<sup>1</sup>

**All-Ways**   
Forwarding int'l inc

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<sup>1</sup> Applicant disclaimed the exclusive right to use the term “Forwarding Int'l Inc.”

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Both applications are for the following services as amended:

Air freight shipping services; Airline and shipping services; Freight forwarding; Freight loading services; Global transportation of freight for others by all available means; 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; Warehousing services, namely, storage, distribution, pick-up, packing, and shipping of gourmet food and spirits, fresh fruits and vegetables, garments, textiles and other general merchandise, in Class 39.

The Trademark Examining Attorney refused to register the marks in applicant's applications on the ground that they so resemble the previously-registered mark ALL WAYS MOVING & STORAGE, in standard character form, for "moving company services," in Class 39, as to be likely to cause confusion.<sup>2</sup> Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).

When, as here, applicant has filed *ex parte* appeals to the Board in two copending applications, and the cases involve common issues of law or fact, the Board, upon request by the applicant or examining attorney or upon its own initiative, may order the consolidation of the appeals for purposes of briefing, oral hearing, and/or final decision. TBMP § 1214 (June 2013). *See also, e.g., In re Anderson*, 101 USPQ2d 1912, 1915 (TTAB 2012) (Board *sua sponte* consolidated two appeals); *In re Country Music Association, Inc.*, 100 USPQ2d 1824, 1827 (TTAB 2011) (same); *In re Bacardi & Co. Ltd.*, 48 USPQ2d 1031, 1033 (TTAB 1997) (Board *sua sponte* considered appeals in five applications together and rendered single

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<sup>2</sup> Registration No. 4015760, registered August 23, 2011. Registrant disclaimed the exclusive right to use the term "Moving & Storage."

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opinion). Accordingly, the Board consolidates these appeals. References to the record refer to Application Serial No. 85554445 unless otherwise indicated.

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”).

A. The similarity or dissimilarity of the marks in terms of appearance, sound, connotation and commercial impression.

We turn first 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.*, 177 USPQ at 567. 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 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

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that confusion as to the source of the goods or services offered under the respective marks is likely to result. *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 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992).

1. ALL-WAYS, in standard character form v. ALL WAYS MOVING & STORAGE.

Applicant's mark ALL-WAYS is very similar to the registered mark ALL WAYS MOVING & STORAGE. The term "ALL WAYS" is the dominant element of registrant's mark because the term "MOVING & STORAGE" is merely descriptive when used in connection with moving company services.<sup>3</sup> It is well-settled that disclaimed, descriptive matter may have less significance in likelihood of confusion determinations. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), *quoting, In re National Data Corp.*, 224 USPQ at 752 ("Regarding descriptive terms, this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion"); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed.

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<sup>3</sup> Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion"). On the other hand, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re National Data Corp.*, 224 USPQ at 751.

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Cir. 1997); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”).

The significance of the term “ALL WAYS” as the dominant element of registrant’s mark is further reinforced by its location as the first part of the mark. *See Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”). *See also Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word).

Finally, consumers are likely to shorten ALL WAYS MOVING & STORAGE to ALL WAYS. “[U]sers of language have a universal habit of shortening full names – from haste or laziness or just economy of words. Examples are: automobile to auto; telephone to phone; necktie to tie; gasoline service station to gas station.” *In re Abcor Development Corp.*, 588 F.2d 511, 200 USPQ 215, 219 (CCPA 1978) (J. Rich, concurring).

[C]ompanies are frequently called by shortened names, such as Penney’s for J.C. Penney’s, Sears for Sears and Roebuck (even before it officially changed its name to

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Sears alone), Ward's for Montgomery Ward's, and Bloomies for Bloomingdales.

*Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1333 (TTAB 1992).

Applicant's use of a hyphen in its mark ALL-WAYS does not serve to distinguish the marks. *Goodyear Tire & Rubber Company v. Dayco Corporation*, 201 USPQ 485, 489 n.4 (TTAB 1978) ("Fast-Finder" with hyphen is in legal contemplation substantially identical to "Fastfinder" without hyphen). *See also Winn's Stores, Incorporated v. Hi-Lo, Inc.*, 203 USPQ 140, 143 (TTAB 1979) (little if any trademark significance can be attributed to apostrophe and letter "s" in opposer's mark "Winn's" when compared with applicant's mark "Win-Way").

The marks ALL-WAYS and ALL WAYS MOVING & STORAGE have the same meaning and engender the same commercial impression. The word "All" means, *inter alia*, "every" and the word "Ways" means "manner, mode, or fashion" or "a direction or vicinity."<sup>4</sup> Thus, the marks mean and engender the commercial impression by all routes or methods. In other words, applicant and registrant are using their marks to convey to consumers that they will do whatever it takes to get the job done.

In view of the foregoing, we find that applicant's mark ALL-WAYS and registrant's mark ALL WAYS MOVING & STORAGE are similar in terms of appearance, sound, connotation and commercial impression.

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<sup>4</sup> **THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (UNABRIDGED)**, pp. 54 and 2151 (2nd ed. 1987). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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2. ALL-WAYS FORWARDING INT'L INC. and design v. ALL WAYS MOVING & STORAGE.

The term "ALL-WAYS" is the dominant element of applicant's mark ALL-WAYS FORWARDING INT'L INC. and design for the same reasons that the term "ALL WAYS" is the dominant element of registrant's mark, as discussed above. Moreover, the term ALL-WAYS is in larger type-font, which reinforces its dominant position. In addition, where a mark consists of words and a design, the words are normally given greater weight because they would be used by consumers to request the products. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 2 USPQ2d 1553, 1554 (TTAB 1987). *See also Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987); *Giant Food, Inc. v. Nation's Food Service, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983).

As discussed above, the marks ALL-WAYS FORWARDING INT'L INC. and design and ALL WAYS MOVING & STORAGE have the same meaning and engender the same commercial impression: by all routes or methods. Consumers encountering both marks are likely to believe that ALL-WAYS FORWARDING INT'L and ALL WAYS MOVING & STORAGE are different divisions of the same company.

In view of the foregoing, we find that applicant's mark ALL-WAYS FORWARDING INT'L INC. and design and ALL WAYS MOVING & STORAGE are similar in terms of appearance, sound, meaning and commercial impression.

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B. The similarity or dissimilarity and nature of the services described in the application and registration.

To show that the services in the applications and the cited registration are related, the Trademark Examining Attorney submitted numerous use-based, third-party registrations for services listed in both the applications 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 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). The registrations listed below are representative.<sup>5</sup>

MARK	REG. NO.	SERVICES
	3820943	Moving company services; freight forwarding of goods of others by truck and ship
<b>Get out of the box and on with your life</b>	3900752	Moving company services; warehousing services
	3940354	Moving company services; delivery and storage of goods; supply chain logistics and reverse logistics services; transportation of goods for others by air, rail, ship or truck
	4154769	Moving company services; storage and delivery of goods; supply chain logistics and reverse logistic services
	4015105	Moving company services; delivery of goods, transportation and storage of goods

<sup>5</sup> We have not included the entire recitation of services for each of the registrations. Only the relevant services in both applicant's applications and the cited registration are listed.

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Also, the Trademark Examining Attorney submitted excerpts from three websites showing companies advertising the services identified in both the applications and the cited registration.

1. Ford Storage & Moving Company (fordstorage.com). Ford Storage & Moving Company “offer[s] our customers public warehousing in Omaha NE., supply chain distribution, 3PL, document storage, freight transportation, and relocation services.” It also assists its customers with local and long distance relocations as an agent for “three (3) dominant carriers in the [moving] industry including Allied Van Lines, North American Van Lines & Specialized Transportation.”

2. Desert Moving Co. (dmcmoving.com). Desert Moving Co. advertises its household moving services, office or business moving services, warehousing services and global freight services.

3. White Glove Storage & Delivery (whitegloveusa.com). White Glove Storage & Delivery advertises its moving company and warehousing services.

Applicant contends that the services of applicant and registrant are not related, in part because applicant is “one of the largest regional customs brokers in the New York metro area” using its mark since at least as early as 1982 while registrant is located in Pennsylvania, outside of the New York metropolitan area and using its mark since only 1990.<sup>6</sup> To the extent that applicant is arguing that it has priority of use, a claim of priority is not relevant in an *ex parte* appeal. *In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278, 280 (CCPA 1971).

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<sup>6</sup> Applicant’s Brief, p. 7.

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Applicant's argument regarding the remote geographic trading areas of applicant and registrant is not germane. The registrant has a geographically unrestricted registration and applicant seeks a geographically unrestricted registration. The owner of a registration enjoys the presumption of the exclusive right to use its mark throughout the entire United States. Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b). *See also Giant Food, Inc. v. Nation's Foodservice, Inc.*, 218 USPQ at 393.

The evidence demonstrates that moving company services are also rendered by the same companies that provide freight forwarding, shipping and warehousing services. Accordingly, we find that applicant's services are related to moving company services.

C. Likely-to-continue channels of trade and classes of consumers.

The channels of trade factor is concerned with whether the same classes of consumers are exposed to the marks under circumstances likely to give rise to the mistaken belief that the services emanate from the same source. *See e.g., Jeanne-Marc Inc. v. Cluett, Peabody & Co.*, 221 USPQ 58, 61 (TTAB 1984) (whether the goods will be encountered by the same purchasers); *Quadrex Corp. v. Inficon Leybold-Heraeus, Inc.*, 228 USPQ 300, 302 (TTAB 1985) (it is not necessary that the products be competitive or used together; likelihood of confusion may be found where the goods (or services) may be "encountered by the same consumers under circumstances that could, because of the marks involved, give rise to a mistaken belief that they originate from, or are in some way associated with the same, albeit

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anonymous, producer.”). The Internet websites discussed above show that individuals using a moving company may also need warehousing and other “freight forwarding” services and that companies regularly using warehousing and freight forwarding services also need moving company services. Ford Moving & Storage specifically advertises that “we continue to operate a quality-based agency providing packing, moving & high value shipping services.” Desert Moving Co. promotes its “consumer” moving services, its “corporate” moving and relocation services, its “storage” services, and its “global freight services” together. A company that may be relocating its headquarters could engage Desert Moving Co. or Ford Moving & Storage to relocate its employees. Thus, the same consumers could encounter moving company, warehousing and freight forwarding services.

In view of the foregoing, we find that the channels of trade and classes of consumers are the same.

D. Third-party registrations incorporating the term “ALL WAYS.”

In its brief, applicant set forth a table of 14 third-party registrations incorporating the term ALL WAYS and submitted copies of those registrations with its reply brief. Applicant argues that these registrations “illustrate the terms as applied to the respective goods or services are distinguishable from each other and support the registration of the pending application.”<sup>7</sup>

The Trademark Examining Attorney objected to applicant’s introduction of the third-party registrations as being untimely because they were introduced for the

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<sup>7</sup> Applicant’s Brief, p. 10.

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first time in applicant's brief. We agree. *See* Trademark Rule 2.142(d) ("The record in the application should be complete prior to the filing of an appeal.").

Moreover, applicant provided only a list of the registrations in its brief. "[I]f applicants or examining attorneys would like to rely on third-party registrations for support of their position, they must submit a copy of the registrations. Simply providing a list of registrations is not sufficient." *In re Promo Link*, 78 USPQ2d 1301, 1304 (TTAB 2006); TMBP § 1208.02; TMEP § 710.03. Applicant's attempt to remedy the situation by filing copies of the registrations with its reply brief fails because such filing is untimely.

However, even if we considered the third-party registrations, they have little, if any, probative value because none of the services in the registrations is related to the services at issue in the appeals before us. *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, 101 (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").

Finally, the third-party registrations introduced by applicant are not evidence that those marks have been used at all, let alone used so extensively that

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consumers have become sufficiently conditioned by their usage that they can distinguish between such marks on the bases of minute differences. The probative value of third-party trademarks depends entirely upon their usage. *See e.g., Scarves by Vera, Inc. v. Todo Imports, Ltd.*, 544 F.2d 1167, 192 USPQ 289, 294 (2d Cir. 1976) (“The significance of third-party trademarks depends wholly upon their usage. Defendant introduced no evidence that these trademarks were actually used by third parties, that they were well promoted or that they were recognized by consumers.”). As the Court pointed out in *Lilly Pulitzer, Inc. v. Lilly Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (C.C.P.A. 1967), “the existence of these registrations is not evidence of what happens in the market place or that customers are familiar with their use.” Where, as here, the “record includes no evidence about the extent of [third-party] uses ... [t]he probative value of this evidence is thus minimal.” *See also Olde Tyme Foods Inc. v. Roundy’s Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992) (“As to strength of a mark, however, registration evidence may not be given *any* weight”).

E. No reported instances of actual confusion.

Applicant argues that “in the 23 years that both companies have been using their respective marks there has been no actual consumer confusion between them, thus supporting that there is no likelihood of confusion.”<sup>8</sup> The contemporaneous use of applicant’s and registrant’s marks without actual confusion is entitled to little weight in an *ex parte* context. *See In re Majestic Distilling Co., Inc.*, 65 USPQ2d at

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<sup>8</sup> Applicant’s Brief, p. 9.

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1205 (“uncorroborated statements of no known instances of actual confusion are of little evidentiary value”). *See also In re Bisset-Berman Corp.*, 476 F.2d 640, 177 USPQ 528, 529 (CCPA 1973) (stating that self-serving testimony of applicant’s corporate president’s unawareness of instances of actual confusion was not conclusive that actual confusion did not exist or that there was no likelihood of confusion); *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 144 USPQ 435, 438 (CCPA 1965). In any event, the record is devoid of probative evidence relating to the extent of use of applicant’s and registrant’s marks and, thus, whether there have been meaningful opportunities for instances of actual confusion to have occurred in the marketplace. *See Cunningham v. Laser Golf Corp.*, 55 USPQ2d at 1847; and *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992). Accordingly, the *du Pont* factor of the length of time during and conditions under which there has been contemporaneous use without evidence of actual confusion is considered neutral.

F. Balancing the factors.

Because the marks are similar, the services are related and the channels of trade and classes of consumers may overlap, we find that applicant’s use of the marks ALL-WAYS and ALL-WAYS FORWARDING INT’L INC. and design for the services listed in the applications, and the registered mark ALL WAYS MOVING & STORAGE for “moving company services,” is likely to cause confusion.

**Decision:** The refusals to register are affirmed.