

This Opinion is not a  
Precedent of the TTAB

Mailed: March 16, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Rescue One Air*

Serial No. 87000714  
Serial No. 87000723<sup>1</sup>

Eugene Beliy, BreanLaw, LLC,  
for Rescue One Air.

Renee McCray, Trademark Examining Attorney, Law Office 111,  
Robert L. Lorenzo, Managing Attorney.

Before Zervas, Taylor, and Larkin,  
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Rescue One Air (“Applicant”) seeks registration on the Principal Register of the  
mark RESCUE ONE AIR in standard characters and the mark shown below

<sup>1</sup> We have consolidated these appeals, and decided them in one opinion, because they involve very similar issues and have identical records. *In re JJ206, LLC*, 120 USPQ2d 1568 n.1 (TTAB 2016); *In re Anderson*, 101 USPQ2d 1912, 1915 (TTAB 2012). References in this opinion to the record are to the records in both cases.



both for “HVAC contractor services; Installation, maintenance and repair of HVAC units and systems,”<sup>2</sup> in International Class 37.

The Trademark Examining Attorney has refused registration of both marks under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that they so resemble the mark AIR RESCUE in standard characters, shown in Registration No. 3244502, and the composite word-and-design mark shown in Registration No. 3244512 and depicted below,



both for “air conditioning contractor services” and owned by the same registrant,<sup>3</sup> as to be likely, when used in connection with Applicant’s services, to cause confusion, mistake, or deception.

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<sup>2</sup> Application Serial No. 87000714 to register the standard character mark and Application Serial No. 87000723 to register the composite word-and-design mark were both filed on April 14, 2016 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), on the basis of Applicant’s claims of first use of the marks at least as early as December 5, 2007 and first use in commerce at least as early as March 4, 2016. The composite mark is described in the application as consisting “of the wording RESCUE ONE AIR in a bold, stylized font. In the row below it is the wording HEATING COOLING with a medical cross in a circle between the two words. This second row of wording is in a rectangular box with rounded corners.” Applicant has disclaimed the exclusive right to use HEATING and COOLING. Color is not claimed as a feature of the mark.

<sup>3</sup> Both registrations issued on May 22, 2007 and were renewed on August 18, 2016.

After the Examining Attorney made the refusals final, Applicant timely appealed in both cases. Applicant and the Examining Attorney have filed briefs in both cases. We affirm both refusals to register.

## **I. Prosecution Histories and Records on Appeal**

The Examining Attorney issued first Office Actions in both cases on July 29, 2016 refusing registration under Section 2(d) on the basis of the cited registrations. The Examining Attorney made of record third-party registrations and Internet webpages regarding the relationship between installation, maintenance and repair of HVAC units and systems, and HVAC contractor services.

Applicant responded to both Office Actions on August 23, 2016. Applicant traversed the refusals to register and made of record Wikipedia pages regarding New York City Fire Department Rescue Company 1 and the Air Rescue Service of the United States Air Force.

The Examining Attorney issued second Office Actions in both cases on September 3, 2016 making final the refusals to register and making of record Nexis excerpts regarding the relationship between the services in the applications and in the cited registrations. These appeals followed.

## **II. Likelihood of Confusion Analysis**

Section 2(d) of the Trademark Act prohibits the registration of a mark that so resembles a registered mark as to be likely, when used in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under § 2(d) is based upon an

analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). We consider each *du Pont* factor that is relevant and for which there is record evidence. *See, e.g., M2 Software, Inc. v. M2 Communications, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015).

In every case under Section 2(d), 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 [or services] and differences in the marks”).

As an initial matter, we will focus our analysis in both cases on a comparison of Applicant’s marks to the standard character mark AIR RESCUE shown in Registration No. 3244502, which we find to be the more relevant of the two cited marks. If we find a likelihood of confusion as to the cited standard character mark, we need not find it as to the cited composite word-and-design mark; conversely, if we do not find a likelihood of confusion as to the standard character mark, we would not find it as to the composite mark. *See Fiserv, Inc. v. Elec. Transaction Sys. Corp.*, 113 USPQ2d 1913, 1917 (TTAB 2015); *In re Max Capital Grp., Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010). We turn first to the similarity of the services, and the related factors regarding the similarity of their trade channels and classes of customers.

**A. Similarity of the Services, Trade Channels, and Classes of Customers**

Our determination of the similarity of the services is based upon the identifications of services in the applications and in the cited registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The services do not have to be identical or even competitive for confusion to be likely. “[L]ikelihood of confusion can be found ‘if the respective [services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.’” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

The identification of services in the cited registration of AIR RESCUE in standard characters is “air conditioning contractor services.” The identifications of services in both applications are “HVAC contractor services; Installation, maintenance and repair of HVAC units and systems.” “HVAC” means “heating, ventilating, and air-conditioning” or “heating, ventilation, and air-conditioning.” *Merriam-Webster Online Dictionary* ([www.merriam-webster.com](http://www.merriam-webster.com)).<sup>4</sup> The services in the applications and in

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<sup>4</sup> 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), including online dictionaries that exist in printed form or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006). Applicant’s identical specimen of use in both cases, which Applicant describes as “a saved, printable version of the main page of Applicant’s website, demonstrating the mark in association with services offered,” corroborates the dictionary definitions. It states that “[w]hen you choose Rescue One Air, you can expect us to provide the most exceptional HVAC service. With the

Registration No. 3244502 are thus identical in part because they both include “air conditioning contractor services.”<sup>5</sup>

“Likelihood of confusion must be found if there is likelihood of confusion involving *any item* that comes within the identification of goods [or services] in the involved application.” *In re Jump Designs*, 80 USPQ2d 1370, 1374 (TTAB 2006) (citing *Tuxedo Monopoly, Inc. v. General Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981)). Although the additional services identified in the applications as “installation, maintenance and repair of HVAC units and systems” appear to be encompassed within the broad and unrestricted identification of “air conditioning contractor services” in the cited standard character registration of AIR RESCUE, the identity of the air conditioning contractor services is sufficient to support a finding of a likelihood of confusion. *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (“[I]n view of our findings with respect to Applicant’s fresh processed fish and frozen fish and Registrant’s non-live fish and frozen fish, we need not make a determination as to Applicant’s remaining goods as it is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.”). This *du Pont* factor supports a finding of a likelihood of confusion as to both Applicant’s word mark and its composite mark.

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professionalism and expertise we have acquired throughout the many years of being a heating, ventilation, and air conditioning contractor company, we are sure to keep our customers satisfied.” April 14, 2016 Specimens at 3.

<sup>5</sup> Applicant does not address any *du Pont* factor in its briefs other than the similarity of the marks, and thus does not dispute the identity of the services.

Because Applicant's services and registrant's services are identical in part, we must presume that the channels of trade and classes of customers for the identified air conditioning contractor services are also identical, *Aquamar*, 115 USPQ2d at 1126 (citing *In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)), and include, as evidenced by Applicant's specimen, the marketing and rendition of those services to average homeowners. These third and fourth *du Pont* factors also support a finding of a likelihood of confusion as to both Applicant's word mark and its composite mark. We turn now to the *du Pont* factor regarding the similarity of the marks.

#### **B. Similarity of the Marks**

This factor focuses on "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." *Palm Bay Imps. Inc. v. Veuve Cliquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). "The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *Coach*, 101 USPQ2d at 1721 (quotation omitted).

The identity of the services in part reduces the degree of similarity between the marks that is necessary for confusion to be likely. *See, e.g., Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016).

The arguments of the Examining Attorney and Applicant regarding this *du Pont* factor are virtually identical in both applications. We summarize them below before turning to the analysis of the similarity of each of Applicant's marks to the cited AIR RESCUE standard character mark.

The Examining Attorney's basic argument in both cases is as follows:

The marks share the identical, dominant wording RESCUE and AIR and are therefore similar in appearance and sound because of the identity of this wording. With respect to connotation and commercial impression, the examining attorney notes that, although the terms RESCUE and AIR appear in reverse combinations, the marks all convey that the parties will "rescue" consumers from their "air" conditioning troubles. Thus, the marks are confusingly similar because they share the identical dominant wording RESCUE and AIR and convey the same meaning and substantially similar commercial impression.

6 TTABVUE 6 (Serial No. 87000714); 6 TTABVUE 6-7 (Serial No. 87000723).

Applicant argues that "the marks share the terms 'Air' and 'Rescue' in common, but that is insufficient to support a finding of likelihood of confusion, particularly where there are a number of differentiating factors," 4 TTABVUE 6 (Serial No. 87000714 and 87000723), including that the marks contain different numbers of words and do not share all the words between them. 4 TTABVUE 6-7 (Serial No. 87000714); 4 TTABVUE 7 (Serial No. 87000723). Applicant acknowledges that the marks "share some sounds between them," but argues that "the order in which the words appear imbues each mark with a distinct and different aural quality," and that its word mark "contains the sound of the word 'one,' which is absent from Registrant's marks," 4 TTABVUE 7 (Serial No. 87000714), and its composite mark "contains the sounds of the words 'one,' 'heating,' and 'cooling,' which are absent from Registrant's



marks.” 4 TTABVUE 7 (Serial No. 87000723). Applicant also argues that the “marks in this case vary substantially in commercial impression” because Applicant’s mark “brings to mind a team of elite, technically competent, and specially trained HVAC contractors who arrive on site to address heating and air condition emergencies,” while the cited marks bring “to mind air conditioning contractors arriving by air on a helicopter or via parachute to fix broken air conditioning.” 4 TTABVUE 7-8 (Serial No. 87000714); 4 TTABVUE 8-9 (Serial No. 87000723).

**Application Serial No. 87000714**

Applicant’s standard character mark RESCUE ONE AIR and the cited standard character mark AIR RESCUE share the words “rescue” and “air.” We take judicial notice that “rescue” means “to save someone or something from a dangerous, harmful, or difficult situation,” while “air” means “the mixture of gases that surrounds the earth and that we breathe;” “the space above, especially high above, the ground,” and “flight above the ground, especially in an aircraft.” *Cambridge Dictionary* (American English) ([dictionary.cambridge.org/us](http://dictionary.cambridge.org/us)). Applicant’s word mark contains the words in the cited word mark, in transposed order and with the words AIR and RESCUE separated by the word ONE.

Applicant correctly notes that it “has long been established under the ‘anti-dissection rule’ that ‘the commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail,’” and that it “violates the anti-dissection rule to focus on the ‘prominent’ feature of a mark, ignoring other elements of the mark, in finding likelihood of confusion.” 4 TTABVUE

4 (quotation omitted). But “in articulating reasons for reaching a conclusion on the issue of confusion, 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 consideration of the marks in their entirety.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For several reasons, we give greater weight, in our analysis of the similarity of the word marks in their entirety, to the shared word RESCUE than to the shared word AIR, or the word ONE in Applicant’s mark.

The meaning of “rescue” as “sav[ing] someone or something from a dangerous, harmful, or difficult situation” shows that RESCUE is a mild hyperbole when it is used in marks for air conditioning contractor services. As such, it is only somewhat suggestive and, in any event, the record is devoid of evidence that its distinctiveness as a source-identifier for air conditioning contractor services has been weakened by third-party uses or registrations of RESCUE-formative marks for those services. The definition of “air” as “the mixture of gases that surrounds the earth and that we breathe” indicates that AIR has limited source-identifying significance in marks for air conditioning contractor services because conditioning air surrounding humans is the defined object of those services. The word ONE in Applicant’s mark does not have any immediate connection to the other wording in the mark (read as RESCUE ONE or ONE AIR), but is not a particularly strong source identifier because it is the first cardinal number and it is positioned in the mark in between the more prominent words RESCUE and AIR.

We find that the word marks are similar in appearance from the standpoint of an average homeowner who requires air conditioning contractor services and “who normally retains a general rather than a specific impression of trademarks.” *In re i.a.m.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015). Both marks display the dominant and hyperbolic word RESCUE, either directly adjacent to, or in close proximity to, the word AIR, and these two words are the most prominent ones in the marks (and the only ones in the cited mark). The visual differences between the marks argued by Applicant resulting from the transposition of these words, and the presence of the word ONE, in Applicant’s mark, 4 TTABVUE 6, are readily apparent only from a side-by-side comparison of the mark, which is not the proper means of comparison. *Coach*, 101 USPQ2d at 1721.

With respect to sound, Applicant acknowledges that the marks “share some sounds between them” but argues that “the order in which the words appear imbues each mark with a distinct and different aural quality.” 4 TTABVUE 7. We disagree. Both RESCUE and AIR are recognized words in the English language having well-known meanings,<sup>6</sup> and they will be pronounced identically when they are verbalized in each mark. *Cf. Research in Motion Ltd. v. Defining Presence Mktg. Grp., Inc.*, 102 USPQ2d 1187, 1193 (TTAB 2009) (ordinary English-language words are exceptions

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<sup>6</sup> This fact distinguishes this case from *Nat’l Distillers & Chem. Corp. v. William Grant & Sons, Inc.*, 505 F.2d 719, 184 USPQ 34 (CCPA 1974), the case cited by Applicant for the proposition that “even when two marks are phonetically similar, no likelihood of confusion exists if other differentiating factors can be established.” 4 TTABVUE 7. In that case, the Court of Customs and Patent Appeals found that DUVET for brandy and DUET for canned cocktails were dissimilar, “[r]egardless of how DUVET might be pronounced,” because “DUET is a familiar word; DUVET is not” and “DUET has a clear and obvious meaning; DUVET does not.” 184 USPQ at 35.

to the rule that there is no correct way to pronounce a mark). AIR RESCUE and RESCUE ONE AIR are phonetically quite similar. The transposition of the words AIR and RESCUE, and the presence of the word ONE, in Applicant's mark do not significantly differentiate the impression of AIR RESCUE and RESCUE ONE AIR on the ear when the marks are verbalized in the context of air conditioning contractor services. Because of the common presence of RESCUE and AIR in the marks, they will both be heard to identify a contractor who rescues consumers from their air conditioning problems.

As noted above, Applicant's mark contains the words that comprise the entirety of the cited mark, in transposed order and separated by the word ONE. "[T]he reversal in one mark of the essential elements of another mark may serve as a basis for a finding of no likelihood of confusion only if the transposed marks create distinctly different commercial impressions." *In re Nationwide Indus., Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (RUST BUSTER for rust-penetrating spray lubricants found to be confusingly similar to BUST RUST for penetrating oil) (citing *Bank of Am. Nat'l Trust and Savings Ass'n v. Am. Nat'l Bank of St. Joseph*, 201 USPQ 842, 845 (TTAB 1978) (BANKAMERICA and BANK OF AMERICA for banking services found to be confusingly similar to AMERIBANC for the identical services)). Applicant's primary argument regarding the connotation and commercial impression of the marks is that the transposed words RESCUE and AIR are used in the two marks in ways that cause the marks to "vary substantially in commercial impression." 4 TTABVUE 7. The record does not support this claim, and we find that

the marks are not “distinctly different” in commercial impression, but rather quite similar.

Applicant argues that “RESCUE ONE AIR was adopted to invoke the spirit and technical prowess of the famous Fire Department of New York City, Rescue 1 fire engine company, FDNY Rescue 1” 4 TTABVUE 8, citing Wikipedia pages in the record regarding that company, the first page of which is reproduced below:

8/23/2016

New York City Fire Department Rescue Company 1 - Wikipedia, the free encyclopedia

Coordinates: 40.760771°N 73.996522°W

## New York City Fire Department Rescue Company 1

From Wikipedia, the free encyclopedia

**New York City Fire Department Rescue Company 1 (FDNY Rescue 1)** was organized March 8, 1915, and is one of five specialized rescue companies of the New York City Fire Department (FDNY) that responds to fire and rescue incidents where there are rescue operations that require specialized equipment and training. Rescue companies have a broad mission that goes beyond firefighting and incidents that may be outside the capabilities of a normal Engine or Ladder Company. The main purpose of a rescue company is to rescue trapped or injured firefighters.

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### Organization

The members of rescue companies receive extensive training in many courses from the Special Operations Command (SOC) of the FDNY. Additionally, many of the members have many years of experience within the FDNY and/or other fields of emergency operations. The rescue companies have an emphasis on equipping the company with tools that could be instrumental in performing rescues of civilians and firefighters at structural fires as well as operating at "odd jobs". Early versions of self-contained breathing apparatus (SCBA) were first assigned to the rescue companies. Heavy duty lifting equipment, torches, and saws were initially introduced to the rescue companies. Life lines and a line gun (Lyle gun) were among the initial equipment used by rescue companies, and as technology evolved, the companies were instrumental in pioneering the fire service application of artificial resuscitation techniques, SCBA, and firefighting foam. Rescue 1 is staffed with one captain, three lieutenants, and typically 25 to 30 firefighters that are split into tours (shifts).<sup>[1]</sup>

### District served


Rescue 1 services the Manhattan borough of New York City below 116th Street in East Harlem and 125th Street in West Harlem. Rescue 3 in The Bronx covers the areas of far northern Manhattan. Rescue 1's firehouse is located on 530 West 43rd Street, in the Hell's Kitchen neighborhood.<sup>[2]</sup>

### FDNY Rescue 1



*Outstanding*

<b>Address</b>	530 W 43rd Street, New York
<b>Coordinates</b>	<span><span><span><span><span>40.760771°N</span> <span>73.996522°W</span></span></span></span></span>
<b>Agency overview</b>	
<b>Established</b>	March 8, 1915
<b>Employees</b>	25
<b>Facilities and equipment</b>	
<b>Stations</b>	1
<b>Rescues</b>	1
<b>Fireboats</b>	1 inflatable



Rescue Co. 1's current "rig", a 2011 Ferrara Ultra Rescue Truck

EXHIBIT

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[https://en.wikipedia.org/wiki/New\\_York\\_City\\_Fire\\_Department\\_Rescue\\_Company\\_1](https://en.wikipedia.org/wiki/New_York_City_Fire_Department_Rescue_Company_1)

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Applicant argues that “[i]n contrast, Registrant’s marks are a clever play-on-words regarding the term ‘air rescue’” that “invoke[] the concept of a military air rescue team,” and that “Registrant’s mark brings “to mind air conditioning contractors arriving by air on a helicopter or via parachute to fix broken air conditioning.” 4 TTABVUE 8 (Serial No. 87000714). As an example of a “military air rescue team,” Applicant cites Wikipedia pages in the record regarding the Air Force Air Rescue Service, the first page of which is reproduced below:

8/23/2016

Air Rescue Service - Wikipedia, the free encyclopedia


## Air Rescue Service

From Wikipedia, the free encyclopedia

The **Air Rescue Service** (ARS) is a disestablished organization in the United States Air Force. Previously a subcommand of the Military Air Transport Service (MATS), a USAF major command (MAJCOM), ARS was redesignated as the **Aerospace Rescue and Recovery Service** (ARRS) on 1 Jan 1966 when MATS was redesignated as the Military Airlift Command (MAC). As ARRS, it retained the same subcommand status with MAC.

The Air Rescue Service was initially established in 1946 under the Air Transport Command, just prior to the U.S. Air Force's designation as a separate service in 1947, and it continued to serve the U.S. Air Force proudly as both ARS and ARRS during the Korean War and Vietnam War, as well as during the Cold War. Rescue's worth was proven time and again: 996 combat saves in Korea and 2,780 in Southeast Asia. The crews, both fixed-wing and helicopter, had but one motto: "*These things we do that others may live.*"

ARRS returned to its former name of ARS in 1989 and was disestablished in 1993, following the disestablishment of Military Airlift Command and the dispersal of legacy USAF search and rescue (SAR) forces among the Air Combat Command (ACC), the Air Force Special Operations Command (AFSOC), United States Air Forces in Europe (USAFE) and Pacific Air Forces (PACAF), to include those Air Force Reserve Command (AFRC) and Air National Guard (ANG) rescue units operationally-gained by these MAJCOMs. The current structure and strength of search and rescue in today's U.S. Air Force is focused primarily on combat search and rescue (CSAR) and Personnel Recovery (PR) and is greatly reduced from the air rescue force structure that served from 1946 through the end of the Vietnam Era.



Air Rescue Service Emblem

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## Origins

There is always a first. In the case of the helicopter, the mainstay of the post-World War II USAF rescue structure, it was Lieutenant Carter Harman who made the first U.S. Army Air Forces helicopter rescue, in Burma behind Japanese lines on 25-26 Apr 1944. First Air Commando Sergeant Pilot Ed “Murphy” Hladovcak had crash-landed

[https://en.wikipedia.org/wiki/Air\\_Rescue\\_Service](https://en.wikipedia.org/wiki/Air_Rescue_Service)

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The Wikipedia pages in the record do not persuade us that consumers of Applicant's services would recognize the association that Applicant seeks to make with the New York City Rescue 1 fire company.<sup>7</sup> 4 TTABVue 8. Applicant's own promotional materials do not help; its specimen uses the words Rescue One in a manner consistent with the dictionary meaning of "rescue" as "sav[ing] someone or something from a dangerous, harmful, or difficult situation" caused by broken air conditioning.<sup>8</sup> The specimen's text does not refer or allude to fire departments in general or the referenced New York City Fire Department rescue company in particular, or compare Applicant's "spirit" or "technical prowess" to that of firefighters, even in its statements about "rescuing" customers. The specimen simply touts the merits of Applicant's services through statements such as the following:

There is nothing worse than having a broken A/C in the summer (or a broken heater when we are having a rare cold front). Rescue One is here to rescue you from the hot summer sun. Our technicians arrive promptly when dispatched, perform quality and reliable inspections, and offer you affordable solutions to all of your heating and cooling needs. Our priority is to rescue your comfort and peace of mind!

and

With the professionalism and expertise we have acquired throughout the many years of being a heating, ventilation, and air conditioning contractor company, we are sure to keep our customers satisfied. Be worry-free about the units

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<sup>7</sup> We note that the Wikipedia pages in the record identify the company as "Rescue Company 1" and "Rescue Co. 1," as well as "Rescue 1." They do not identify the company as "Rescue One."

<sup>8</sup> The specimen states, for example, that "Rescue One Air is here to rescue you from the hot summer sun" and that "[o]ur priority is to rescue your comfort and peace of mind!" April 14, 2016 Specimen at 3.

you have at home or at work, give us a try! We guarantee you will not be disappointed. We'll get the job done right the first time! If we can keep our customers happy and satisfied, then we will be too.

April 14, 2016 Specimen at 3.

There is also nothing in the record to suggest that consumers of air conditioning contractor services will understand RESCUE ONE AIR to allude to the New York City Fire Department rescue company. Applicant's specimen states that "Rescue One Air is a *Phoenix Air Conditioning* company." April 14, 2016 Specimen at 3 (emphasis in original). We are not persuaded that Applicant's Phoenix-area residential and business customers, or any other potential consumers of air conditioning contractor services, are familiar with New York City Fire Department Rescue Company 1 solely on the basis of the Wikipedia pages devoted to the company. There is no other evidence in the record to show that any consumers of air conditioning contractor services would understand Applicant's mark RESCUE ONE AIR to allude to the New York City fire company.

Finally, there is no evidence in the record supporting Applicant's argument that the cited mark AIR RESCUE "invokes the concept of a military air rescue team" and "brings to mind air conditioning contractors arriving by air on a helicopter or via parachute to fix broken air conditioning." 4 TTABVUE 8.<sup>9</sup> As with the Wikipedia pages devoted to the New York City Fire Department company, we are not persuaded

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<sup>9</sup> Applicant argues that this "impression is further solidified in the Registrant's logo and its patriotic waving flag background and red, white, and blue coloring that invokes an impression regarding the U.S. military services." 4 TTABVUE 8. We do not further consider this argument because it pertains solely to the cited composite mark. As previously stated, we limit our discussion to the cited standard character mark.



that consumers of air conditioning contractor services are familiar with military air rescue teams in general, or the Air Force Air Rescue Service in particular, on the basis of the Wikipedia pages made of record by Applicant.<sup>10</sup> Applicant did not make of record any other evidence regarding public familiarity with military rescue teams, or any evidence that is probative of the way in which any consumers of air conditioning contractor services would perceive the cited AIR RESCUE mark.

When considered in their entirety and in the context of air conditioning contractor services, the RESCUE ONE AIR and AIR RESCUE word marks both connote, through their common use of the dominant word RESCUE, that the contractors identified by the marks will not just fix a broken air conditioner, but will metaphorically “save someone . . . from a dangerous, harmful, or difficult situation.”<sup>11</sup> When the marks are used for the identical air conditioning contractor services, this common hyperbolic meaning makes them “sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely

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<sup>10</sup> We further note that the first page of the Wikipedia entry states that the military’s Air Rescue Service was disestablished in 1993. 4 TTABVUE 13.

<sup>11</sup> Applicant’s argument in both cases regarding the commercial impressions created by the marks does not dispute that they both connote the same image of a figurative “rescue” from air conditioning woes. 4 TTABVUE 7-8 (Serial No. 87000714); 4 TTABVUE 8-9 (Serial No. 87000723). Instead, Applicant argues that the marks evoke different imagery of the figurative types of rescuers (firefighters v. aviators) and means of arrival on scene (fire engines v. aircraft). There is no evidence in the record that air conditioning contractors emulate firefighters or aviators, or that they arrive at the job site by means other than civilian vehicles such as vans or trucks. To glean the specific figurative meanings of the marks argued by Applicant from the marks themselves, consumers of air conditioning contractor services would need to use a degree of imagination that is unsupported by the record and inconsistent with the accepted general principle that the average consumer retains only “a general rather than a specific impression of trademarks.” *In re i.a.m.symbolic, llc*, 116 USPQ2d at 1409.

to assume a connection between the parties.” *Coach*, 101 USPQ2d at 1721. We find, on this record, that the word marks’ similarity in connotation and commercial impression is the most significant means of comparison in finding the marks to be similar, because there is no evidence that any air conditioning contractors other than Applicant and the registrant use marks that identify themselves as “rescuers.” *M.C.I. Foods, Inc. v. Bunte*, 96 USPQ2d 1544, 1550 (TTAB 2010) (“In a particular case, any one of these means of comparison may be critical in finding the marks to be similar.”).

This *du Pont* factor supports a finding of likelihood of confusion with respect to Applicant’s standard character mark RESCUE ONE AIR.

**Application Serial No. 87000723**

The mark in this application is the composite word-and-design mark shown below:



We give greater weight, in our analysis of the similarity of this mark in its entirety to AIR RESCUE in its entirety, to the shared word RESCUE than to the shared word AIR, or the other visual and verbal elements of Applicant’s composite mark. We do so for the reasons discussed above in connection with Applicant’s word mark, and for the additional reasons that the descriptive words HEATING and COOLING lack source-identifying significance and have been disclaimed, *see In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (affirming finding that “DELTA,” not the disclaimed word “CAFE,” was the dominant portion of the mark THE DELTA CAFE for restaurant services), and that “[i]n the case of a composite

mark containing both words and a design, ‘the verbal portion of the mark is the one most likely to indicate the origin of the goods [or services] to which it is affixed,’” *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 218, USPQ 198, 200 (Fed. Cir. 1983)), because “the literal component of brand names likely will appear alone when used in text and will be spoken when requested by consumers.” *Id.* at 1911. The latter principle is illustrated by Applicant’s own use of “Rescue One Air” to identify itself in the text of its specimen, a page from which is reproduced below:

4/12/2016

Phoenix Air Conditioning Repair Service by Rescue One Air

priority. There is nothing worse than having a broken A/C in the summer (or a broken heater when we are having a rare cold front). Rescue One Air is here to rescue you from the hot summer sun. Our technicians arrive promptly when dispatched, perform quality and reliable inspections, and offer you affordable solutions to all of your heating and cooling needs. Our priority is to rescue your comfort and piece of mind!

## What We Do

Rescue One Air provides a single resource for all aspects of heating, air conditioning, and ventilation systems – from planning, engineering, and construction, to equipment sales, installations, repair service, and maintenance – and we are able to back up our commitment through professionalism and customer satisfaction. We start by listening to you, learn about the reason of your request, and your priorities. After, we are able to customize and set-up an effective solution for you, and put them in place quickly and professionally. We’ve been in this industry for many years and we know we can get the job done right, the first time. Rescue One Air is a *Phoenix Air Conditioning* company

## Services We Provide:

<ul style="list-style-type: none"><li>• Phoenix Air Conditioning Repair</li><li>• Heating Repair</li><li>• Furnace Repair</li><li>• HVAC Repair Services</li></ul>	<ul style="list-style-type: none"><li>• Air Duct Cleaning</li><li>• Insulation</li><li>• Sheet Metal Duct Work</li><li>• Preventative Maintenance Programs</li></ul>	<ul style="list-style-type: none"><li>• Part Replacements</li><li>• Air Conditioning Unit Installation</li><li>• Heating Unit Installations</li><li>• Rooftop Unit Services</li><li>• And Many More</li></ul>
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## What It Means To You

When you choose Rescue One Air, you can expect us to provide the most exceptional HVAC service. With the professionalism and expertise we have acquired throughout the many years of being a heating, ventilation, and air conditioning contractor company, we are sure to keep our customers satisfied. Be worry-free about the units you have at home or at work, give us a try! We guarantee you will not be disappointed. We’ll get the job done right the first time! If we can keep our customers happy and satisfied, then we will be too.

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<http://rescueoneair.com/>

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We find that Applicant’s composite mark is similar in appearance to the cited AIR RESCUE mark. The most prominent visual element in Applicant’s composite mark is what Applicant describes in the application as “the wording RESCUE ONE AIR in a bold, stylized font.” Applicant’s word mark is the visual portion of its composite mark that will be remembered by consumers. The word mark is visually more striking than the descriptive and disclaimed words HEATING and COOLING displayed in smaller and thinner letters beneath it. It is also visually more striking than the bolded symbol that also appears beneath it, which is described by Applicant in the application as “a medical cross in a circle.”<sup>12</sup> The prominence of Applicant’s word mark RESCUE ONE AIR in its composite mark makes the composite mark similar in appearance, when considered in its entirety, to the cited AIR RESCUE standard character mark, which covers all “depictions of the standard character mark regardless of font style, size, or color.” *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011).

With respect to sound, Applicant argues that its composite mark differs in sound from the cited marks because the composite mark “contains the sounds of the words ‘one,’ ‘heating,’ and ‘cooling,’ which are absent from Registrant’s marks.” 4 TTABVue

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<sup>12</sup> A description of a mark “cannot be used to restrict the likely public perception of a mark” because a “mark’s meaning is based upon the impression actually created by the mark in the minds of consumers, not on the impression that the applicant states the mark is intended to convey.” TRADEMARK MANUAL OF EXAMINING PROCEDURE Section 808.02 (January 2017). If the symbol were perceived as a medical cross, it would connote first aid, and would reinforce the notion of “rescue” conveyed by Applicant’s RESCUE ONE AIR word mark situated directly above the design, because it would “emphasize, in a pictorial way, the main word portion of the . . . mark.” *In re Wine Society of America*, 12 USPQ2d 1139, 1142 (TTAB 1989) (in composite mark, design elements consisting of a map of North America, a bunch of grapes, and a glass filled with wine, reinforced meaning of AMERICAN WINE SOCIETY word mark).

7 (Serial No. 87000723). It is true that Applicant's composite mark contains words (and thus sounds) that are different from those in the cited AIR RESCUE mark, but "[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 Sears alone), Ward's for Montgomery Ward's, and Bloomies for Bloomingdales." *Anthony's Pizza & Pasta Int'l v. Anthony's Pizza Holding Co.*, 95 USPQ2d 1271, 1280 (TTAB 2009) (quoting *Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1333 (TTAB 1992)). In *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135 (Fed. Cir. 2015), the Federal Circuit cautioned against assuming such truncation of marks without supporting evidence, but the record here contains such evidence in the form of Applicant's own truncation of its composite mark to "Rescue One Air" alone.

Applicant's specimen (depicted above) uniformly uses "Rescue One Air" to identify Applicant in statements such as "When you choose Rescue One Air, you can expect us to provide the most exceptional HVAC service." April 14, 2016 Specimen at 3. Applicant's use of "Rescue One Air" alone shows that the disclaimed portions of Applicant's composite mark, the descriptive words HEATING and COOLING, will rarely, if ever, be used when the composite mark is verbalized. Consumers who "choose Rescue One Air" are likely to refer to the company orally in that manner, and not as "Rescue One Air Heating [and] Cooling." When the composite mark is verbalized, it will sound similar to the cited mark AIR RESCUE because both marks

will be heard to identify a contractor who rescues customers from air conditioning problems.

With respect to the connotation and commercial impression of the composite mark, Applicant makes the same arguments that it makes with respect to its word mark. The primary words in the composite mark, Applicant's word mark RESCUE ONE AIR, connote the same hyperbolic image of "rescue" as the cited AIR RESCUE mark for the reasons discussed above in connection with the word marks. As noted above, if the "medical cross" symbol in the composite mark were perceived as such, the composite mark as a whole would evoke first aid, an association that is not present on the face of Applicant's word mark. We cannot assume this perception simply from Applicant's description of the symbol in its composite mark, and there is nothing in Applicant's specimen or elsewhere in the record that promotes this perception. But an association with first aid would not significantly differentiate the composite mark in connotation and commercial impression from the cited AIR RESCUE mark, as this association would reinforce the general figurative meaning of "rescue" from air conditioning problems conveyed by the composite mark. The composite mark is similar in connotation and commercial impression to the cited AIR RESCUE mark when the marks are considered in their entirety.

This *du Pont* factor supports a finding of a likelihood of confusion with respect to Applicant's composite mark.

### **Conclusion**

All of the *du Pont* factors for which there is record evidence support a finding of a likelihood of confusion in both cases with respect to Registration No. 3244502. The services, channels of trade, and classes of customers in both cases are identical in part, which reduces the degree of similarity between the marks that is required for confusion to be likely, and the marks in both cases are similar. We find that confusion as to the source or sponsorship of Applicant's services is likely in both cases.

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