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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	78624296
Applicant	OTS Logistics Group Ltd.
Applied for Mark	OTS LOGISTICS GROUP
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Date	09/27/2006

TABLE OF CITED CASES

<i>Colgate Palmolive Co. v. Carter Wallace, Inc.</i> , 432 F.2d 1400 (C.C.P.A. 1970)	6
<i>Homeowners Group, Inc. v. Home Marketing Specialists, Inc.</i> , 931 F.2d 1100 (6th Cir. 1991)	3
<i>In re Data Corp.</i> , 753 F.2d 1056, 1058 (Fed. Cir. 1985).....	3-4
<i>In re DuPont de Nemours & Co.</i> , 476 F.2d 1357, 1367 (C.C.P.A. 1973)	3-4

I. INTRODUCTION

Pursuant to a Notice of Appeal filed August 1, 2006, the Applicant has appealed the Trademark Examining Attorney's refusal to register Applicant's mark OTS LOGISTICS GROUP for:

shipping services, namely export shipping services from U.S. to foreign ports globally, and including cargo to port, preparing and issuing export declarations, bills of lading, and other export documentation; booking or confirming cargo space, arranging cargo insurance, loading freight into containers, coordinating the movement of shipments from origin to the vessel, provision of transportation services, entering into affreightment agreements with shippers, entering into arrangements with foreign destinations agents, and collecting freight charges from shippers; linehaul services, namely to and from major cities in the U.S.; freight ship transport; moving van transport, and shipping agency services namely arranging movement of import freight from pier to warehouse, unloading freight from containers, delivering freight to consignees, and collecting freight charges from consignees in International Class 039.

The Examining Attorney has refused registration of the mark under Section 2(d) on the grounds that the mark is likely to be confused with the mark of United States trademark registration no. 2,183,942 (the "'942 registration"). The '942 registration is for a service mark which comprises the letters "O.T.S." within a highly stylized logo. The Examining Attorney has further required an amendment to Applicant's recitation of services and a disclaimer of the words "LOGISTICS GROUP."

II. ARGUMENT

1. Recitation of Services

The Examining Attorney has objected to Applicant's recitation of services as indefinite. Applicant respectfully requests entry of a proposed amended recitation of services to substantially conform to the recitation of services proposed by the Examining Attorney. Applicant submits the following revised recitation of services:

Class 35: Information management services, namely, shipment processing, preparing shipping documents and invoices, namely, preparing and issuing export declarations, bills of lading, and other export documentation; arranging for pickup, delivery, storage, and transportation of documents, packages, freight and parcels via ground, vessel and air; transportation logistics services, namely, planning and scheduling shipments for users of transportation services, namely, booking or confirming cargo space, arranging cargo insurance, loading freight into containers, and coordinating the movement of shipments.

Class 39: Shipping and delivery services, namely, pickup, loading, transportation, and delivery of packages and cargo by various modes of transportation, namely, freight ship transport from the United States to and from foreign ports globally, cargo hauling, cargo unloading, truck hauling services to and from major cities in the United States; freight ship transport; moving van transport.

Applicant's proposed amended recitation of services would require the payment of the fee required to add an additional class. If Applicant's application proceeds to publication, Applicant will submit the required fee for the added class.

2. Disclaimer

As requested by the Examining Attorney, Applicant requests entry of the following disclaimer:

“No claim is made to the exclusive right to use “LOGISTICS GROUP” apart from the mark as shown.”

3. Section 2(d) Refusal

With respect to the likelihood of confusion rejection, Applicant respectfully requests reconsideration of this refusal. Because there are substantial differences between Applicant’s mark and the ‘942 registration, Applicant respectfully submits that the marks are sufficiently distinct so as to avoid the possibility of customer confusion.

In the *DuPont* decision, the Court of Customs and Patent Appeals listed a number of relevant factors to be considered when determining whether a likelihood of confusion exists between trademarks. *In re DuPont de Nemours & Co.*, 476 F.2d 1357, 1367 (C.C.P.A. 1973). One of these factors is the similarity or dissimilarity of the marks as to appearance, sound, connotation and commercial impression. It is axiomatic that when comparing the marks, the marks must be compared in their entireties and not dissected apart. *See In re Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *see also Homeowners Group, Inc. v. Home Marketing Specialists, Inc.*, 931 F.2d 1100 (6th Cir. 1991). When properly compared in their entireties, it is evident that the marks can be easily distinguished from one another.

The ‘942 registration comprises a highly stylized mark. The mark includes what appears to be a front view of a flying airplane or flying saucer. This image is then largely surrounded by a triangle in which the letters “O.T.S.” are disposed. The overall impression of this stylized mark is distinct from a simple word mark, and the stylized features of the ‘942 registration cannot be ignored. In contrast to the mark of the ‘942 registration, Applicant’s mark comprises a

three word phrase – OTS LOGISTICS GROUP. It is well settled that confusion is not automatic even if a mark consists, in part, the whole of another’s mark. *Colgate Palmolive Co. v. Carter Wallace, Inc.*, 432 F.2d 1400 (C.C.P.A. 1970). Therefore, Applicant’s mark is not confusingly similar to the ‘942 registration by virtue of sharing the letters “OTS.” Furthermore, a conclusion that the Applicant’s mark is confusingly similar to the ‘942 registration ignores the presence of the words LOGISTICS GROUP in Applicant’s mark and therefore improperly dissects Applicant’s mark. *See In re Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *see also Homeowners Group, Inc. v. Home Marketing Specialists, Inc.*, 931 F.2d 1100 (6th Cir. 1991). The addition of the words LOGISTICS GROUP gives Applicant’s mark a different connotation and commercial impression such that the marks are not confusingly similar, and these additional words substantially alter the appearance of the mark when compared to the ‘942 registration. Furthermore, the stylization of the ‘942 registration conveys a distinctive commercial impression that is absent from Applicant’s mark. Therefore, when compared side-to-side, the stylization of the cited mark distinguishes the ‘942 registration from Applicant’s mark.

With respect to sound, Applicant’s mark is considerably different phonetically in comparison to the ‘942 registration. As noted above, the word portion of the ‘942 registration consists only of the term “OTS.” In contrast, Applicant’s mark consists of “OTS” along with two additional words – LOGISTICS and GROUP. The “LOGISTICS GROUP” portion of Applicant’s mark has no equivalent in the ‘942 registration, and, based on a comparison of sound alone, is a sufficient basis for customers to differentiate Applicant’s mark from the ‘942 registration.

Because of the differences in the sight, sound and commercial impression of Applicant’s mark as compared to the ‘942 registration, there is no likelihood of confusion between the marks.

In addition to these differences between the marks, the services provided under the marks are distinct. As amended herein, Applicant's recitation of services provides numerous services beyond those listed in the '942 registration. For example, Applicant provides transportation logistics services to coordinate and schedule shipments for others and prepares the requisite shipping documents. In contrast, the '942 registration only provides "international sea, air and land freight transportation." These differences in the scope of the services provided under the mark are sufficient to allow a customer to distinguish between the source of the goods, and therefore confusion between the marks is not likely.


III. CONCLUSION

For the foregoing reasons, Applicant submits that the refusal by the Trademark Examining Attorney to register the Applicant's mark should be reversed.

Dated: September 27, 2006

Respectfully submitted,

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In re the Trademark Application of:)	
)	
OTS Logistics Group Ltd.)	Trademark Attorney: Wendy B. Goodman
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Serial No.: 78/624,296)	Law office: 109
)	
Filed: May 5, 2005)	International Classes (amended): 035, 039
)	
For: OTS LOGISTICS GROUP)	
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APPLICANT'S APPEAL BRIEF