

From: Vanston, Kathy

Sent: 4/5/2012 8:36:39 AM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 85041968 - EAGLE MARINE SERVICES - 008114-01220 - Request for Reconsideration Denied - Return to TTAB - Message 1 of 3

Attachment Information:

Count: 9

Files: st2.jpg, ceres-1.jpg, ceres-2.jpg, coop-1.jpg, coop-2.jpg, coop2-1.jpg, coop2-2.jpg, ics.jpg, 85041968.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85041968

MARK: EAGLE MARINE SERVICES



CORRESPONDENT ADDRESS:

ANTHONY J. MALUTTA
KILPATRICK TOWNSEND AND STOCKTON LLP
2 EMBARCADERO CTR FL 8
SAN FRANCISCO, CA 94111-3833

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

APPLICANT: Eagle Marine Services, Ltd.

CORRESPONDENT'S REFERENCE/DOCKET NO:

008114-01220

CORRESPONDENT E-MAIL ADDRESS:

amalutta@kilpatricktownsend.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 4/5/2012

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. *See* 37 C.F.R. §2.64(b); TMEP §§715.03(a), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated March 23, 2011 are maintained and continue to be final. *See* TMEP §§715.03(a), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §§715.03, 715.03(a), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP

§715.03(a), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

The final refusal under Section 2(d) is MAINTAINED.

Comparison of Marks

Registrant is using EAGLE OCEAN, having disclaimed OCEAN. Applicant is using EAGLE MARINE SERVICES, having disclaimed MARINE SERVICES. Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. Disclaimed matter is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii).

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

Comparison of Services

In a likelihood of confusion analysis, the comparison of the parties' services is based on the services as they are identified in the application and registration, without limitations or restrictions that are not reflected therein. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1595 (TTAB 1999); *see Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267-68, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638-39 (TTAB 2009); TMEP §1207.01(a)(iii). Applicant has framed its entire argument with respect to the differences in the services based upon information in the websites of each party. This analysis is not persuasive because the comparison of the services must be based upon the services as they are identified in the registration and the application. Applicant may not rely on extraneous evidence to identify and differentiate the services.

Applicant's services are identified as: Operation of port facilities for others; booking and scheduling cargo transportation for others; Stevedoring services; cargo handling; storage of goods for others. Stevedoring is the loading and unloading of cargo from a ship. [See http://www.dictionary.reference.com](http://www.dictionary.reference.com).

The relevant services of registrant are identified as: attending to loading and unloading of vessels; cargo handling; freight transportation by sea and air; chartering of vessels, and freight and cargo brokerage.

It is apparent that some of the services provided by each party are identical. Applicant's "stevedoring services" and "cargo handling" are identical to registrant's "loading and unloading of vessels" and "cargo handling." Moreover, as the attached evidence indicates, applicant's port facilities services, storage services and scheduling of cargo transportation are highly related to cargo handling as many companies routinely provide the kinds of services offered by both registrant and applicant. See <http://www.ceresglobalc.com>; www.cooperconsolidated.com; www.icslogisitcs.com; www.murphy-marine.com; www.shipperstevedoring.com; www.schaefferstevedoring.com; www.wellsville-terminals.com. The similarities between the marks, therefore, and the relatedness of the services create a substantial likelihood that consumers may be confused as to the source of the services.

Material obtained from the Internet is generally accepted as competent evidence. *See In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009) (accepting Internet evidence to show relatedness of goods in a likelihood of confusion determination).


The absence of actual confusion is not relevant. The test under Trademark Act Section 2(d) is whether there is a likelihood of confusion. It is unnecessary to show actual confusion in establishing likelihood of confusion. TMEP §1207.01(d)(ii); *e.g.*, *Weiss Assocs. Inc. v. HRL Assocs. Inc.*, 902 F.2d 1546, 1549, 14 USPQ2d 1840, 1842-43 (Fed. Cir. 1990). The Trademark Trial and Appeal Board stated as follows:

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

In re Kangaroos U.S.A., 223 USPQ 1025, 1026-27 (TTAB 1984).

The argument pertaining to the sophistication of the purchasers is not persuasive. The fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see In re Cynosure, Inc.*, 90 USPQ2d 1644 (TTAB 2009); *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983).

/Kathleen M. Vanston/
Examining Attorney
Law Office 107
(571) 272-9235
kathy.vanston@uspto.gov [for informal
inquiries]



 Sign Up | Log In

How many words do you know? **FIND OUT!**

Dictionary
Thesaurus
Word Dynamo FREE
Quotes
Reference
Translator
Spanish

Related Searches

- Stevedoring servi...
- American stevedor...
- Bulk cargo
- Salvage
- Pilotage
- Demurrage

Did you know: Look at your phone, now discover **what the G in 4G stands for.**

Finish your order now & RECEIVE

FREE SHIPPING



On ALL Orders No Minimums

Shop Today

Nearby Words

- steve spielberg
- steve wozniak
- steve's shell
- stevedore**
- stevedore knot

stevedoring

[stee-vi-dawr, -dohr]   [Origin](#)

Stevedoring & Warehousing

www.telescopicrocks.com/Stevedoring

Increase Weight & Volume containers with Mechanical Lifttruck Equipment

Veltkamp

www.velt kamp-packaging.com/

Manufacturer of Strapping and Lashing Supplies and Fittings

Stevedore

noun

1. a firm or individual engaged in the loading or unloading of a vessel.

Stevedore

www.jobsonline.net/

\$10-\$55/Hour. Found: 386 Jobs In Your Area. Hiring Now! Ad

verb (used with object)

2. to load or unload the cargo of (a ship).

Word Dynamo By Dictionary.com


Searching for **stevedoring**? How many words do you actually know?

▶ **FIND OUT**

Your request was denied because this URL contains content that is categorized as "Malicious Sources" which is blocked by USPTO policy. If you believe the categorization is inaccurate, please contact the USPTO OCIO IT Help Desk

Quote Of The Day

"Strictly speaking, one cannot legislate love, but what one can do is legislate


Stevedoring is always a great word to know. 00:01

WORD DYNAMO
How many words do you know? **FIND OUT**



[Home](#) [Our Company](#) [Services](#) [Locations](#) [Helpful Links](#) [Contacts](#)

Operational Diversity For All Types of Cargoes

Containers

Ceres constantly explores modern container handling methods and processes as well as partnering opportunities in the development of new container facilities. Ceres' solid reputation and quality

RoRo Operations

Ceres is a premier Roll-on/Roll-off (RoRo) specialist handling over 400,000 RoRo units annually for major RoRo carriers throughout North America. Ceres provides full RoRo Stevedoring and

Breakbulk, Bulk, Special Project Cargo

Ceres knows the special transport requirements of breakbulk, bulk and special project cargoes. You can always trust Ceres to provide the best, most cost-effective solutions

Cruise Operations

Ceres is the largest, fastest growing cruise stevedore and terminal operator in North America. We handle the world's premier cruise ships, process over six million passengers annually and

Cargo/Terminal Services

Ceres constantly researches innovative cargo handling techniques and technology, terminal management, global logistics and distribution methods. What differentiates Ceres from

solid reputation and quality service helps to maintain a significant market share in container stevedoring and adds to a robust growth in container volumes – 3 million container moves per annum. [Learn more >](#)



full RoRo Stevedoring and Terminal Services for all types, sizes, shapes, high and heavy cargoes. [Learn more >](#)



cost-effective solutions. [Learn more >](#)



passengers per year and manage and operate cruise terminals. Check out Ceres' First Class capabilities. [Learn more >](#)



differentiates Ceres from our competition is the ability to continually expand our service scope and methodology to satisfy the needs and requirements of our customers. [Learn more >](#)



Baltimore
Bayonne
Beaumont
Breakbulk/Project Cargo
Brooklyn
Charleston
Contacts
Containers
Cruise

Duluth/Superior
Halifax
History
Home
Jacksonville
Locations
Management Team
Miami
Montreal

New Orleans
News
Our Company
Port Canaveral
Port Everglades
Port of Huonania
Resource Center
RORO
Safety/Security/Environment

Savannah
Services
Tampa
Technology
Terminal Operations
Texas Ports
Vancouver BC
Virginia Ports

[CONTACT US](#)
(Login Required)
Terminal Op System
RORO System



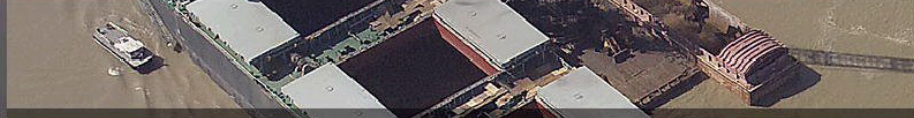
COOPER/CONSOLIDATED

Home

Stevedoring & Marine Services

Transportation & Logistics

About Us



Cooper/Consolidated Stevedoring & Marine Services

CAPABILITIES

- High Capacity Crane Power
- Mid-Stream Anchorages
- Fleeting
- Two (2) Dry Docks
- Barge Stacking and Preparation for Export
- Project Cargo Lashing and Securing Services
- Outside Ground Storage

Cooper/Consolidated has barge fleeting available for more than 1,000 river barges and twelve midstream vessel mooring sites.

When you move bulk commodities into the Center Gulf, you need the largest selection of transportation choices that the industry offers. We are the largest asset-backed stevedoring and logistics company operating in the ports of New Orleans and Baton Rouge, Louisiana.

We move any dry cargo freight ranging from coal, coke, iron ore, pig iron, HBI,



Storage

iron, iron ore, pig iron, iron, DRI, to fertilizers, scrap steel, alloys, cement, clinkers, salt, break bulk, steel products and project cargo.



Regardless of what dry cargo you are moving, we have the experience, locations and equipment to ensure your cargo is transported to the end user efficiently and economically. That access can only be found via Cooper/Consolidated.

We own eleven (11) mid-stream anchorages between New Orleans and Baton Rouge and operate twelve (11) high capacity barge mounted floating cranes that include Am Clyde Model 28s, and Manitowoc Model 4600s. In addition, we have one floating grain elevator called the America which is capable of loading 20,000 metric tons of grain product per day. Cooper/Consolidated can provide the kind of service and access to unique transportation assets affiliated with each.

We provide stevedoring services, fleetng, and cleaning and repairs at the following locations:

- **Waggaman, LA** (MP 111(3), MP 111(4))
- **LaPlace, LA** (MP 133, 134, 135)
- **Darrow, LA** (MP 171, 172, 172R, 175, 179, 180)

CONTACTS

Sales & Logistics

Brent Mahana
(985) 871-4403

Brent.Mahana@cgb.com

Stevedoring & Marine Operations

Billy Fitzpatrick
(225) 473-4268

Billy.Fitzpatrick@coopertsmith.com

For more information:

For more information regarding the capabilities and locations of Cooper T. Smith and Consolidated Terminals and Logistics Company, please visit www.coopertsmith.com and www.ctlconline.com.

COOPER/CONSOLIDATED

Home Stevedoring & Marine Services **Transportation & Logistics** About Us

Cooper/Consolidated Transportation & Logistics

CAPABILITIES

- Logistical Solutions and Barge Transportation on all Inland Waterways

Our fleet of controlled assets provides the most economical and convenient transportation available.

Getting your shipment to anchorage is only half the journey.

Getting it there is where Cooper/Consolidated's

- Waterways
 - Trucking
 - Rail
 - Inland Terminating
 - Warehousing
 - Logistics
 - Management and Supervision
 - Daily Position Reporting

Getting it there is where Cooper/Consolidated's seamless journey makes your life easy. Cooper/Consolidated's transportation assets can complete your journey to destination in the most efficient, cost effective way.

Whether it is by barge, rail, truck, or other transportation, Cooper/Consolidated has the assets, the experience, and the connections to complete your move.



CONTACTS

Sales & Logistics

Brent Mahana
(985) 871-4403

Brent.Mahana@cgb.com

Stevedoring & Marine Operations

Billy Fitzpatrick
(225) 473-4268

Billy.Fitzpatrick@coopertsmith.com

For more information:

For more information regarding the capabilities and locations of Cooper T. Smith and Consolidated Terminals and Logistics Company, please visit www.coopertsmith.com and www.ctconline.com.



ICS Logistics

[» JOBS](#)

[» LOGIN](#)

[» ABOUT US](#) [» EXPERTISE](#) [» NEWS](#) [» CONTACT US](#)

S E R V I C E S

Cold Storage

Marine Services

Transportation

The critical communications link between ship, owner, charterer and stevedore, ICS Marine Services maintains close working relationships across the entire spectrum of marine disciplines. Whatever you need by sea you'll find right here.

- *US Customs, USDA and US Immigration clearance for all vessel types*
- *Arrangement and coordination of berths and vessel requirements*
- *Stevedoring and terminal operations*
- *Full International documentation*
- *International freight forwarding*
- *Marine Insurance*
- *Customhouse brokerage*
- *Ship's agency*
- *Containerized and break bulk vessel loading*
- *Dockside warehouse with rail siding and covered and open storage*
- *Container, general cargo, heavy lift capabilities and crating services*
- *State-of-the-art container handling equipment*



Global Stevedoring Inc: Expansive facilities in Jacksonville, FL, Port Manatee, FL and Mobile, AL provide the full range of terminal services required for international trade.

[LEARN MORE >>](#)



Pacorini Global Services: Warehousing and complete terminal operations with leading edge inventory and vessel management systems at the Port Of New Orleans.

[LEARN MORE >>](#)

[Terms of Use](#) | [Privacy Policy](#)

©Copyright 2011 ICS Logistics, LLC

[Home](#) | [Sitemap](#)