

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 Security Automation Systems, Inc.
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Serial No. 86885126
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Jason A. Houdek of Taft Stettinius & Hollister LLP,
for Security Automation Systems, Inc.

Danythe Johnson, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

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Before Cataldo, Ritchie, and Heasley,
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Security Automation Systems, Inc. (“Applicant”) seeks registration on the Principal Register of the mark SAS SECURITY AUTOMATION SYSTEMS and design, as shown below, for “installation of security systems for buildings and curtilage sold as subcontracted services to contractors engaged in building and construction of correctional institutions, namely, security systems for on-site

monitoring and control of correctional institution buildings and curtilage by customers of said contractors,” in International Class 37:¹



The mark contains the following description of the mark:

The mark consists of a circular stylized design including a backward letter “S” which contacts and is followed by a portion of a character that resembles the top portion of a letter “A” with the lower portion obscured by a group of three curves which contacts and is followed by a forward letter “S.” To the right of the circular design is the stylized wording “SECURITY AUTOMATION SYSTEMS” with the words stacked on top of one another.

The term “SECURITY AUTOMATION SYSTEMS” is disclaimed apart from the mark as shown.

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when applied to the identified services, so resembles the previously registered mark, S-A-S ALARM SERVICE,² in typed drawing format,³ for

¹ Application Serial No. 86885126 was filed on January 25, 2016 under Section 1(a) of the Trademark Act, claiming dates of first use and first use in commerce on July 30, 2008.

² Registration No. 1750628, issued February 2, 1993. Renewed twice.

³ “Prior to November 2, 2003, ‘standard character’ drawings were known as ‘typed’ drawings. The mark on a typed drawing was required to be typed entirely in capital letters. A typed mark is the legal equivalent of a standard character mark.” Trademark Manual of Examining Procedure (TMPEP) § 807.03(i) (October 2017).

“monitoring of security systems,” in International Class 42, as to be likely to cause confusion, mistake, or to deceive. The term “ALARM SERVICE” is disclaimed apart from the mark as shown.

When the refusal was made final, Applicant filed this appeal, which is fully briefed. For the reasons discussed below, we affirm the refusal to register.

Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). *See also In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). We consider the *du Pont* factors for which there are arguments and evidence. The others, we consider to be neutral.

Relatedness of the Services/Channels of Trade/Classes of Purchasers

We consider first the relatedness of the services. Applicant identifies “installation of security systems for buildings and curtilage sold as subcontracted services to contractors engaged in building and construction of correctional institutions, namely, security systems for on-site monitoring and control of correctional institution buildings and curtilage by customers of said contractors,” and the cited registration

identifies “monitoring of security systems.” We examine the evidence to see if the services are of a type that consumers will believe emanate from a common source.

In this regard, the Examining Attorney submitted evidence of third parties that advertise both installation of security services for correctional facilities for on-site monitoring and control on the one hand, as identified by Applicant, and security monitoring, on the other hand, as identified in the cited registration. These include the following:

COMPANY	SERVICES SIMILAR TO THOSE IDENTIFIED BY APPLICANT	SERVICES SIMILAR TO THOSE IDENTIFIED BY REGISTRANT
ISI Security ⁴	“Critical Security Solutions for Detention Facilities” including “Video Surveillance” and “Gate Systems.”	Monitoring of security systems.
AISG ⁵	“Complete Prison Security Solution” including delivery of “immediate and remote access” to security data.	Interactive monitoring of security systems.
Midstate Security ⁶	Installation of “robust solution” and “design consultation” of correctional facility.	Security monitoring services.
TW Systems ⁷	Installation of security systems for correctional facilities	Monitoring security systems.
Denco Security Inc. ⁸	Installation of alarms, including to correctional facilities.	Monitoring services for security systems.

⁴ Attached to December 7, 2016 Final Office Action, at 2-5; 10-11.

⁵ Attached to December 7, 2016 Final Office Action, at 29-33.

⁶ Attached to March 17, 2017 Denial of Request for Reconsideration, at 2.

⁷ Attached to March 17, 2017 Denial of Request for Reconsideration, at 6-8.

⁸ Attached to March 17, 2017 Denial of Request for Reconsideration, at 46.

Tri State Life Safety ⁹	Installation of security, including for correctional facilities.	Monitoring services for security systems.
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The Examining Attorney also included copies of use-based third-party registrations that include monitoring of security systems, as identified in the cited registration, and installation of security systems as would generally identify Applicant’s services. These include PER MAR (Registration No. 1377522); [design mark] (Registration No. 1602705); [design mark] (Registration No. 1699433); THE PROTECTORATE CORPORATION (Registration No. 1974670); 24 HOUR ALARM SERVICES PROTECTION ONE and design (Registration No. 2091397); BLUE RIDGE SECURITY SYSTEMS (Registration No. 2217189); ALARMO THE SLOMIN’S SHIELD and design (Registration No. 2588675); and WE PROTECT WHAT YOU TREASURE MOST (Registration No. 3375244).

These third-party registrations serve to suggest that the services are of a type which may emanate from a single source under a single mark. *See In re Davey Prods. Pty. Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). In short, because Registrant’s broadly identified services are related and complementary to services identified by Applicant, this factor weighs in favor of finding a likelihood of confusion. Applicant argues that its services are very limited to the niche of correctional facilities. Applicant further argues that it installs security systems while Registrant monitors them. The evidence shows that

⁹ Attached to March 17, 2017 Denial of Request for Reconsideration, at 54.

these services are nonetheless related and complementary, and that they are of a type that consumers would expect to emanate from a single source.


Applicant argues that even substantially identical marks can be found to not cause a likelihood of confusion if they are sold through different channels of trade, citing *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992). The case is inapposite, however, since the services and channels of trade were shown to be different. Here, by contrast, in the absence of specific limitations in the cited registration and the application, we must presume that Registrant's monitoring of security systems will travel in all normal and usual channels of trade and methods of distribution. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-1162 (Fed. Cir. 2014); *see also In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because there are no limitations as to channels of trade or classes of purchasers in either the application or the cited registration, it is presumed that the services in the registration and the application move in all channels of trade normal for those services, and that the services are available to all classes of purchasers for the listed services). In this regard, we find that Registrant's broadly defined security monitoring services would include services targeting correctional facilities, as more narrowly identified in the application.

These *du Pont* factors favor a finding of likelihood of confusion.

The Similarity/Dissimilarity of the Marks

We next consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). 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 that confusion as to the source of the 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 mem.*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The mark in the cited registration is S-A-S ALARM SERVICE in typed drawing format. The term “ALARM SERVICE” is descriptive and disclaimed. Applicant’s

mark is  SECURITY AUTOMATION SYSTEMS, with the literal element SAS SECURITY AUTOMATION SYSTEMS. The term “SECURITY AUTOMATION SYSTEMS” is descriptive and disclaimed. We consider each mark in its entirety. It is, nevertheless, 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) (“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.’”) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)); *In re Dixie Rests. Inc.*, 41 USPQ2d at 1533-34; *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”). While we note that Applicant’s mark contains a design element, we generally give less weight to the style and design elements of a mark than to the wording, because it is the wording that would be used by purchasers to request the services. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1911 (Fed. Cir. 2012). Moreover, with respect to Applicant’s mark, while Applicant argues that the design in its mark covers or obscures the letters SAS in its mark, it is clear from the



mark as a whole that the letters displayed in the design are “SAS,” an abbreviation for “SECURITY AUTOMATION SYSTEMS.” Finally, the design is not so distinctive as to serve to distinguish Applicant’s mark from the registered mark. While the marks have obvious differences in sight and sound, they also have clear similarities in commercial impression.

Applicant argues that the shared term or letters “SAS” is weak with regard to security systems, and thus the mark in the cited registration is entitled to a very narrow scope of protection. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co.*

KGAA v. New Millennium Sports, S.L.U., 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015). To this end, Applicant submitted evidence of six third-party websites that advertise marks including the term or letters “SAS” for various security alarm services. These include the following:

COMPANY	SERVICES
SAS SECURITY SYSTEMS, INC. ¹⁰	“Full service, installation and monitoring company.”
SAS Superior Alarm Systems (stylized lettering) ¹¹	Commercial and other alarm systems.
SAS SECURITY ALARMS SYSTEMS, INC., (and design) ¹²	“Our products range from Intrusion Detection, Fire Detection, Video Surveillance, Access and Evacuation Systems.”
SAS Security Alarm Service Co. Inc. (and design) ¹³	Monitoring; surveillance cameras; security systems.
SAS STRATEGIC ALARM SYSTEMS LTD (stylized lettering). ¹⁴	Video surveillance (residential and commercial).
SAS Fire & Security (stylized lettering). ¹⁵	Electronic security and fire systems.

We note that the final two of the six companies listed above are not located in the United States, and do not refer on their websites to any services offered to United

¹⁰ Attached to February 20, 2017 Request for Reconsideration, at 2.

¹¹ Attached to February 20, 2017 Request for Reconsideration, at 3.

¹² Attached to February 20, 2017 Request for Reconsideration, at 4.

¹³ Attached to February 20, 2017 Request for Reconsideration, at 5.

¹⁴ Attached to February 20, 2017 Request for Reconsideration, at 7. This company states that it is based in Winnipeg, Manitoba.

¹⁵ Attached to February 20, 2017 Request for Reconsideration, at 9-11. This company states that it is an “Irish company” and the phone number given is not a United States area code.

States consumers. Thus, there is no evidence that United States consumers would be influenced by a company using the term “SAS” for security services in another country. *See* Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 1208.03 (June 2017). As to the other four, we recognize that evidence of extensive registration and use of a term by others can be “powerful” evidence of weakness. *See Jack Wolfskin*, 116 USPQ2d at 1136; *Juice Generation*, 115 USPQ2d at 1674. We note, however, that in *Juice Generation*, there were at least twenty-six relevant third-party uses or registrations of record, *see* 115 USPQ2d at 1672 n.1, and in *Jack Wolfskin*, there were at least fourteen, 116 USPQ2d at 1136 n.2. By comparison, a few web pages showing security systems with the term “SAS,” has more limited persuasive value. Applicant also submitted seven webpages with the term “SOS” or “S.O.S.” used as a mark in connection with security systems. However, due to the meaning of that term as a distress signal used with Morse code, it has a different commercial impression than the letters or term “SAS,” and we do not find those uses to be persuasive.¹⁶

We do find that Applicant has established a slight degree of commercial weakness of the shared term or letters “SAS” with regard to security systems. We further note that while we do not find the mark in the cited registration to be particularly weak, even weak marks are entitled to the presumptions of validity under Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), and are entitled to protection against

¹⁶ Applicant itself refers in its request for reconsideration to the “Morse code distress call S-O-S.”

registration of confusingly similar marks. *See King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

We find that the marks, considered in their entireties, are similar in sight and sound and substantially similar in commercial impression. Thus, the first *du Pont* factor also favors finding a likelihood of confusion.


Degree of Consumer Care

Applicant urges us to consider the consumer sophistication and degree of purchaser care likely to be exercised for the services at issue in this proceeding, given that Applicant's identification specifies that its services are "sold as subcontracted services to contractors engaged in building and construction of correctional institutions." The cited registration contains no limitations and may be sold to general consumers. Based on Applicant's identification, we expect that consumers of Applicant's services, or consumers of both, may be expected to exercise a certain degree of care in selecting their security providers. Nevertheless, it is well-established that even sophisticated consumers are not immune from source confusion where both the services and marks are similar. *See Cunningham*, 55 USPQ2d at 1846. Overall, we find this factor to slightly weigh against finding a likelihood of confusion.

Conclusion

On balance, after considering all of the arguments and evidence of record as they pertain to the relevant *du Pont* factors, we find that the services are related and complementary and, despite limitations in the application, would be expected to travel through some of the same channels of trade to some of the same consumers.

The marks are similar in sight and sound, and substantially similar in commercial impression, notwithstanding that the term or letters “SAS” common to both marks is commercially somewhat weak. Although some of the consumers would be likely to exercise an increased degree of care, we find, on balance, that there is a likelihood of

confusion between Applicant’s mark  and the mark in the cited registration, S-A-S ALARM SERVICE, for the identified services.

Decision: The refusal to register under Section 2(d) is affirmed.