

This Opinion is Not a  
Precedent of the TTAB

Mailed: August 2, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Hub Group, LLC*  
*v.*  
*SPL Group, Inc.*  
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Opposition No. 91263984

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Matthew J. Duchemin and Michael W. Carvin of Quarles & Brady LLP  
for Hub Group, LLC.

Joseph E. Sutton, Ezra Sutton and Anthony M. Morano of Sutton IP Associates, PA  
for SPL Group, Inc.

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Before Greenbaum, Adlin and Dunn, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant SPL Group, Inc. seeks registration of SHIPHUB, in standard characters, for “software as a service (SAAS) services featuring software for shipping management,” in International Class 42.<sup>1</sup> In its notice of opposition, Opposer Hub Group, LLC alleges prior use and registration of HUB GROUP, variations thereof and other HUB-formative marks for a variety logistics, shipping and transportation-

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<sup>1</sup> Application Serial No. 88823756, filed March 6, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the mark in commerce.

related services, and associated software.<sup>2</sup> As grounds for opposition, Opposer alleges that use of Applicant's mark would be likely to cause confusion with Opposer's marks. In its answer, Applicant denies the salient allegations in the notice of opposition.<sup>3</sup>

## **I. The Record and Evidentiary Objections**

The record consists of the pleadings, and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of Applicant's involved application. In addition, Opposer introduced:

Notice of Reliance ("NOR") No. 1 on its pleaded registrations ("Opp. NOR 1"). 26 TTABVUE.

NOR No. 2 on printed publications ("Opp. NOR 2"). 27 TTABVUE.

NOR Nos. 3-5 on Internet printouts and official records ("Opp. NOR 3" – "Opp NOR 5"). 28-30 TTABVUE.

Testimony Declaration of Erin Thill, its Vice President of Program and Change Management, and the exhibits thereto ("Thill Dec."). 31-33 TTABVUE.

Testimony Declaration of Jennifer Telek, its Vice President of Marketing, and the exhibits thereto ("Telek Dec."). 34-37 TTABVUE.

Rebuttal NOR on official records ("Reb. NOR"). 65 TTABVUE.

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<sup>2</sup> Registration Nos. 1997149, 4746318, 4949945, 4949946, 5487111, 5587286, 5587287, 5681287 and 5692458, the most relevant of which are described in more detail below. Some of Opposer's pleaded registrations are over five years old, and the underlying applications in all of them were filed before the involved application.

<sup>3</sup> In its January 3, 2022 order the Board struck Applicant's first "affirmative defense," explained that Applicant's third defense would be given no consideration, and indicated that Applicant's second "affirmative defense" merely amplifies Applicant's denials. 18 TTABVUE. Citations to the record are to TTABVUE, the Board's online docketing system. Specifically, the number preceding "TTABVUE" corresponds to the docket entry number(s), and any number(s) following "TTABVUE" refer to the page number(s) of the docket entry where the cited materials appear.

Cross-examination of Morris Mevorach, Applicant's President and founder, and the exhibits thereto ("Mevorach Cross"). 66 TTABVUE.

Cross-examination of Samuel Charm, Applicant's Chief Operating Officer, and the exhibits thereto ("Charm Cross"). 67 and 68 TTABVUE.

Applicant introduced:

NOR Nos. 1-6 on its involved application, Opposer's pleaded registrations, third-party applications and registrations and Internet printouts ("App. NOR 1" – "App. NOR 6"). 38-42, 48, 49 and 72 TTABVUE.

NOR No. 7 on patents and patent publications ("App. NOR 7"). 50-52 TTABVUE.

NOR No. 8 on Opposer's discovery responses ("App. NOR No. 8"). 43 and 45 TTABVUE.

Testimony Declaration of Mr. Mevorach and the exhibits thereto ("Mevorach Dec."). 44 TTABVUE.

Testimony Declaration of Mr. Charm ("Charm Dec."). 46 and 47 TTABVUE.

Opposer objects on relevance grounds, 70 TTABVUE 11, to two abandoned third-party applications Applicant introduced into evidence. Because the applications are virtually identical to Applicant's involved application, they are relevant. 38 TTABVUE 29-87. Applications may serve as "evidence that the application was filed." *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1403 n.4 (TTAB 2010) (quoting *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1049 n.4 (TTAB 2002)). Thus, to this extent, Opposer's objection is overruled. Nonetheless, we have kept in mind the limited probative value of these abandoned applications.

Opposer also “incorporates by reference all objections it made on the record” in connection with “any oral testimony or accompanying exhibits on which [Applicant] seeks to rely.” 70 TTABVUE 11. This is not an appropriate way to state an objection. Even if it was, we observe that most or all of the testimony on which Applicant seeks to rely was submitted by declaration, and thus for this testimony there were no “objections on the record.” To the extent Opposer is referring to its “leading” objection to a question posed during Applicant’s re-direct examination of Mr. Charm, 67 TTABVUE 104, we have not relied on the response to the objected-to question.

Applicant’s objection to Opposer’s reliance on unpleaded marks, 76 TTABVUE 59-62, is sustained. *Riceland Foods, Inc. v. Pacific Eastern Trading Corp.*, 26 USPQ2d 1883, 1884-85 (TTAB 1993). *See also* 77 TTABVUE 29 (Opposer “is not attempting to assert any HUB-formative marks that are not specifically identified in its Notice of Opposition”).

## **II. Background**

Opposer’s “predecessor” Hub City Terminals, Inc., a freight brokerage, formed in 1971. 31 TTABVUE 7 (Hill Dec. ¶ 14). A few years later Hub City Terminals “created a network of Hub Operating Companies ... which were ultimately consolidated under the umbrella entity, Hub Group.” *Id.* (Hill Dec. ¶ 15). Hub Group “continued to expand its transportation, shipping, and logistics-related services, including brokerage, intermodal, trucking, drayage,<sup>4</sup> distribution, logistics, warehousing, and

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<sup>4</sup> “Drayage” is “the transport of goods over a short distance, often between ship and warehouse.” 31 TTABVUE 7 n.4 (Hill Dec. ¶ 16).

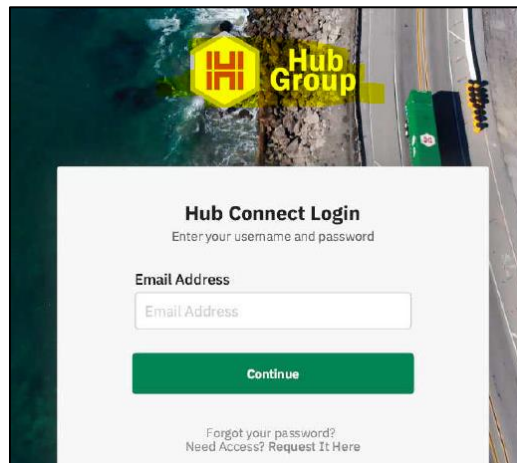
other services.” *Id.* (Hill Dec. ¶ 16); 34 TTABVUE 3 (Telek Dec. ¶ 7) (Opposer’s services “have grown to include intermodal, truck brokerage, dedicated trucking, managed transportation, freight consolidation, warehousing, international transportation, and other logistics services”).

After years of expansion, Opposer went public in 1996. 31 TTABVUE 9 (Hill Dec. ¶ 21). “In the late 1990s and early 2000s, [Opposer] began acquiring its own [shipping] containers,” which it brands with its HUB GROUP name and mark. *Id.* at 10 (Hill Dec. ¶ 23). Opposer “currently owns and operates over 41,500 containers, which are seen on trains, ships and trucks across the United States.” *Id.* at 11 (Hill Dec. ¶ 24).

“In the early 1990s, [Opposer] implemented a system using electronic data interchange, which ... provided real-time monitoring of all of its shipments. *Id.* (Hill Dec. ¶ 25). In 2001 Opposer invested in a “network-wide imaging system” that allowed its customers “to view and print shipping documents online and accurately predict delivery times.” *Id.* (Hill Dec. ¶ 26). It also added two “portals” to its website, one of which “allowed customers to obtain pricing, place orders and track shipments online,” while the other allowed Opposer “to tender freight to vendors and draymen and allowed the vendors to provide [Opposer] status updates and bill [Opposer] online.” *Id.* at 12 (Hill Dec. ¶ 27). These portals bear Opposer’s HUB GROUP mark, as shown below:



*Id.* at 12, 13 (Hill Dec. ¶¶ 28, 30). Opposer later added additional portals, and in 2017 “decided to bring all of its various customer and vendor portals under a single umbrella ... branded Hub Connect, and shown below:



*Id.* at 15-16 (Hill Dec. ¶ 36). “Through Hub Connect, customers that have shipping needs can arrange for shipping with [Opposer], track and trace shipments, get rate quotes, view historic shipping documents, review freight analytics, view and release purchase orders, and view weather alerts that may affect their shipments.” *Id.* at 16 (Hill Dec. ¶ 37). Hub Connect had over 67,000 active users between September 2017 and April 2020, and Opposer now offers a Hub Connect mobile app. *Id.* at 17 (Hill Dec. ¶¶ 38, 40).

Opposer “serves customers across a wide range of industries,” including automotive, chemicals, e-commerce, food and beverage and healthcare. *Id.* at 18 (Hill

Dec. ¶ 43). In addition to shipping-related services, Opposer “also provides transportation services, including third-party logistics (‘3PL’) services.” *Id.* (Hill Dec. ¶ 45). In recent years, through a series of acquisitions, Opposer also began providing small parcel services. *Id.* at 18-19 (Hill Dec. ¶¶ 46-57).

Applicant’s name SPL stands for “small parcel logistics.” 44 TTABVUE 3 (Mevorach Dec. ¶ 4). Perhaps not surprisingly, Applicant is “a small parcel broker that acts as a conduit between its customers (companies primarily in the fields of apparel and electronics) and small parcel shipping companies like FedEx, UPS, DHL, Amazon, SF Express.” *Id.* “Small parcels are generally limited, especially for trucking and shipping, to boxes having a weight of under 1,000 kilograms (if that weight is exceeded the shipped product is then classified as ‘freight’ rather than as a ‘parcel’).” 46 TTABVUE 4 (Charm Dec. ¶ 9). In fact, Applicant’s SHIPHUB software “is not designed to handle shipments having a weight over 1,000 kg since shipments over that size and weight cannot be handled by the carriers that [Applicant] works with, such as FedEx, UPS, and DHL.” *Id.* at 13 (Charm Dec. ¶ 28).

Applicant “provides its customers with more efficient shipping at cheaper rates,” largely through “proprietary technology” and managing negotiations with parcel carriers, “including providing payment services to its customers by paying invoices for their shipped parcels.” 44 TTABVUE 3 (Mevorach Dec. ¶ 4). Applicant’s “proprietary software technology is a rate-shopping tool.” *Id.* (Mevorach Dec. ¶ 5). However, “because SHIPHUB is designed to only manage small parcel shipments and

has small parcel carrier limitations,” Applicants customers are unable to “use ShipHub to arrange to ship palletized goods.” *Id.* at 14 (Mevorach Dec. ¶ 17).

Applicant’s “customers already have existing contracts with logistics companies, including FedEx, UPS, and DHL, and use [Applicant] as an agent to deal with these companies on their behalf, and as a supplemental logistics manager in addition to the primary logistical management services and products provided by FedEx, UPS, and DHL.” *Id.* at 4 (Mevorach Dec. ¶ 6).

Applicant chose the mark SHIPHUB “to reflect [its] proprietary technology created to help the end-user customer get all of its small parcel shipping on one platform.” *Id.* at 15 (Mevorach Dec. ¶ 19). None of the other marks Applicant considered “reflected [Applicant’s] vision of creating one platform for [Applicant’s] small parcel logistic services.” *Id.* (Mevorach Dec. ¶ 20).

### **III. Entitlement to a Statutory Cause of Action**

Entitlement to a statutory cause of action is a requirement in every inter partes case. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at \*3 (Fed. Cir. 2020), *cert. denied*, 142 S.Ct. 82 (2021) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 (2014)). To establish entitlement to a statutory cause of action, a plaintiff must demonstrate: (i) an interest falling within the zone of interests protected by the statute; and (ii) a reasonable belief in damage proximately caused by registration of the mark. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at \*4 (Fed. Cir. 2020), *cert. denied*, 141 S.Ct. 2671 (2021). Here, Opposer made its pleaded registrations of record, 1 TTABVUE 15-126, and they establish both that Opposer has



a statutorily protected interest and a reasonable belief in damage proximately caused by registration of Applicant's involved mark. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (registration establishes "standing").

#### **IV. Priority**

Because Opposer's pleaded registrations are of record, 1 TTABVUE 15-126, and Applicant has not counterclaimed to cancel any of them, priority is not at issue with respect to the marks and goods and services identified therein. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

#### **V. Likelihood of Confusion**

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 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 goods and 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.").

Opposer bears the burden of establishing that there is a likelihood of confusion by a preponderance of the evidence. *Cunningham*, 55 USPQ2d at 1848. We consider the

likelihood of confusion factors about which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

We focus our likelihood of confusion analysis on Opposer's pleaded HUB GROUP and HUBPRO marks. Not only are the goods and services offered under these marks essentially identical to Applicant's identified services (as explained immediately below), but these marks are more similar to Applicant's mark than Opposer's other pleaded marks. Thus, if we find confusion likely between HUB GROUP or HUBPRO and Applicant's involved mark, we need not consider the likelihood of confusion between Applicant's mark and Opposer's other pleaded marks. On the other hand, if we find no likelihood of confusion between HUB GROUP or HUBPRO and Applicant's mark, we would not find confusion likely between Applicant's mark and Opposer's other pleaded marks. *In re Max Capital Grp.*, 93 USPQ2d 1243, 1245 (TTAB 2010).<sup>5</sup>

**A. The Goods and Services and Their Channels of Trade and Classes of Consumers**

The parties' services are identical in-part because both offer software as a service ("SAAS") services featuring software for shipping management. Indeed, those are the services identified in Applicant's involved application, and Opposer has established that it owns prior common law rights in its HUB GROUP mark for the same services.

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<sup>5</sup> Mr. Hill's testimony addresses Opposer's alleged "family of Hub marks." 31 TTABVUE 4-8 (Hill Dec. ¶¶ 10-13, 18). However, Opposer did not plead ownership of a "family" of marks, the issue was not tried by implied consent and Opposer did not claim to own a family of marks in its Trial Brief. Therefore we consider each of Opposer's marks individually. *Cf. Productos Lacteos Tocumbo S.A. de C.V. v. Paleteria La Michoacana Inc.*, 98 USPQ2d 1921, 1927 (TTAB 2011) ("Petitioner's reference to a family of marks in its brief will not be considered because this claim was neither pleaded nor tried by the parties.").

31 TTABVUE 11-17, 20, 23 (Thill Dec. ¶¶ 25-42, 55, 63); 34 TTABVUE 7-8 (Telek Dec. ¶¶ 18-21).

Furthermore, we find that Applicant's services are, essentially, legally identical to the goods identified in Opposer's pleaded Registration No. 5487111 (HUBPRO in standard characters): "downloadable computer application software for mobile devices, computers, and mobile telephones, namely, software for tracking shipments during transit and facilitating the provision of information and communication among parties, including, by way of example, the arrival and departures of shipments and other transport events and shipment related information." 1 TTABVUE 67-78. Indeed, we perceive no meaningful difference between the "downloadable computer application software" for which Opposer's HUBPRO mark is registered, and Applicant's SAAS services, because whether the parties' offerings are called "goods" or "services," they are essentially the same thing – shipping software – whether the software is loaded onto a computer by its user or provided as a "service" online. *Cf. In re JobDiva, Inc.*, 843 F.3d 936, 121 USPQ2d 1122, 1126 (Fed. Cir. 2016) ("We agree with the Board's initial observation that, with modern technology, the line between services and products sometimes blurs . . . . [C]areful analysis is required to determine whether web-based offerings, like those JobDiva provides, are products or services.") and *In re Ancor Holdings, LLC*, 79 USPQ2d 1218, 1221 (TTAB 2006) ("[I]n today's commercial context if a customer goes to a company's website and accesses the company's software to conduct some type of business, the company may be rendering a service, even though the service utilizes software.").

Applicant does not dispute that the parties' goods and services are essentially identical in part. 76 TTABVUE 28.

As for the channels of trade and classes of consumers for these identical goods and services, Applicant's SAAS services are identified in the involved application without limitation as to channels of trade or classes of consumers, and thus we presume that Applicant offers its services in all channels of trade normal therefor. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-62 (Fed. Cir. 2014); *Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006) (goods presumed to be "offered in all channels of trade which would be normal therefor"); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). That is, Applicant declared its intention to use its SHIPHUB mark for SAAS "services featuring software for shipping management," without regard to any particular type of shipping, or any particular type of customer. Thus, Applicant's identified services are not limited, to small parcels or to serving the small parcel market, to consumers that "already have existing service contracts with third party logistics companies," or otherwise. 76 TTABVUE 29. In other words, Applicant's argument that there are "real world" differences between the parties' channels of trade and classes of consumers, 76 TTABVUE 29-30, are essentially irrelevant. Applicant concedes that its shipping software, like Opposer's, "does permit customers to track and monitor their shipments" online, *id.* at 30, and Applicant's identification of services is not limited to a "rate shopping tool to choose the cheapest third-party courier." *Id.*

The legal identity of the goods and services and their overlapping channels of trade and classes of purchasers not only weigh heavily in favor of finding a likelihood of confusion, but also reduce the degree of similarity between the marks necessary to find a likelihood of confusion. *In re Viterra*, 101 USPQ2d at 1908; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed Cir. 2010); *In re Max Capital*, 93 USPQ2d at 1248.

## **B. Strength of Opposer’s Mark**

Before addressing the parties’ marks, we turn first to the strength of Opposer’s pleaded HUB GROUP and HUBPRO marks (used for software goods and services), to determine the scope of protection to which they are entitled. There are two types of strength: conceptual and commercial. *In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength ... and its marketplace strength ...”). *See also Spireon, Inc. v. Flex Ltd.*, 71 F.4<sup>th</sup> 1355, 2023 USPQ2d 737, at \*4 (Fed. Cir. 2023) (“There are two prongs of analysis under the sixth [*du Pont*] factor: conceptual strength and commercial strength.”).

### **1. Conceptual Strength**

Turning first to conceptual strength, it is settled that “[m]arks that are descriptive or highly suggestive are entitled to a narrower scope of protection, *i.e.* are less likely to generate confusion over source identification, than their more fanciful counterparts.” *Spireon*, 2023 USPQ2d 737, at \*4 (quoting *Juice Generation, Inc. v. GS Enter., LLC*, 794 F.2d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015)).

Here, because Opposer's pleaded HUB GROUP and HUBPRO marks are registered on the Principal Register without a claim of acquired distinctiveness, and Applicant has not petitioned to cancel any of Opposer's pleaded registrations, we must presume that Opposer's pleaded marks are inherently distinctive, i.e. that they are at worst suggestive of Opposer's goods and services. 15 U.S.C. § 1057(b) (registration is "prima facie evidence of the validity of the registered mark"); *In re Fiesta Palms, LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007) (when mark is registered on the Principal Register, "we must assume that it is at least suggestive"). *See also In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997).

Nonetheless, Applicant takes the position that the "HUB" element of HUB GROUP and HUBPRO is conceptually quite weak. Applicant's evidence of conceptual weakness includes dictionary and other definitions revealing that the shared term in the parties' marks – "HUB" – has a generally known meaning, including when used in connection with shipping/logistics.

Specifically, a "hub" is defined generally as "a center of activity: FOCAL POINT," as in the example: "The island is a major tourist *hub*." 42 TTABVUE 16.<sup>6</sup> Industry-specific definitions reveal that the term "HUB" maintains this general meaning in the transportation and logistics fields, with some specific nuances.

For example, according to the Federal Highway Administration's "Freight Glossary and Acronyms," a "hub" is :“A common connection point for devices in a network. Referenced for a transportation network as in ‘hub and spoke’ which is

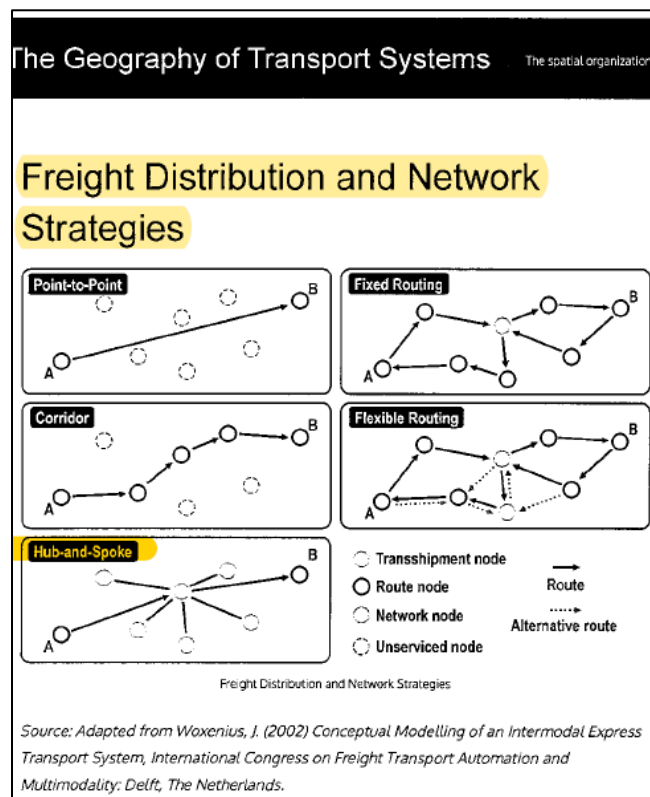
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<sup>6</sup> <https://www.merriam-webster.com/dictionary/hub>.

common in the airline and trucking industry.” *Id.* at 19. According to shipping company UPS’s glossary of terms, “[t]he hub and spoke strategy is the consolidation of transportation assets through ‘hub’ locations that then connect to and from multiple ‘spokes,’ or destinations, along the network.” *Id.* at 21. *See also id.* at 24 (Inbound Logistics’s similar definition of “hub”). The “saloodo.com” website goes further, answering the question “What is a Hub in logistics?” as follows:

A hub is the “main transshipment base” in the logistics chain. It is a place where consignments are collected, sorted and reloaded. Generally, the hub is regarded as the central location for dealing with all the activities that are related to the movement of goods ....

*Id.* at 31. *See also id.* at 34, 38-39, 45, 60, 62, 67, 75, 78, 81, 84, 87, 89, 92, 94. The “transportgeography.org” website displays a graphic representation of “hub and spoke” distribution, and compares it to other types, as shown below:



*Id.* at 41.

The term “HUB” is used in patents and patent publications in a manner consistent with these definitions. For example, the abstract of Patent No. 10,043,151 B1, for a “locker-based logistics management system,” states: “Systems described herein coordinate and manage the delivery of items by large numbers of couriers using a network of electronic locker arrangements. Implementations are described corresponding to couriers delivering items between electronic locker arrangements **without the use of a distribution hub.**” 50 TTABVUE 3 (emphasis added); *see also id.* at 18 (“service providers operate **distribution hubs that aggregate items for a particular region and vehicles of the service provider obtain items from the distribution hubs ...**”) (emphasis added); *id.* at 19. Similarly, Patent No. 8,719,182 B2, for “Internet package shipping systems and methods” states: “**A sorting hub is well known by those skilled in the art and typically comprises a strategically located facility that receives packages on a local, regional, national, or global level, and directs those packages for transportation to another hub ....**” 51 TTABVUE 64 (emphasis added). Patent Publication No. 2007/0271159 A1 for “flexible ordering of inventory from material sources according to material requirements for manufacturing operations” states: “**The term hub is used herein to describe an intermediate business that agrees with the manufacturer to maintain high levels of inventory of materials that can be delivered to the manufacturer’s factory on short notice upon request.** The hub makes its own arrangements with suppliers to provide material to a storage




location for hub inventory. **A hub may be referred to as a Supplier Logistics Center (SLC).**” 52 TTABVUE 14 (emphasis added). Finally, Patent Publication No. 2016/0217399 A1 for a “method and system for monitoring shipments in a supply and/or logistics chain” states: **“A ‘logistics hub’ is a center, facility, or installation for shipment, storage, collection and/or distribution of goods, such as products, parts, components, and/or raw materials.”** 52 TTABVUE 39 (emphasis added).

Applicant also relies on third-party uses and registrations of marks containing the term HUB that are used for shipment or logistics-related goods or services. The relevant registrations are summarized below:<sup>7</sup>

<u>Mark/Reg. No.</u>	<u>Indicia of Descriptiveness of HUB, if Any</u>	<u>Goods/Services</u>
LOGIHUB Reg. No. 5893242		“freight logistics management”


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<sup>7</sup> The following third-party registrations were cancelled after Applicant introduced them, and have not been considered: Registration Nos. 4998951, 5035427 and 4826700. *See Action Temp. Servs Inc. v. Labor Force Inc.*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989) (“It is well established that ... a registration provides constructive notice for all use during the existence of the registration. However, a canceled registration does not provide constructive notice of anything.”). The following third-party marks are registered for goods or services too different from Opposer’s (and Applicant’s) to be relevant: Registration Nos. 5500434, 2512338, 5788233, 6093645, 5404722 and 6279763. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017) (“Symbolic has neither introduced evidence, nor provided adequate explanation to support a determination that the existence of I AM marks for goods in other classes, e.g., its class 25 registration for clothing, support a finding that registrants' marks are weak with respect to the goods identified in their registrations.”).

<u>Mark/Reg. No.</u>	<u>Indicia of Descriptiveness of HUB, if Any</u>	<u>Goods/Services</u>
TRUCKHUB Reg. No. 5654896		“Computer software development in the field of freight transportation by truck, rail, air and ocean; Providing a web site featuring software that enables shippers of freight using truck, rail, ocean or air transportation to select routes and carriers, to communicate with carriers, and to manage pickup and delivery of shipments”
HUBTEK Reg. No. 5909952 <sup>8</sup>		“Business consulting services relating to product distribution, operations management services, logistics, reverse logistics, supply chain, and production systems and distribution solutions”
HUBTOBEE Reg. No. 5576651		“Transportation logistics services, namely, arranging the transportation of goods for others; Promoting the travel services of others by offering of travel discounts and travel promotions”
 Reg. No. 5034442		“Booking and arranging of transportation of goods by air, sea and land, provided via the Internet or on-line from a computer network or database”


<sup>8</sup> Opposer filed a petition to cancel this registration three years ago (Cancellation No. 92074673). 31 TTABVUE 22 (Hill Dec. ¶ 61). The case is pending.

<u>Mark/Reg. No.</u>	<u>Indicia of Descriptiveness of HUB, if Any</u>	<u>Goods/Services</u>
WHSE HUB Reg. No. 5940428	Supplemental Register	“Freight transportation by air, rail, ship or truck; Freight forwarding services; Freight forwarding services; Global transportation of freight for others by all available means; Packing, crating and warehousing services; 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; Supply chain logistics and reverse logistics services, namely, storage, transportation and delivery of goods for others by air, rail, ship or truck; Warehousing services, namely, storage, distribution, pick-up, and packing for shipment of documents, packages, raw materials, and other freight for others”
STARHUB Reg. No. 4938335		“... business management consultancy in the field of transport and delivery ...”
HUBBOX Reg. No. 5033889		“Providing temporary use of non-downloadable computer software for shipment processing over computer networks, intranets and the internet; providing temporary use of non-downloadable computer software for tracking freight over computer networks, intranets and the internet ...”

<u>Mark/Reg. No.</u>	<u>Indicia of Descriptiveness of HUB, if Any</u>	<u>Goods/Services</u>
 Retailerhub Reg. No. 5964915 <sup>9</sup>		“Supply chain management services; Business management services, namely, managing logistics, reverse logistics, supply chain services, supply chain visibility and synchronization, supply and demand forecasting and product distribution processes for others ...”
MASONHUB Reg. No. 6102719 <sup>10</sup>		“Warehouse storage; warehousing services, namely, storage, distribution, pick-up, packaging, packing and shipping of business and consumer goods; packaging and parceling of goods for transport”  “Providing non-downloadable computer software for receiving, processing and fulfilling order and shipping instructions; Providing non-downloadable computer software for order management; Providing non-downloadable computer software for managing distribution centers and warehouses; Providing non-downloadable software and non-downloadable software applications for use in providing e-commerce transaction and data services for vendors of goods and services, and for receiving, processing and fulfilling orders”

<sup>9</sup> Applicant introduced a website printout that indicates this mark is in use. 48 TTABVUE 54-83.

<sup>10</sup> Applicant introduced a website printout that indicates this mark is in use. 48 TTABVUE 85-125.

<u>Mark/Reg. No.</u>	<u>Indicia of Descriptiveness of HUB, if Any</u>	<u>Goods/Services</u>
PACKAGEHUB Reg. No. 6710906 <sup>11</sup>		“Packaging articles for transportation; shipping of goods; freight transportation brokerage; gift wrapping”
COMMERCEHUB Reg. No. 2464992 <sup>12</sup>		“computer services, namely providing temporary use of non-downloadable computer software on a global computer network to enable suppliers and buyers to process acknowledgments, reports, invoices, shipping labels, packaging slips, and purchase orders”
JUNK HUB Reg. No. 6513336	Supplemental Register	“... transport and delivery of goods; transport by trucks; transport of materials by trucks”
HD Hub Dub Registration No. 5727010	“HUB” disclaimed	“... business research and data analysis services in the field of distribution channel logistics, namely, building, promoting and managing e-commerce strategies and business to business sales channels for others ...”
 Reg. No. 5121848	“INTERNATIONAL TRANSIT HUB” disclaimed	“...Freighting services; Parcel delivery ... Transport of persons and goods ...”

<sup>11</sup> The owner of this mark also owns Registration No. 6154475 for PACKAGEHUB BUSINESS CENTERS for the same relevant services. Applicant introduced a website printout that indicates this mark is in use. 48 TTABVUE 127-146.

<sup>12</sup> The owner of this mark also owns Registration No. 4488114 for COMMERCEHUB & Design for similar services. Applicant introduced a website printout that indicates this mark is in use. 48 TTABVUE 19-37.

<u>Mark/Reg. No.</u>	<u>Indicia of Descriptiveness of HUB, if Any</u>	<u>Goods/Services</u>
GS1 US DATA HUB Reg. No. 4532345	“US DATA HUB” disclaimed	“Providing an on-line computer data-base in the field of e-commerce and supply chain management, including information on company prefix data, global trade item number data, product data and global location number data; providing a web site featuring temporary use of non-downloadable computer software in the field of e-commerce and supply chain management, namely, providing online computer databases featuring information in the field of business, including information on company prefix data, global trade item number data, product data and global location number data”  “Software as a service (SaaS) services namely, providing software for use in the electronic exchange of commercial data for use in the field of e-commerce and supply chain management”
CAMPUSHUB Reg. No. 2867029		“computer software to facilitate internet purchasing, ordering, shipment and delivery of goods”
WEST AUTO HUB Reg. No. 6599677	“AUTO HUB” Disclaimed	“Freighting services, namely, shipping of goods; transportation logistics, namely, transportation of goods for others; transport of goods; transport brokerage services”
EYEHUB Reg. No. 6699237		“Business management of logistics for others; Order fulfillment services”

39 TTABVUE 18-295. Here, these third-party registrations function essentially as a dictionary, show how the term “HUB” is used in “ordinary parlance,” and “are

relevant to the question of whether the shared segment – in this case, [“hub”] – has a commonly understood descriptive or suggestive meaning in the field and whether there is a crowded field of marks in use.” *Spireon*, 2023 USPQ2d 737, at \*5; *Juice Generation*, 115 USPQ2d at 1675.

The general and industry definitions of “hub,” uses of the term in patents and patent publications, and third-party registrations for marks containing “hub” are all consistent and corroborate each other. Combined, this evidence leaves no doubt that the shared “HUB” component of the parties’ marks is highly suggestive of shipping management software, for two reasons. First, shipments often transit through “hubs.” Second, shipping software serves as a “hub” or focal point of shipping and logistics-related information.

While “HUB” is not the only component of Opposer’s marks, the additional terms in Opposer’s most relevant pleaded marks – “GROUP” in “HUB GROUP” and “PRO” in “HUBPRO” – are not distinctive. Indeed, Opposer has conceded that “GROUP” is merely descriptive by disclaiming the term in all of its pleaded registrations in which the term appears. *Alcatraz Media*, 107 USPQ2d at 1762 (TTAB 2013); *Bass Pro Trademarks LLC v. Sportsman’s Warehouse Inc.* 89 USPQ2d 1844, 1851 (TTAB 2008). *See also* 31 TTABVUE 7 (Hill Dec. ¶ 15) (“The name Hub Group was selected because the entity was to provide oversight over the different entities constituting

the Hub Network.”). Similarly, “PRO” is merely an abbreviation for “professional,” and therefore is laudatory; it is not distinctive.<sup>13</sup>

Thus, when considered in their entirety, the marks HUB GROUP and HUBPRO do not convey “any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” When used in Opposer’s industry, “HUB GROUP” conveys what Ms. Hill referred to as a collection of “different entities constituting [a] Hub Network,” 31 TTABVUE 7 (Hill Dec. ¶ 15), and HUBPRO conveys the skilled use or monitoring of transportation/logistics hubs. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents, and for tracking the status of the records by means of the Internet).

In short, Opposer’s HUB GROUP and HUBPRO marks are conceptually quite weak. Moreover, the dictionary definitions, patent materials and third-party registrations show that Opposer’s competitors in the shipping/logistics industry have a need to use the term “HUB.” *Cf. In re Boston Beer Co. L.P.*, 47 USPQ2d 1914, 1920-

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<sup>13</sup> “Pro” is a shortened form of “professional.” <https://www.merriam-webster.com/dictionary/pro>. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).



21 (TTAB 1998), *aff'd*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) and *In re Abcor Development*, 200 USPQ at 217.

## 2. Fame/Commercial Strength

Opposer argues that its “HUB GROUP and HUB-formative marks are famous,” and “commercially strong.” 70 TTABVUE 33, 34. Of course, fame is not “an all-or-nothing” proposition, *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734-35 (Fed. Cir. 2017), and thus we must determine where to place HUB GROUP and HUBPRO on the “spectrum” of marks, which ranges from “very strong to very weak.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003)).

The stronger the mark, the greater the scope of protection to which it is entitled. *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1056 (TTAB 2017) (“A very strong mark receives a wider latitude of legal protection in the likelihood of confusion analysis.”); *Nike, Inc. v. WNBA Enters., LLC*, 85 USPQ2d 1187, 1198 (TTAB 2007). Moreover, when a mark is famous, that plays a dominant role in the likelihood of confusion analysis. *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002) (quoting *Recot*, 54 USPQ2d at 1897; *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992)).

Fame or strength “of a mark may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling under the

mark, and by the length of time those indicia of commercial awareness have been evident.” *Bose*, 63 USPQ2d at 1305. Other relevant factors include “length of use of the mark, market share, brand awareness, licensing activities, and variety of goods bearing the mark.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1720 (Fed. Cir. 2012). The question is “whether consumers in fact associate the ... mark with a unique source.” *Spireon*, 2023 USPQ2d 737, at \*4.

Here, Opposer has used HUB GROUP for well over 30 years. 31 TTABVUE 7 (Hill Dec. ¶¶ 15-16). Moreover, Opposer’s “annual revenues for 2015-2020” exceeded \$3 billion each year. 31 TTABVUE 21 (Hill Dec. ¶ 58). While Opposer designated the figures “Confidential,” its marketing expenses associated with “promoting its services under the HUB marks” are not insignificant. 37 TTABVUE 8-9 (Telek Dec. ¶ 22). Opposer has also received some “shipping, transportation and logistics industry” awards and a modicum of unsolicited media attention. 34 TTABVUE 9-12 (Telek Dec. ¶¶ 23-25).

There is less to Opposer’s evidence of commercial strength than initially meets the eye, however. While Opposer’s annual revenues are indisputably impressive, and greater than those seen in the vast majority of Board cases, they are not tied in any way to any of Opposer’s pleaded marks, much less HUB GROUP or HUBPRO specifically. We recognize that “Hub Group” is Opposer’s corporate name, and on that basis can safely infer that at least some relevant consumers have been exposed to the HUB GROUP name and mark when encountering Opposer’s goods and services, though there is no indication as to how many.

More importantly and specifically, however, there is no evidence regarding, or basis on which to infer, how many relevant consumers have been exposed to Opposer's software goods and services most relevant to Opposer's likelihood of confusion claim, let alone software goods and services sold under the HUB GROUP or HUBPRO marks. Furthermore, Opposer failed to provide "context" for its sales and advertising figures, or its other evidence of strength, "such as how the figures for [products and services bearing Opposer's pleaded marks] compare with that for other brands" in the shipping/logistics industries. *Lebanon Seaboard Corp. v. R&R Turf Supply Inc.*, 101 USPQ2d 1826, 1831 (TTAB 2012); *see also Bose*, 63 USPQ2d at 1309 ("some context in which to place raw statistics is reasonable"). In short, being a successful business does not by itself establish that any specific mark the business owns is commercially strong.

Furthermore, we are underwhelmed by what Ms. Telek characterized as "positive media mentions and accolades for [Opposer's] contributions to the shipping, transportation and logistics industry." 34 TTABVUE 11 (Telek Dec. ¶ 25). *See e.g.* 36 TTABVUE 110-111 (Chicago Sun-Times article merely listing Opposer as one of eight "Chicago-area up-and-coming players," and identifying Chicago as "the national transportation hub"); *id.* at 114 (indicating that Opposer was named "as an EcoConnexions Partner" by Canadian National); *id.* at 117-122 (listing a large number of award winners, Opposer among them). In short, many of the "media mentions" are in what appear to be small publications, most do not concern topics of

general interest or shipping/logistics software, and most importantly there is no evidence concerning how many consumers have been exposed to these “mentions.”

In addition, and perhaps not surprisingly given the extreme suggestiveness of HUB in the shipping and logistics field, Applicant has introduced evidence indicating that third parties are using HUB-formative marks on the Internet for shipping/logistics-related software or goods or services related thereto. Furthermore, many third parties in the shipping/logistics industry with “HUB”-formative names have registered with the United States Department of Transportation (“DOT”). 40 TTABVUE 8-115; 41 TTABVUE 16-269; 48 TTABVUE 14-274; 49 TTABVUE 3-273. We recognize that each of these apparent third-party uses, considered individually, has limited probative value because the evidence consists solely of printouts from third-party websites and information registered by third parties with DOT; none of the third-party use evidence is accompanied by supporting testimony. Thus, we cannot rely on these materials for the truth of the matters asserted therein. *Safer Inc. v. OMS Inv. Inc.*, 94 USPQ2d 1031, 1037 n.14 and 1040 (TTAB 2010). *See also In re Ayoub Inc.*, 118 USPQ2d 1392, 1399 n.62 (TTAB 2016); *Couch / Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USQ2d 1458, 1467 n.30 (TTAB 2014).

On the other hand, the DOT records Applicant introduced reveal registration of quite a large number of freight/shipping/logistics company names that include HUB, 41 TTABVUE 16-269, some of which include the phrase “HUB GROUP” specifically. *Id.* at 16, 19, 22, 25, 28, 31, 34, 37. This evidence and Applicant’s other third-party use evidence, considered in its entirety, reveals that consumers are likely exposed to

multiple third-parties using the term “HUB” in connection with shipping/logistics. While we cannot assess the depth or quality of any individual potential consumer exposure, Applicant’s third-party use evidence is so voluminous that it cannot be ignored and we can safely assume that consumers have been exposed to at least some of these many uses. *Cf. In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1565 n. 16 (TTAB 1996) (“We realize, of course, that the record does not reveal the extent of the use made by the listed third-party businesses; that some of the businesses may never have gotten off the ground, or may have gone out of business; that some of the businesses may be small enterprises, in remote locations, that have affected only a miniscule portion of the general purchasing public ... Nevertheless, the magnitude of applicant’s evidentiary record is such that even allowing for these possibilities, there is still a significant body of evidence of third-party use.”).

Opposer points out that it has taken enforcement action against a number of third-party uses of, and attempts to register, HUB-formative marks. 31 TTABVUE 22-23 (Hill Dec. ¶ 61). Nonetheless, notwithstanding Opposer’s petition to cancel the HUBTEK registration (Cancellation No. 92074673 against Reg. No. 5909952), which remains pending, Opposer has apparently left unchallenged at least the vast majority of the many third-party uses and registrations discussed in this decision. While it is of course possible that Opposer took enforcement actions that it did not introduce into the record, Applicant’s evidence indicates that such enforcement actions were unsuccessful.

Moreover, as detailed in the chart of third-party registrations, Applicant has introduced Internet evidence showing that at least four of the third-party registered marks Applicant introduced into evidence are in use. 48 TTABVUE 54-83 (ETAILERHUB, Reg. No. 5964915); *id.* at 85-125 (MASONHUB, Reg. No. 6102719); *id.* at 127-146 (PACKAGEHUB, Reg. No. 6710906); *id.* at 19-37 (COMMERCEHUB, Reg. No. 2464992). And while it is not possible to determine whether the websites showing use of LOGIHUB (*id.* at 169-177) and HUBBOX (*id.* at 148-167) are owned by the owners of the LOGIHUB (Reg. No. 58932452) and HUBBOX (Reg. No. 5033889) registrations, the fact remains that these marks also appear to be in use on the Internet and presumably some consumers have been exposed to them.

Weighing all of this evidence together, while we infer that Opposer's HUB GROUP mark likely enjoys some consumer recognition in the shipping and logistics fields generally because Opposer Hub Group is a very successful business, Applicant's evidence shows that consumers are exposed to many third party uses of HUB-formative marks and names in the shipping/logistics industry, including for shipping management and related software. Thus, to the extent consumers have been exposed to Opposer's HUB GROUP and HUBPRO marks for shipping/logistics, that recognition is diluted by other uses of HUB-formative marks in the same or similar fields, including for shipping software. The record thus falls far short of establishing that HUB GROUP is famous, widely known or commercially strong for shipping software. And any commercial strength Opposer's HUB GROUP mark may enjoy for shipping and logistics services generally is less significant than the mark's high

degree of conceptual weakness. There is no evidence that HUBPRO is commercially strong for shipping software.

### **3. Conclusion Regarding Strength of Opposer's HUB GROUP and HUBPRO Marks**

Overall, Opposer's HUB GROUP and HUBPRO marks are entitled to a reduced scope of protection, because HUB, GROUP and PRO are conceptually quite weak for shipping and logistics-related goods and services. This conceptual weakness far outweighs the HUB GROUP mark's commercial strength for shipping and logistics services generally, especially where there is no evidence that HUB GROUP or HUBPRO are commercially strong for shipping software specifically.

#### **C. The Marks**

We consider the marks – Opposer's HUB GROUP and HUBPRO and Applicant's SHIPHUB – “in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay*, 73 USPQ2d at 1691 (quoting *Du Pont*, 177 USPQ at 567). Obviously, the marks are similar in some ways and dissimilar in others.

They are similar because they all contain the term “HUB,” which is the dominant part of Opposer's marks. It is dominant because it appears first in both of them. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018) (“The identity of the marks' initial two words is particularly significant because consumers typically notice those words first.”); *Presto Prods. Inc. v. Nice-Pak Prods., 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”). It is also dominant because the trailing terms in both marks – GROUP and PRO – are

descriptive or generic and GROUP is disclaimed. *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)); see also *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (DELTA, not the disclaimed term CAFÉ, is the dominant portion of the mark THE DELTA CAFÉ).

However, this identical shared term is conceptually quite weak and has not been shown to be commercially strong for shipping software, whether offered as a good or as a service. Indeed, the term is registered by third parties for: freight transportation software (TRUCKHUB, Reg. No. 5654896); shipment processing and freight tracking software (HUBBOX, Reg. No. 5033889, shown to be in use at 48 TTABVUE 148-167); order and distribution management software (MASONHUB, Reg. No. 6102719, shown to be in use at 48 TTABVUE 85-125); shipping label and purchase order processing software (COMMERCEHUB, Reg. No. 2464992, shown to be in use at 48 TTABVUE 19-37); supply chain management software (GS1 US DATA HUB, Reg. No. 4532345); and shipment and delivery software (CAMPUSHUB, Reg. No. 2867029). It is also registered and appears to be widely used for a variety of shipment and logistics-related goods and services, as detailed above. Thus, we do not find confusion likely solely because the parties’ marks share the weak term “HUB.”

We also cannot ignore the other elements in the parties’ marks, GROUP, PRO and SHIP, even though they too are conceptually weak and GROUP is disclaimed. *Shen*



*Mfg. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1355 (Fed. Cir. 2004) (“The disclaimed elements of a mark, however, are relevant to the assessment of similarity ... This is so because confusion is evaluated from the perspective of the purchasing public, which is not aware that certain words or phrases have been disclaimed.”); *Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 144 USPQ 433 (CCPA 1965). Those elements are significant here primarily because HUB is so weak for shipping/logistics-related goods and services.

In fact, notwithstanding that they share the weak term “HUB,” and look and sound similar to that extent, the marks look and sound fairly different overall. Opposer’s marks begin with “HUB,” while Applicant’s mark begins with “SHIP,” terms which do not look or sound alike in any way. This is significant because the first part of a mark is entitled to more weight in our analysis. . *In re Detroit Athletic Co.*, 128 USPQ2d at 1049.

More importantly, the marks convey different meanings and create different commercial impressions. As Opposer puts it, the HUB GROUP mark conveys a collection of affiliated “HUB” entities. 31 TTABVUE 7 (Hill Dec. ¶ 15) (“The name Hub Group was selected because the entity was to provide oversight over the different entities constituting the Hub Network.”). *See also Mitchell Miller, P.C. v. Miller*, 105 USPQ2d 1615, 1622 (TTAB 2013) (“We find that ‘LAW GROUP’ is a generic designation for a law firm.”). The HUBPRO mark conveys a “professional” version of a hub-related product. By contrast, the focus of Applicant’s mark is on its first term “SHIP,” with “HUB” indicating that Applicant’s software is a focal point for shipment-

related information. In other words, consumers encountering Opposer's marks will focus on the term "HUB" while consumers encountering Applicant's mark will focus on the term "SHIP."

As we have explained in this decision, the record shows that the term "HUB" has a relationship to the term "SHIP." If Opposer's mark was more distinctive or strong, perhaps this relationship between the terms could result in a finding that the marks containing those terms convey somewhat similar meanings or create somewhat similar commercial impressions. But here, where the record establishes that Opposer's marks are entitled a reduced scope of protection, that potential similarity in meaning and commercial impression is not enough for us to find the marks confusingly similar.

The bottom line is that because the only thing the marks have in common is the conceptually weak and diluted term "HUB," confusion is unlikely. *See e.g. Sure-Fit Prods. Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 117 USPQ 295, 297 (CCPA 1958) (finding no likelihood of confusion between SURE-FIT and RITE-FIT, both for slip covers, because the term "fit" is "eminently suitable for use in connection with goods such as ready-made slip covers ... [u]nder these circumstances, we do not feel that appellant is entitled to the broad protection which it seeks"); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1476-78 (TTAB 2014) (finding "that the mark PERKSPOT is sufficiently different from the marks PERKS and PERKSCARD to avoid a likelihood of confusion" even though the marks were used for legally identical services); *Plus Prods. v. Natural Organics, Inc.*, 204 USPQ 773,

779-80 (TTAB 1979) (allowing registration of NATURE'S PLUS for vitamins despite prior registration of PLUS for vitamins given coexistence of a number of registrations containing PLUS for similar goods).

Opposer should not be able to prevent others from registering marks which share with Opposer's mark only the weak and diluted term "HUB," even if the marks are used for identical goods or services. Indeed, as the record demonstrates, companies in the shipping/logistics industry may have a need or desire to use the same highly suggestive and diluted term, and many already do. As the Federal Circuit's predecessor court stated in *Sure-Fit*:

It seems both logical and obvious to us that where a party chooses a trademark which is inherently weak, he will not enjoy the wide latitude of protection afforded the owners of strong trademarks. Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights. The essence of all we have said is that in the former case there is not the possibility of confusion that exists in the latter case.

*Sure-Fit Prods.*, 117 USPQ at 297.

#### **D. Consumer Sophistication and Care**

Applicant has introduced evidence that consumers of shipping/logistics software goods and services exercise care in purchasing, that there is a long-term process "to convert a prospective customer to an [Applicant] customer," and that "shipping products" is "typically" expensive. 44 TTABVUE 4-6 (Mevorach Dec. ¶¶ 6-9); 46 TTABVUE 4, 6-7 (Charm Dec. ¶¶ 10, 15-17). Moreover, Applicant's customers "typically" spend a not insignificant sum on Applicant's services. 46 TTABVUE 4 (Charm Dec. ¶ 10).

We accept that relevant consumers (typically businesses that ship products) will exercise care in purchasing shipping/logistics software, because efficient shipping is a core need of so many businesses. At the same time, however, in considering this factor we are bound by Applicant's identification of services, which is not limited to large, sophisticated businesses. Small businesses and even individuals could have a need for simple "shipping management" tools on a small scale. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162-63 (Fed. Cir. 2014). This factor weighs against a finding of likelihood of confusion, but only slightly.

## **VI. Conclusion**

While the parties' goods and services are identical in-part, and travel in the same channels of trade to the same classes of consumers, confusion is unlikely. The parties' marks share only the term "HUB," which the record shows to be conceptually quite weak for shipping/logistics-related goods and services, there is no evidence that Opposer's marks are commercially strong for the specific software goods and services at issue and consumers will exercise at least some care in purchasing. Thus, the differences between the parties' marks are much more important than their similarities, especially because so many third parties use and have registered marks containing the shared term "HUB," and these third-party marks currently coexist with Opposer's.

**Decision:** The opposition is dismissed.