

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

Mailed:
March 24, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Castlepoint Holdings, Ltd.

Serial No. 78757504
Serial No. 78757505

Amy E. Carroll of Drinker Biddle & Reath LLP for
Castlepoint Holdings, Ltd.

Sophia S. Kim, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Drost, Bergsman and Mermelstein, Administrative
Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Castlepoint Holdings, Ltd. filed an intent to use
application for the mark CASTLEPOINT HOLDINGS, LTD., in
standard character format, for services identified as
follows, as amended:

Reporting for insurance and reinsurance institutions,
in Class 35; and,

Financial and insurance holding company services;
financial services, namely, providing financial
planning, management, analysis and consultation
services to insurance and reinsurance institutions;

Serial No. 78757504

Serial No. 78757505

insurance services, namely, reinsurance underwriting services and brokerage services, in Class 36.¹

Applicant also filed an intent to use application for the mark CASTLEPOINT REINSURANCE COMPANY, in standard character format, for services ultimately identified as "insurance services, namely, reinsurance underwriting and brokerage services; insurance and insurance-related services rendered to insurance company clients, namely, reinsurance underwriting and reinsurance claims adjustment services, quota share reinsurance underwriting, property and casualty excess of loss reinsurance underwriting, property risk excess of loss reinsurance underwriting, excess aggregate stop and gap loss reinsurance underwriting, and facultative insurance underwriting," in Class 36.²

The Examining Attorney refused both applications under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's marks are likely to cause confusion with the mark CASTLE POINT MORTGAGE, in standard character format, for "mortgage banking services,"

¹ Serial No. 78557504, filed November 18, 2005. Applicant disclaimed the exclusive right to use "Holdings, Ltd."

² Serial No. 78557505, filed November 18, 2005. Applicant disclaimed the exclusive right to use "Reinsurance Company."

Serial No. 78757504

Serial No. 78757505

in Class 36.³ In addition, the Examining Attorney refused to register the CASTLEPOINT HOLDINGS, LTD. application because applicant refused to amend its description of services.

Because both applications are owned by the same applicant and share common questions of fact and law, we have consolidated the appeals.

In its appeal brief for the CASTLE HOLDINGS, LTD. application, applicant stated that if the likelihood of confusion refusal were reversed, then applicant would amend the description of services in that application to read as follows:

Providing expert evaluations relating to business matters for insurance and reinsurance institutions; providing market reports and studies for insurance and reinsurance institutions; preparing business reports for insurance reinsurance institutions, in Class 35; and,

Financial services, namely, providing financial planning, management, analysis and consultation services to insurance and reinsurance institutions; insurance services, namely, reinsurance underwriting services and brokerage services, in Class 36.

The Examining Attorney accepted the proposed amendment to the description of services. In our discretion, we will act on the proposed amendment to the description of services first so that we do not decide the issue of

³ Registration No. 3068067, issued March 14, 2006.

Serial No. 78757504

Serial No. 78757505

likelihood of confusion based on an inaccurate description of services. In view of the acceptance of the proposed amendment by the Examining Attorney, we deem the description of services in the CASTLEPOINT HOLDINGS, LTD. application amended, and we will use the amended description of services in our likelihood of confusion analysis.

Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 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. *See Federated Foods, Inc. v. Fort Howard 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").

Serial No. 78757504

Serial No. 78757505

A. The similarity or dissimilarity and nature of the services.

The cited registration is for mortgage banking services. A "mortgage banker" is "[a]n individual or organization that originates real-estate loans for a fee, resells them to other parties, and services the monthly payments."⁴ Indeed, the registrant's website states that registrant provides mortgage loans for buying or refinancing homes.⁵

Applicant, on the other hand, is seeking to register its marks for services related to the reinsurance industry.

Reinsurance is defined as follows:

REINSURANCE form of insurance that insurance companies buy for their own protection, "a sharing of insurance." An insurer (*the reinsured*) reduces its possible maximum loss on either an individual risk (FACULTATIVE REINSURANCE) or a large number of risks (AUTOMATIC REINSURANCE) by giving (*ceding*) a portion of its liability to another insurance company (*the reinsurer*).

Reinsurance enables an insurance company to (1) expand its capacity; (2) stabilize its underwriting results; (3) finance its expanding volume; (4)

⁴ Black's Law Dictionary, p. 1029 (7th ed. 1999). The Board may take judicial notice of dictionary evidence. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

⁵ www.castlemortgage.com attached to applicant's November 30, 2006 Responses.

Serial No. 78757504

Serial No. 78757505

secure catastrophe protection against shock losses; (5) withdraw from a class or line of business, or geographical area, within a relatively short time period, and (6) share large risks with other companies.⁶

In essence, "reinsurance" is insurance for insurance companies. It refers to "the relationship between reinsured(s) and reinsurer(s)."⁷ By definition, mortgage banking services and applicant's reinsurance services are very different.

The Examining Attorney argued that the 45 third-party registrations she submitted clearly show that "many parties provide mortgage banking service and insurance and underwriting services."⁸ However, applicant is not rendering traditional insurance and underwriting services. It is rendering reinsurance related services to insurance companies. In this regard, there were only three third-party registrants (Allianz Aktiengesellschaft, Irwin Financial, and General Electric Company) that had registered marks for both mortgage banking or lending services and reinsurance related services. In view of the fact that other evidence in this case points to the

⁶ Dictionary of Insurance Terms, pp. 424-425 (2000).

⁷ Insurance Words & Their Meanings, p. 155 (21st ed. 2006).

⁸ The Examining Attorney's Briefs, unnumbered page 7.

Serial No. 78757504

Serial No. 78757505

significant differences between mortgage banking services and reinsurance services, these third-party registrations owned by only three registrants demonstrate that mortgage banking or lending services and reinsurance are at best only tangentially related.

In view of the foregoing, we find that the similarity or dissimilarity and nature of the services favors finding that there is no likelihood of confusion.

B. The similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers.

Neither the Examining Attorney, nor the applicant, submitted any evidence regarding channels of trade or classes of consumers. However, as discussed in the previous section, registrant provides mortgage loans for buying or refinancing homes. Because registrant's description of services is not limited to "houses," we must construe the registrant's services as covering all types of mortgages (e.g., houses, offices, apartments, etc.). On the other hand, applicant's reinsurance services are rendered to insurance companies. As a practical matter, mortgage banking services and reinsurance related services will not be rendered to the same consumers under circumstances likely to give rise to the mistaken belief

Serial No. 78757504

Serial No. 78757505

that the services emanate from the same source.

Accordingly, we find that the channels of trade and classes of consumers are different.

C. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

We now turn to the *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co., supra.* In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re Lamson Oil Co.,* 6 USPQ2d 1041, 1042 (TTAB 1988). *See also, In re White Swan Ltd.,* 9 USPQ2d 1534, 1535 (TTAB 1988). 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 goods 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

Serial No. 78757504

Serial No. 78757505

USPQ 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992).

The term "Castle Point" is the dominant portion of the mark in the cited registration because the word "Mortgage" is descriptive when it is used in connection with mortgage banking services. "Mortgage" describes the type of banking services, as well as the purpose of the registrant's services (*i.e.*, to originate real estate loans).

Likewise, the word "Castlepoint" is the dominant portion of applicant's mark because the terms "Holdings, Ltd." and "Reinsurance Company" are descriptive. The term "Holdings, Ltd." is descriptive of applicant's entity (*i.e.*, a holding company) and "Reinsurance Company" is indicative of the nature of applicant's services (*i.e.*, reinsurance services). Moreover, applicant disclaimed the exclusive right to use "Holdings, Ltd." and "Reinsurance Company" in response to the Examining Attorney's finding that they are merely descriptive, thereby conceding the descriptive nature of those terms as applied to applicant's services. *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1442 (TTAB 2005). *See also Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972). Therefore, the names "Castle Point" and

Serial No. 78757504

Serial No. 78757505

"Castlepoint" are accorded more weight than the words "Mortgage," "Holdings, Ltd.," and "Reinsurance Company" in our comparison of the marks. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

The significance of the names "Castle Point" and "Castlepoint" as the dominant element of applicant's mark and the registrant's mark is further reinforced by their location as the first word(s) of the marks. *Presto Products Inc. v. Nice-Pak Products, 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"). *See also Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because "veuve" is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, *supra* (upon encountering the marks, consumers must first notice the identical lead word).

The terms CASTLEPOINT and CASTLE POINT are virtually identical in appearance and sound. The space between the words "Castle" and "Point" in the registered mark is not sufficient to distinguish the marks. *Goodyear Tire &*

Serial No. 78757504

Serial No. 78757505

Rubber Co. v. Dayco Corp., 201 USPQ 485, 488 n.1 (TTAB 1978) (FAST-FINDER with a hyphen is substantially identical to FASTFINDER without the hyphen). See also *In re International Business Machines Corp.*, 81 USPQ2d 1677, 1679 (TTAB 2006) (there is no difference in the meaning of "e-server" and "eserver"); *In re Home Federal Savings and Loan Association*, 213 USPQ 68, 69 (TTAB 1982) ("That applicant's mark "TRAN\$FUND" has a dollar sign where registrant's mark has a letter "S" is inconsequential in a comparison of the sound, appearance, and meaning of the two marks").

"Castle Point" in the registered mark and "Castlepoint" in applicant's marks have the same meaning and engender the same commercial impression (*i.e.*, the place where a castle is located). Applicant argued, to the contrary, that its use of "Castlepoint" has no obvious meaning,⁹ whereas, in the cited registration, "Castle Point" conveys the message that "the *point* of Registrant's mortgage services is to help you buy your castle."¹⁰ In support of its argument, applicant referenced the advertising legend "Because Your Home Is Your Castle" used on the registrant's website and to five third-party

⁹ Applicant's Briefs page 14.

¹⁰ Applicant's Brief, page 13.

Serial No. 78757504

Serial No. 78757505

registrations, owned by four entities, that include the word "Castle" in connection with mortgage lending or real estate services. Applicant submitted copies of the following registrations:

1. Registration No. 1758732 for the mark CASTLE MORTGAGE CORPORATION and design for mortgage brokerage services;
2. Registration No. 3133817 for the mark CASTLE FINANCIAL for mortgage lending featuring reverse mortgages;
3. Registration No. 3049984 for the mark CASTLE FINDERS and Registration No. 2904788 for the mark CASTLE FINDERS and design both for real estate brokerage, management, leasing and investing services; and,
4. Registration No. 2,985206 for the mark KASTLE REALTY for real estate brokerage services.

The registrant's use of the advertising legend "Because Your Home Is Your Castle" is a clever use of the word "castle" to draw a connection with the CASTLE POINT MORTGAGE mark and the slogan "a man's home is his castle." However, the argument is too much of a stretch to persuade us that the commercial impression of CASTLE POINT MORTGAGE

Serial No. 78757504

Serial No. 78757505

is "the *point* of Registrant's *mortgage* services is to help you buy your *castle*."

The third-party registrations imply that the word "castle" was registered because it is suggestive of the word "home" (*i.e.*, a reference to the slogan that "a man's home is his castle"). However, the third-party registrations are of very limited probative value because the marks at issue are CASTLE POINT MORTGAGE, CASTLEPOINT HOLDINGS, LTD. and CASTLE POINT REINSURANCE COMPANY, not CASTLE MORTGAGE, CASTLE HOLDINGS, LTD., and CASTLE REINSURANCE COMPANY, and in this case, we are comparing CASTLE POINT MORTGAGE with CASTLEPOINT HOLDINGS, LTD. and CASTLEPOINT REINSURANCE COMPANY.

While the marks are not identical, we find that similarities of the marks outweigh the differences.

D. Balancing the factors.

In view of the differences in the services, channels of trade, and classes of consumers, it is unlikely that a consumer of applicant's reinsurance services would encounter registrant's mortgage lending services or vice versa. Accordingly, we find that applicant's use of the marks CASTLEPOINT HOLDINGS, LTD. and CASTLEPOINT REINSURANCE COMPANY, when used in connection with

Serial No. 78757504

Serial No. 78757505

applicant's reinsurance related services, are not likely to cause confusion with CASTLE POINT MORTGAGE, used in connection with mortgage banking services.

Decision: The description of services in application Serial No. 78757504 is amended pursuant to the discussion on pages 3-4 *supra*.

The refusal to register applicant's marks is reversed.