

**THIS OPINION IS NOT A
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Mailed:
March 24, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Castlepoint Holdings, Ltd.

Serial No. 78757509
Serial No. 78757511

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 intent to use applications for the marks CASTLEPOINT INSURANCE COMPANY, in standard character format (Serial No. 78757509),¹ and CASTLEPOINT SPECIALTY INSURANCE COMPANY, in standard character format (Serial No. 78757511),² both for the following services:

¹ Applicant disclaimed the exclusive right to use the words "Insurance Company."

² Applicant disclaimed the exclusive right to use the words "Specialty Insurance Company."

Serial No. 78757509

Serial No. 78757511

Insurance services, namely, underwriting of casualty insurance, property insurance, general liability insurance, workers' compensation liability insurance, commercial auto insurance, commercial umbrella liability insurance coverage for mercantile and services, restaurant liability insurance, construction liability insurance, and real estate liability insurance, and providing ancillary services thereto, namely insurance administration and insurance claims adjustment; commercial insurance underwriting services in the fields of liability insurance, business interruption insurance, and business property insurance and providing ancillary services thereto, namely insurance administration and insurance claims adjustment; wholesale and retail insurance brokerages in the field of property and casualty insurance; insurance claims adjustment services; insurance services, namely, reinsurance underwriting and brokerage services, insurance administration, insurance consultation, risk management services, claims processing, and claims adjustment services in the field of reinsurance; insurance claims services, namely, providing multi-line loss adjustment services, in Class 36.

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," in Class 36.³

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

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

Serial No. 78757509

Serial No. 78757511

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").

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

⁴ Black's Law Dictionary, p. 1029 (7th ed. 1999). The Board may take judicial notice of dictionary evidence. *University of Notre*

Serial No. 78757509

Serial No. 78757511

registrant provides mortgage loans for buying or refinancing homes.⁵

Applicant, on the other hand, is seeking to register its marks for a full line of insurance services (e.g., underwriting, brokerage, administration, and claims adjustment). "Insurance" is "coverage by contract whereby for a stipulated consideration one party undertakes to indemnify or guarantee another against loss by a specified contingency or peril."⁶

While mortgage banking services and insurance services are different, the issue is not whether purchasers would confuse the services, but rather whether purchasers are likely to confuse the source of the services. *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 (TTAB 1989); *In re Permagrain Products, Inc.*, 223 USPQ 147, 148 (TTAB 1984). See also *Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517, 520 (TTAB 1975) ("In determining whether products are identical or similar, the inquiry should be whether they appeal to the same

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.

⁶ Webster's Third New International Dictionary of the English Language Unabridged, p. 1173 (1993).

Serial No. 78757509

Serial No. 78757511

market, not whether they resemble each other physically or whether a word can be found to describe the goods of the parties"). Thus, it is sufficient if the respective services are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used in connection therewith, give rise to the mistaken belief that they emanate from or are associated with a single source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

The Examining Attorney argued that the 45 third-party registrations she submitted show that "many parties provide mortgage banking service and insurance and underwriting services."⁷ The following registrations are representative of the evidence submitted by the Examining Attorney:⁸

Mark	Reg. No.	Services
PATRION	297187	Underwriting auto, casualty, life, health, fire, disability, and workers compensation insurance; mortgage banking services

⁷ The Examining Attorney's Briefs, page 5.

⁸ In the following table, we have not included the entire description of services for each registration. Only the relevant services are listed.

Serial No. 78757509

Serial No. 78757511

Mark	Reg. No.	Services
IMBD	3010930	Underwriting accident, health, fire, and life insurance; mortgage banking services
IRWIN	2672393	Insurance brokerage and underwriting credit life reinsurance; mortgage banking services
MAINSOURCE MORTGAGE	3074154	Underwriting and brokerage services in the fields of health, property, life, and casualty insurance; mortgage banking services
POPULAR	2991584	Insurance services, namely, underwriting services and insurance claims processing, insurance brokerage services; mortgage banking services

These third-party registrations, based on use in commerce, have probative value to the extent that they serve to suggest that the services may emanate from a single source. *In re Infinity Broadcasting Corporation*, 60 USPQ2d 1214, 1217-1218 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d at 1785-1786; *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1267, 1270 n.6 (TTAB 1988).

Applicant argued that its marks "identif[y] insurance and reinsurance services, which are offered to primary insurance companies and wholesale insurance brokers," and that "[a]pplicant provides *insurance services* to insurance

Serial No. 78757509

Serial No. 78757511

and reinsurance brokers.”⁹ However, applicant’s description of services are not limited to insurance companies, wholesale insurance brokers, or insurance and reinsurance brokers. In an *ex parte* appeal, likelihood of confusion is determined on the basis of the services as they are identified in the application and the cited registration. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); *In re William Hodges & Co., Inc.*, 190 USPQ 47, 48 (TTAB 1976). See also *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed”). As the Court of Customs and Patent Appeals, the predecessor of our primary reviewing court, explained in *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981):

Here, appellant seeks to register the word MONOPOLY as its mark without any

⁹ Applicant’s Briefs, pp. 5-6.

Serial No. 78757509

Serial No. 78757511

restrictions reflecting the facts in its actual use which it argues on this appeal prevent likelihood of confusion. We cannot take such facts into consideration unless set forth in its application.

Accordingly, we cannot consider applicant's argument.

In view of the foregoing, we find that the similarity or dissimilarity and nature of the services favors finding that there is a 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, there are no restrictions or limitations in the description of services for the applications or the cited registration. Absent such restrictions or limitations, we must assume that the services travel in "the normal and usual channels of trade and methods of distribution." *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983). See also *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 16 USPQ2d at 1787. Accordingly, both applicant's insurance services and registrant's mortgage banking services are presumed to move in all normal channels of trade and be available to all

Serial No. 78757509

Serial No. 78757511

classes of potential consumers. *Venture Out Properties LLC v. Wynn Resorts holding LLC*, 81 USPQ2d 1887, 1894 (TTAB 2007); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). People in need of insurance services may also need mortgage banking services.

Applicant argued that "[e]ven assuming *arguendo* that the parties' services were deemed related, the differences between the consumer groups as well as the sophistication of the purchaser (see discussion below) precludes any likelihood of confusion."¹⁰ Presumably, applicant's reference to "the differences between consumer groups" relates to its argument that its services "are offered to primary insurance companies and wholesale insurance brokers," and that "[a]pplicant provides *insurance services* to insurance and reinsurance brokers." However, because applicant's description of services are not so limited, we cannot give this argument any consideration.

In view of the facts that the third-party registrations suggest that applicant's insurance services and registrant's mortgage banking services sold under similar marks may emanate from a single source, the presumption that such services move in all normal channels

¹⁰ Applicant's Brief, p. 9.

Serial No. 78757509

Serial No. 78757511

of trade and are available to all classes of potential consumers that would purchase both applicant's services and registrant's services, and that consumers in need of insurance services may also need mortgage banking services, we find that the channels of trade and classes of consumers overlap.

C. The conditions under which and buyers to whom sales are made (i.e., "impulse" vs. careful, sophisticated purchasing).

Applicant argued that, in this case, "the knowledge and sophistication of the purchasers has substantial relevance."¹¹

The relevant consumers purchasing the services of Applicant and Registrant must be extremely knowledgeable about their respective fields. Applicant's services are marketed to wholesale insurance brokers and primary insurance companies seeking the risk-sharing benefits of insurance pooling. Applicant does not even market to, or compete for, the same customers as Registrant. Applicant stresses that the owner of the Cited Mark, Castle Point Mortgage, Inc., does not appear to be a licensed insurance company. Any business seeking commercial insurance is undoubtedly savvy enough to seek insurance from companies that are licensed to provide this service. For this reason, it is highly unlikely that Applicant's potential insurance company and insurance broker clients would be confused by the existence of

¹¹ Applicant's Brief, p. 11.

Serial No. 78757509

Serial No. 78757511

CASTLE POINT MORTGAGE when searching
for Applicant's services.¹²

As indicated above, because applicant's description of services are not restricted to insurance company and insurance broker clients, we cannot give applicant's argument any consideration. In fact, because there are no restrictions in either applicant's description of services or the registrants' description of services, we must consider all potential consumers of insurance services and mortgage banking services, including those who may exercise a lower degree of care. *In re Bercut-Vandervoot & Co.*, 229 USPQ 763, 765 (TTAB 1986) (average ordinary wine consumer must be looked at in considering source confusion). In other words, mortgage banking services and insurance services include knowledgeable consumers, as well as less sophisticated consumers.

In view of the foregoing, we find that the ordinary degree of care exercised by general consumers of these services weighs in favor of finding that there is a likelihood of confusion.

¹² Applicant's Briefs, p. 12.

Serial No. 78757509

Serial No. 78757511

D. 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 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"

Serial No. 78757509

Serial No. 78757511

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 "Insurance Company" and "Specialty Insurance Company" are descriptive. Both terms directly describe the fact that applicant is providing insurance services. Moreover, applicant disclaimed the exclusive right to use "Insurance Company" and "Specialty Insurance 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 "Castlepoint" are accorded more weight than the words "Mortgage," "Insurance Company," and "Specialty Insurance Company" in our comparison of the marks. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Serial No. 78757509

Serial No. 78757511

The significance of the names "Castle Point" and "Castlepoint" as the dominant element of applicant's marks 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 & 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

Serial No. 78757509

Serial No. 78757511

(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,¹³ 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*."¹⁴ 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 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:

¹³ Applicant's Briefs p. 13.

¹⁴ Applicant's Brief, pp. 13-14.

Serial No. 78757509

Serial No. 78757511

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 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

Serial No. 78757509

Serial No. 78757511

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.

E. Balancing the factors.

In weighing all the relevant likelihood of confusion factors, we find that because the marks are similar, the services are sufficiently related and move in same channels of trade to the same classes of consumers, there is a likelihood of confusion. To the extent that any doubt might exist as to the correctness of this decision, we resolve such doubt against applicant. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988).

Serial No. 78757509

Serial No. 78757511

Decision: The refusal to register applicant's marks
is affirmed and registration is refused.