

**APPLICANT'S EASY COLOR MARK IS NOT LIKELY TO CAUSE CONFUSION
WITH THE CITED MARK**

Applicant has filed an application for the mark EASY COLOR for use in connection with “paint” in International Class 2. The Trademark Office has refused registration of the EASY COLOR mark, based on a finding that this mark is likely to be confused with U.S. Reg. No. 4357605 for the mark EASY COLOR used in connection with “plastic film for commercial and industrial use” in International Class 17.

Taking into account the relevant DuPont factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 et seq. Application of the above factors to the instant case shows that Applicant's mark is not likely to cause confusion with the cited references.

I. The Goods of the Parties are Dissimilar and Do NOT Travel in the Same Channels of Trade

Applicant's goods are dissimilar to the goods in the cited registration. Applicant's goods are paint, sold exclusively through Applicant's retail stores. Registrant's goods, on the other hand, are adhesive, vinyl colored film intended to be used for packaging, signage, and display. (See Exhibit A.) Consumers of applicant's goods are commonly homeowners and individuals

who purchase paint for do-it-yourself (“DIY”) paint projects in the home. Registrant’s goods are sold commercially to businesses that use vinyl film as part of product packaging or as part of store displays. Indeed, Registrant’s marketing materials tout, “While this material is most popular for automotive decals, its pattern makes for eye-catching Point of Purchase (PoP) displays.” (See Exhibit A.) In addition, Registrant’s goods are not available for purchase through Registrant’s website if the order does not exceed \$1000.00. (See Exhibit B.) By contrast, Applicant’s paint sold under the EASY COLOR mark would only cost between \$12-25. (See, e.g., Exhibit C for paint sold under Applicant’s different, EASY CARE mark.) Individuals who perform DIY home improvement and paint projects tend to seek cost savings and would not be purchasing bulk products totaling thousands of dollars. There is thus no overlap between the channels of trade for the parties’ respective goods.

The third party evidence cited by the Trademark Office supports a finding of no likelihood of confusion between the goods of the parties. For example, the Trademark Office cited Sherwin-Williams, among others, as a source for both paint products as well as “painter’s plastic” for “paint protection.” Applicant notes that Registrant’s goods are not film of the same type that the Trademark Office cited as evidence. Registrant’s goods are a completely different type of film and are not used for paint protection. The cited evidence demonstrates that Registrant’s goods are far removed from Applicant’s goods and are thus unrelated.

II. The Cited Mark is Not Strong

Generally, the strength of a mark depends on two factors: (1) Distinctiveness of the mark; and (2) the extent to which the mark is recognized by the relevant consuming class. *Aveda Corp. v. Evita Marketing, Inc.*, 706 F.Supp. 1419, 1428 (D. Minn. 1989). The strength of the mark is shown by various factors, including whether the owner’s use has been exclusive. *Clamp Mfg. Co.*

v. Enco Mfg. Co, 870 F.2d 512, 517 (9th Cir. 1989). Here, the cited mark is weak and entitled to a narrow scope of protection.

The term “EASY” and derivatives thereof is used by and registered to a number of unrelated third parties for film products in International Class 17. This common usage of the “EASY” name and derivatives thereof indicates that the cited mark is entitled to a relatively narrow scope of protection, and that small differences between the goods, the marks, or the channels of trade through which they travel are likely to avoid a likelihood of confusion.

The chart below contains marks that demonstrate the diluted nature of EASY marks and derivatives thereof in the field of film products in International Class 17:

Mark/Name	Status/Key Dates	Full Goods/Services	Owner	App. No./ Reg. No.
EASYSCREEN	Registered November 18, 2014 Filed: February 8, 2012 Application Published: September 2, 2014 Registered: November 18, 2014	(Int'l Class: 17) protective film made of plastic, silicon and or polyethylene terephthalate with an acrylic adhesive for the protection of glass and other fragile surface materials; protective film made of plastic, acrylic, silicon and/or silicon and/or polyethylene terephthalate, namely, polyolefin film with a rubber adhesive used to protect surfaces; protective sheeting made of plastics, acrylic, synthetic rubber or elastomeric materials, namely, plastic sheets for construction and general use, rubber sheets, unfitted covering sheets of	Callum Bush (United Kingdom Citizen) Heath End, Bower Heath Lane, Harpenden Hertfordshire AL55ef United Kingdom	RN: 4639209 SN: 85537293

Mark/Name	Status/Key Dates	Full Goods/Services	Owner	App. No./ Reg. No.
		<p>elastomeric polymer for storing commercial and industrial products; self-adhesive transparent surface protectors, namely, adhesive or silicon coated plastic or acrylic sheets; self-adhesive transparent protecting film, other than for household or stationery use, namely, adhesive plastic film for industrial and commercial use</p>		
EASYSEAL	<p>Renewed June 18, 2016</p> <p>Int'l Class:17 First Use:January 31, 1995</p> <p>Filed: February 13, 1995 Application Published: March 26, 1996 Registered: June 18, 1996 Last Renewal: June 18, 2016</p>	<p>(Int'l Class: 17) treated polyester film used as a buffer in the process of heat-sealing plastics</p>	<p>Oliner Fibre Co., Inc. (New Jersey Corp.) 2391 Vauxhall Road Union New Jersey 07083</p>	<p>RN: 1980720 SN: 74632970</p>
EASYWEED	<p>Published - Opposed</p>	<p>(Int'l Class: 17) heat plastic film transfers for</p>	<p>Siser S.R.L. (Italy Private</p>	<p>SN: 85470699</p>

Mark/Name	Status/Key Dates	Full Goods/Services	Owner	App. No./ Reg. No.
	<p>July 2, 2013</p> <p>Int'l Class:17 First Use:2004</p> <p>Filed: November 11, 2011 Application Published: June 4, 2013</p>	<p>manufacturing plastic transfers; heat plastic film transfers for use in manufacturing plastic transfers used for applying letters, numbers, graphics or designs onto garments or other substrates</p>	<p>Limited Company) Viale Della Technica Vicenza 18I-36100 Italy</p>	
EZ BANDER	<p>Registered May 15, 2012</p> <p>Int'l Class:17 First Use:1989</p> <p>Filed: September 22, 2011 Application Published: February 28, 2012 Registered: May 15, 2012</p>	<p>(Int'l Class: 17) plastic film for commercial and industrial use; plastic film for industrial and commercial packing use</p>	<p>W. Plastics, Inc. (California Corp.) C/O 12702 Via Cortina, Suite 100 Del Mar California 92014</p>	<p>RN: 4142567 SN: 85429682</p>
EZ FAUX DECOR	<p>Registered May 5, 2015</p> <p>Int'l Class:17 First Use:April 1, 2003</p> <p>Filed:</p>	<p>(Int'l Class: 17) mica; fluoropolymer and fluoropolymer composite materials in the form of films and sheets for industrial and commercial use; laminated plastic films for use on countertops,</p>	<p>Ezfauxdecor, LLC (Kansas Limited Liability Company) 6417 W. 125th Street</p>	<p>RN: 4729872 SN: 85903874</p>

Mark/Name	Status/Key Dates	Full Goods/Services	Owner	App. No./ Reg. No.
	<p>April 15, 2013 Application Published: February 17, 2015 Registered: May 5, 2015</p>	<p>sinks, refrigerators, dish washers, clothes washers and dryers; plastics in the form of sheets and films; poly-olefin film with a rubber adhesive used to protect countertops, cupboards, sinks, refrigerators, dish washers, clothes washers and dryers; plastic film for industrial and commercial packing use; plastic film for use in laminating paper; non-metal laminates, non-metal films and flexible vinyl sheets for use in protecting countertops, cupboards, sinks, refrigerators, dish washers, clothes washers and dryers</p>	<p>Leawood Kansas 66209</p>	
<p>E-Z FLOOR GUARDS</p>	<p>Registered March 17, 2015 Int'l Class:17 First Use:February 18, 2014 Filed: June 23, 2014 Application Published: December 30, 2014</p>	<p>(Int'l Class: 17) sheets of adhesive plastic film used to cover footwear</p>	<p>Trimaco, LLC (Missouri Limited Liability Company) 2300 Gateway Centre Blvd, Suite 200 Morrisville North Carolina 27560</p>	<p>RN: 4702919 SN: 86317128</p>

Mark/Name	Status/Key Dates	Full Goods/Services	Owner	App. No./ Reg. No.
	Registered: March 17, 2015			
EZ PEEL	<p>Renewed Principal Register - Sec. 2(F) November 13, 2011</p> <p>Int'l Class:17 First Use:May 10, 1995</p> <p>Filed: December 18, 2000 Application Published: August 21, 2001 Registered: November 13, 2001 Last Renewal: November 13, 2011</p>	(Int'l Class: 17) flexible packaging film for industrial and commercial use for packaging of snack foods	<p>Bemis Company, Inc. (Missouri Corp.) One Neenah Center 4th Floor 134 E. Wisconsin Avenue Neenah Wisconsin 54956</p>	<p>RN: 2506638 SN: 76182425</p>
E-Z PULL	<p>Registered Principal Register - Sec. 2(F) May 3, 2011</p> <p>Int'l Class:17</p>	(Int'l Class: 17) plastic films used as packaging for food	<p>Schreiber Foods, Inc. (Wisconsin Corp.) 425 Pine Street Green Bay Wisconsin</p>	<p>RN: 3954188 SN: 85113770</p>

Mark/Name	Status/Key Dates	Full Goods/Services	Owner	App. No./ Reg. No.
	<p>First Use: February 10, 2004</p> <p>Filed: August 23, 2010</p> <p>Application Published: February 15, 2011</p> <p>Registered: May 3, 2011</p>		54301	
EZ-FLASH	<p>Renewed April 2, 2012</p> <p>Int'l Class: 17</p> <p>First Use: March, 1997</p> <p>Filed: August 7, 1998</p> <p>Application Published: April 3, 2001</p> <p>Registered: April 2, 2002</p> <p>Last Renewal: April 2, 2012</p>	<p>(Int'l Class: 17)</p> <p>non-metal vapor barrier membrane comprised of a laminate of adhesive rubberized asphalt laminated to a polyethylene film backed with a silicon coated release paper for installation around doors and windows to exclude air and moisture</p>	<p>Carlisle Intangible Company (Delaware Corp.)</p> <p>Suite 201</p> <p>205 S. Clinton Street</p> <p>Syracuse New York</p> <p>132021258</p>	<p>RN: 2556406</p> <p>SN: 75532732</p>
EZTEAR	<p>Registered April 1, 2014</p> <p>Int'l Class: 17</p>	<p>(Int'l Class: 17)</p> <p>plastic flexible packaging film sold in bulk to industrial and commercial</p>	<p>Multi-Plastics, Inc. (Ohio Corp.)</p> <p>7770 North</p>	<p>RN: 4507068</p> <p>SN: 85799832</p>

Mark/Name	Status/Key Dates	Full Goods/Services	Owner	App. No./ Reg. No.
	First Use: January 16, 2013 Filed: December 11, 2012 Application Published: May 21, 2013 Registered: April 1, 2014	manufacturers	Central Drive Lewis Center Ohio 43055	

See full references in Exhibit D.

The dilution of EASY and derivatives thereof in connection with film products in International Class 17 demonstrates that the cited mark is relatively weak, entitled to a narrow scope of protection, and not likely to cause confusion with Applicant's EASY COLOR mark for the goods listed in this application.

III. Conclusion

In light of all of the foregoing, Applicant respectfully requests that the United States Patent and Trademark Office withdraw the § 2(d) refusal and prior cited references and allow Applicant's application to proceed to publication.