

In action to response to the office action emitted by the USPTO of the application Serial Number 88010916, we have received the following text:

REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3609458. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

Applicant’s mark is BORO HOME PLUS (in special form) for “Flexible hoses, not of metal; Hoses of textile material; Flexible pipes, not of metal; Garden hoses; Non-metal junctions for pipes; Non-metallic flexible pipes; Rubber tubes and pipes; Watering hoses” in International Class 17.

Registrant’s mark is HOMEPLUS+ (in special form) for goods including “lawn sprinklers, grass sprinklers, sprayer nozzles for garden hoses, hose nozzles” in International Class 21.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a consumer would be confused, mistaken, or deceived as to the source of the goods of the applicant and registrant. *See* 15 U.S.C. §1052(d). Determining likelihood of confusion is made on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). However, “[n]ot all of the [*du Pont*] factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1366, 101 USPQ2d 1713, 1719 (Fed. Cir. 2012) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)). The USPTO may focus its analysis “on dispositive factors, such as similarity of the marks and relatedness of the goods.” *In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *see* TMEP §1207.01.

Comparison of Marks

Marks are compared in their entirety for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof’ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

Although marks are compared in their entirety, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. *See In re Nat’l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751.

Although applicant’s mark and the registered mark contain design elements, when evaluating a composite mark containing both words and designs, the word portion is more likely to indicate the origin of the goods because it is that portion of the mark that consumers use when referring to or

requesting the goods. *Bond v. Taylor*, 119 USPQ2d 1049, 1055 (TTAB 2016) (citing *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012)); TMEP §1207.01(c)(ii). Thus, although marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)). In this case, the literal element of applicant's mark, "BORO HOME PLUS," and the literal element of registrant's mark, "HOMEPLUS+" are the dominant feature of each mark for purposes of the likelihood of confusion analysis.

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Here, both marks share the wording "HOME PLUS" despite the slight difference in appearance between applicant's mark, which displays the wording as two separate words, and registrant's mark which displays the wording as a compound word with no space separating the words, that is, "HOMEPLUS". This portion of the marks are identical in sound and virtually identical in appearance, and are thus confusingly similar for the purposes of determining likelihood of confusion. See, e.g., *Seaguard Corp. v. Seaward Int'l, Inc.*, 223 USPQ 48, 51 (TTAB 1984) ("[T]he marks 'SEAGUARD' and 'SEA GUARD' are, in contemplation of law, identical [internal citation omitted]."); *In re Best W. Family Steak House, Inc.*, 222 USPQ 827, 827 (TTAB 1984) ("There can be little doubt that the marks [BEEFMASTER and BEEF MASTER] are practically identical"); *Stock Pot, Inc., v. Stockpot Rest., Inc.*, 220 USPQ 52, 52 (TTAB 1983), *aff'd* 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984) ("There is no question that the marks of the parties [STOCKPOT and STOCK POT] are confusingly similar. The word marks are phonetically identical and visually almost identical.").

Although applicant has added the wording "BORO" before the wording "HOME PLUS," adding a house mark to an otherwise confusingly similar mark will not obviate a likelihood of confusion under Section 2(d). See *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1366-67 (TTAB 2007) (finding CLUB PALMS MVP and MVP confusingly similar); *In re Christian Dior, S.A.*, 225 USPQ 533, 534 (TTAB 1985) (finding LE CACHET DE DIOR and CACHET confusingly similar); TMEP §1207.01(b)(iii). It is likely that consumers would believe that goods sold under these marks come from the same source. See *In re Chica, Inc.*, 84 USPQ2d 1845, 1848-49 (TTAB 2007).

Therefore, applicant's mark and registrant's mark share the same commercial impression and are confusingly similar.

Comparison of Goods

The goods are compared to determine whether they are similar, commercially related, or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

The compared goods need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

The attached Internet evidence from the website of *Garden Store*, *Home Depot*, and *PlumbersStock* establishes that the same entity commonly manufactures the relevant goods and markets the goods under the same mark. Further, the attached Internet evidence from the website of *Gardener’s Edge*, *Garden Store*, and *Gardener’s Supply Company* shows that the relevant and similar goods are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use. Thus, applicant’s and registrant’s goods are considered related for likelihood of confusion purposes. See, e.g., *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Further, the trademark examining attorney has attached evidence from the USPTO’s X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. This evidence shows that the goods listed therein, namely garden, watering, and other types of hoses, nozzles for garden hoses, grass and lawn sprinklers, and related tools and parts for watering and irrigating lawns and gardens, are of a kind that may emanate from a single source under a single mark. See *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (citing *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988)); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); TMEP §1207.01(d)(iii).

Since the marks are similar and the goods are related, there is a likelihood of confusion as to the source of the goods. Therefore, applicant’s mark is refused registration under Section 2(d) of the Trademark Act.

Although applicant’s mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

Applicant should note the following additional ground for refusal.

As result of this we have the following observations:

1. The words HOME PLUS are generic words
2. The Brands are different
3. The class and products are different

The words HOME PLUS are generic words

The words “HOME” and “PLUS” are generic and appears in many other registers, where those words appear repeatedly:

Brand	Source	Status	Relevance	Origin	Holder	Number	App. Date	Image Class	Nice Cl.	Image
HOME PLUS	US TM	Active	286	US	Protrend Co., Ltd.	77211950	2007-06-21	US.07.01, US.26.11, US.26.17, US.27.03	20, 21	
HOME PLUS	US TM	Active	285	US	PIC Corporation	85480244	2011-11-23		5, 21	
HOME PLUS H+	US TM	Active	258	US	HOME PLUS AMERICA, INC.	74484359	1994-01-31	US.07.01, US.24.13, US.26.01, US.26.03, US.27.01	21	
VIBRANT FAITH @ HOME PLUS	US TM	Active	236	US	VIBRANT FAITH MINISTRIES	85846026	2013-02-11	US.02.01, US.02.07, US.04.07, US.26.01	9, 41, 45	
HOMME+	US TM	Active	123	US	REVOLUTION ONE LIMITED	77444638	2008-04-10		9, 16, 41	
HOMEPLUS+	US TM	Active	115	US	Ace Hardware Corporation	77240515	2007-07-27	US.07.01, US.24.17	6, 8, 21, 11	
PET@HOME+	US TM	Active	108	US	Lo, Yue Chung	87606566	2017-09-13		9	
HOME STORAGE PLUS	US TM	Active	26	US	99c Only Stores	77855434	2009-10-22		21, 22	

All of them coexist and it does not generate confusion among the consumers.

#	Brand	Status	Holder	Number	Nice Cl.
1	HOME PLUS	Active	Protrend Co., Ltd.	77211950	20, 21
2	HOME PLUS	Active	PIC Corporation	85480244	5, 21
3	HOME PLUS H+	Active	HOME PLUS AMERICA, INC.	74484359	21
4	VIBRANT FAITH @ HOME PLUS	Active	VIBRANT FAITH MINISTRIES	85846026	9, 41, 45
5	HOMME+	Active	REVOLUTION ONE LIMITED	77444638	9, 16, 41
6	HOMEPLUS+	Active	Ace Hardware Corporation	77240515	6, 8, 21, 11
7	PET@HOME+	Active	Lo, Yue Chung	87606566	9
8	HOME STORAGE PLUS	Active	99c Only Stores	77855434	21, 22
9	ART PLUS HOME	Active	Rees, Smadar Dary	86411546	9
10	HOME SERVICE PLUS	Active	CENTERPOINT ENERGY RESOURCES CORP.	78129635	9, 35, 37, 45

In hundreds of brands the words “home” and / or “plus” appears repeatedly.

The Brands are different

	
<p>MAIN IMPORTANCE ELEMENT COLORED CIRCLE AND WORD BORO</p>	<p>MAIN IMPORTANCE ELEMENT THE HOUSE AND THE WORD HOME</p>

Is hard do believe that a consumer may be confused between the brands even if they are together in the same display.

The class and products are different

	
<p>"Flexible hoses, not of metal; Hoses of textile material; Flexible pipes, not of metal; Garden hoses; Non-metal junctions for pipes; Non-metallic flexible pipes; Rubber tubes and pipes; Watering hoses" in International Class 1</p>	<p>"lawn sprinklers, grass sprinklers, sprayer nozzles for garden hoses, hose nozzles"</p>
 	   

Is even harder to get confused when the products are no even the same, yes complementary but not competitors.

After this simple, but graphic explanation, is clear that

- 1. Consumer has no risk to confusion**
- 2. Products are not competitors**
- 3. Brands and products are totally different.**