

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: January 25, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Angel Computer Network Services, Inc.
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Serial No. 77438719
—

Thomas L. Adams of Adams Law Office
for Angel Computer Network Services, Inc.

Michelle E. Dubois, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

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Before Bucher, Grendel and Holtzman,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Angel Computer Network Services, Inc., seeks registration on the Principal
Register of the following mark:



for services recited as

retail services by direct solicitation by sales representatives to
end users of computer hardware and software, including net-
work security products, in International Class 35;

installation of computer hardware and software, in Interna-
tional Class 37;

training others to use computer hardware and software, including network security products, in International Class 41; and

design of computer systems, including network security products, using computer hardware and software designed by others; and technical support services, namely, perfecting the installation of systems using computer hardware and software designed by others by troubleshooting computer software problems arising from the joining of computer hardware and software designed by others, including network security products in International Class 42.¹

The examining attorney issued a final refusal to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The examining attorney has taken the position that applicant's mark, when used in connection with the recited services, so resembles the following mark



registered for the following goods and services:

computer programs and software recorded on magnetic media or that may be downloaded from global telecommunications networks for creating, managing and administering networks for electronic service and technical support and assistance, for

¹ Application Serial No. 77438719 was filed on April 3, 2008, based on applicant's claim of first use in commerce for the various classes of services having dates ranging from November 1999 to March 2004. The mark consists of the letter "A" surrounded by a halo, with a sunburst in the center. To the right of the letter "A" are the words "Angel Computer Network Services, Inc." with the words "Your Guiding Force in Voice and Data Technology" below. Color is not claimed as a feature of the mark.

providing electronic service and technical support and assistance, to collect information about online users and to answer questions from online users, to communicate and interact with online users and to manage communications and interactions with and questions from online users, to download, create, publish and customize information and software relating to electronic service and technical support and assistance, to automatically connect computer users with technical experts and to repair technical problems with and deliver technical assistance for computers and computer systems, to capture, collect, organize and manage enterprise knowledge and information, to automatically diagnose and detect computer technical problems, to identify and describe possible solutions and repair the problem, in International Class 9;

repair and maintenance of computer hardware, electrical appliances, furniture, musical instruments and mechanical tools, in International Class 37;

electronic message, images and data transmission, in International Class 38; and

consultation in the field of technology and product research; consultation in the field of maintenance of computer software; updating of computer software for others; computer software design for others, in International Class 42;²

as to be likely to cause confusion, to cause mistake or to deceive.

After the examining attorney made the refusal final, applicant appealed to this Board. Applicant and the examining attorney have briefed the issues in this appeal.

We reverse the refusal to register.

Arguments of applicant and the examining attorney

The examining attorney argues that the respective marks are highly similar since both employ the word “Angel” as a dominant feature; that both registrant and applicant recite services that involve the use and maintenance of computer sys-

² Registration No. 3583507 issued on March 3, 2009. No claim is made to the exclusive right to use the words “Online PC Support” apart from the mark as shown. Color is not claimed as a feature of the mark.

tems; that applicant's assertions regarding the lack of actual confusion are largely meaningless in this *ex parte* setting; and that any doubt regarding a likelihood of confusion must be resolved in favor of the prior registrant.

By contrast, in urging registrability, applicant contends that: the respective marks are different in appearance, they sound different, and create quite different commercial impressions, and that that examining attorney has improperly dissected the respective marks; that the term "Angel" is not as arbitrary for these services as the Office argues; that the examining attorney has failed in the "daunting task of trying to explain away the coexistence of 21 third-party registered 'Angel' marks in the computer field," resorting to arguments inconsistent with arguments made to find a likelihood of confusion with the cited mark; by the very wording of the recitations of services, the nature of the respective services are different and involve different trade channels; and that applicant is the senior party in the U.S., and after twelve years of usage, has no knowledge of a single instance of actual confusion with any competitor.

Likelihood of Confusion

We turn then to a consideration of the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also, In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In any likelihood of confusion analysis, however, two key, although not exclu-

sive, considerations are the similarities between the marks and the relationship between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

A. Relationship of the Services/Goods

We turn first to the *du Pont* factor focused on the relationship of the services and goods involved herein. The examining attorney correctly points out that both registrant and applicant recite services that involve the use and maintenance of computer systems. However, applicant argues that the respective services are quite different as reflected in the very wording of the recitations of services. Applicant makes the following arguments in an attempt to differentiate the involved goods and services:

Applicant:

- Applicant's services involve selling computer/network appliances and services supporting that sales service.
- Applicant's supporting services include: (a) installing purchased equipment; (b) training customers to use the goods purchased from applicant; (c) designing systems that connect the products sold by applicant to other products; and (d) troubleshooting problems arising from installing the products sold by applicant.
- Applicant does no online repair of PCs.
- Applicant is not involved in technology research or product research.
- Applicant deals with specific manufacturers and learns about the manufacturer's products from the manufacturer, not by doing research or consulting about research.
- Applicant's sales services are not online, but rather are performed by "direct solicitation by sales representatives."
- Applicant's "installation of computer hardware" is not and cannot be performed online.

Registrant:

- Registrant's International Class 9 goods are basically online, help desk software.
- Registrant's International Class 38 services involve the sending of information electronically (related to online, help desk PC support software).
- Registrant's International Classes 37 and 42 services basically concern fixing PCs, both their hardware and software.
- Although registrant's International Class 42 services of "consultation in the field of technology and product research" appears to be indefinite, in the context of registrant's International Class 9 identification of goods and the cited mark's tagline — "Permanent On-Line PC Support," registrant appears to be researching and analyzing the performance of a customer's technical products and related technology.

In part, applicant would have us limit the broad language in one class of services to comport with the narrowness of the goods or services in another class. For example, applicant would have us limit registrant's support services to being only offered online and solely in reference to PCs. However, the recitation in the registration has not been limited in that manner. We agree with the examining attorney that we have no basis in statute or practice to conclude that goods or services in one class should limit the services recited in another class. Rather, we must consider each class of registrant's goods and services independently, giving each the scope to which it is entitled under the statute. Under such an approach, certain of the respective listings of goods and services pertaining to the use and maintenance of computer systems seem inherently related.

For example, applicant's International Class 35 "retail services ... to end users of computer hardware and software" must be construed broadly inasmuch as they "include," but are not limited to, network security products. Hence, they could

also encompass the sale at retail of registrant's types of International Class 9 computer programs/software. Applicant's Class 42 services, "design of computer systems," must be read as similar to, if not overlapping with, registrant's International Class 42 "computer software design" services. Similarly, applicant's International Class 42 "technical support" services must be read as intertwined with registrant's International Class 9 "technical support" software.

Through third-party registrations and numerous third-party websites, the examining attorney has provided evidence showing that applicant's International Class 41 training in the use of computer hardware and software (again *not* limited to training in "network security products") is related to, for example, registrant's International Class 9 "technical support and assistance" software. The websites of computer repair or support services businesses demonstrate that many entities that configure, design, install and troubleshoot a computer systems network (*viz.*, applicant's International Class 37 services) generally also perform other computer services listed by registrant, such as maintenance and repair of computer hardware (registrant's relevant services in International Class 37), as well as the design and updating of computer software, and technology consulting (registrant's International Class 42). Finally, applicant's retail services and training services must also be deemed related to registrant's recited services inasmuch as computer repair companies typically offer training for others in the use of computer hardware and software. Finally, a logical precursor to the installation of computer hardware and software is the sale of such goods. Hence, this *du Pont* factor favors a finding of likelihood of confusion.

B. Channels of trade

Applicant argues at length that, in reality, it sells/supports appliances, e.g., hardware with factory-installed software dedicated to a special purpose. It contends that the involved products are made by prominent third-party manufacturers under their own well-known brand names. Much of applicant's business is referred by these third-party manufacturers, who identify applicant as a distributor and as a contractor that can design, install, support and provide training for the manufacturer's products. In many cases applicant's sales representatives will visit prospective customers to promote the goods of these third-party manufacturers and to offer applicant's design, installation, support, and training services to the customer.

In this way, applicant argues that its services are inextricably bound up with the appliances made by these manufacturers. The appliances sold by applicant are accessories to a larger system. One can enhance an existing network by buying through applicant a new firewall system, a caching device, load balancer, or storage device, but applicant is not the overall designer of the client's network. Applicant points out that it relies on sales representatives to sell its appliances, and that as a result, its ancillary services (installing equipment, equipment training, designing and troubleshooting installations) are quite different from customers merely subscribing to an online PC support service. Finally, it argues that purchasing highly-expensive equipment from applicant is a huge commitment of time and money, in contrast to an online service that can be tried and then easily replaced or dropped. By contrast to its own business model, applicant argues that registrant provides help desk services for users of PCs, individuals who are making transitory, one-off purchases from

registrant. Applicant argues that in today's marketplace, PCs have become a rather inexpensive commodity, and that PC-maintenance has become a relatively routine and inexpensive transaction. Registrant allegedly promotes its services through mass market ads, does not depend upon sales representatives, and interacts with individual consumers through on-line registration and the use of IDs and passwords.

While we understand the gist of applicant's arguments, they are not determinative on this *du Pont* factor. Under our likelihood of confusion jurisprudence, given that we find the involved goods and services to be closely related, if we presume that the goods and services in the cited registration move in all normal channels of trade and that they are available to all classes of purchasers, then we also find that there could well be an overlap in the trade channels of the respective services. *See, e.g., In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638 (TTAB 2009) ("We have no authority to read any restrictions or limitations into the registrant's description of goods."); and *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006). Hence, this related *du Pont* factor likewise favors a finding of likelihood of confusion.

C. Strength of cited mark

In addition to the cited "*angelpc* and wings design," applicant points to at least fourteen third-party registrations in the field of information technology (IT) where the marks feature prominently the term "Angel":

ANGEL

for, *inter alia*, " ... technical support services, namely, troubleshooting of learning management computer hardware and software problems; computer consultation concerning the installation, customization, maintenance and

	training in the use of learning management computer software” in International Class 42; ³
ANGEL	for “providing multiple use access to global computer information networks for the transfer and dissemination of a wide range of information” in International Class 38; ⁴
ANGEL.COM	for “providing multiple use access to global computer information networks for the transfer and dissemination of a wide range of information” in International Class 38; ⁵
Angelsoft	for, <i>inter alia</i> , “Providing communications services to others, namely, facilitating communication and collaboration between all parties in private equity investment deals by providing e-mail, online forums and private intranet” in International Class 38; “application service provider (ASP) featuring software in the field of investment analysis, collaboration, tracking and financing” in International Class 42; ⁶
ANGELLINK	for “computer programs in the field of linen usage, distribution, ordering and inventory systems management” in International Class 9; ⁷
AngelSpeech	for “application service provider for hosting speech-enabled computer software applications, namely, hosting computer software applications, namely, software in the nature of a virtual appointment manager for use by physicians and medical and dental offices and clinics” in International Class 42; ⁸
Angel Systems, Inc.	for “customized computer software used as an electronic medical record to record patient admission and discharge orders, medication orders, patient treatment, staff commu-

³ Registration No. 3028640 issued on December 13, 2005; Section 8 affidavit accepted and Section 15 affidavit acknowledged.

⁴ Registration No. 3177337 issued on November 28, 2006; Section 8 affidavit accepted and Section 15 affidavit acknowledged.

⁵ Registration No. 3169032 issued on November 7, 2006; Section 8 affidavit accepted.

⁶ Registration No. 3228603 issued on April 10, 2007.

⁷ Registration No. 2719755 issued on May 27, 2003; Section 8 affidavit accepted and Section 15 affidavit acknowledged.

⁸ Registration No. 2997094 issued on September 20, 2005; Section 8 affidavit accepted and Section 15 affidavit acknowledged.

	nication and intake and referral source statistics in the field of behavioral healthcare” in International Class 9; ⁹
ANGELFIRE	for “electronic mail services” in International Class 38; ¹⁰
ANGELFIRE	for “computer services, namely, creating and maintaining websites of others on a global computer network” in International Class 42; ¹¹
ANGEL PHOENIX	for, <i>inter alia</i> , “ ... computer hardware, computers ...” in International Class 9; ¹²
Guardian Angel Support	for “computer technology support services, namely, help desk services” in International Class 42; ¹³
ANGELWITCH	for, <i>inter alia</i> , “ ... computer hardware, computers ...” in International Class 9; ¹⁴
ROAD ANGEL	for, <i>inter alia</i> , “telecommunications services, namely, providing telecommunications connections to a global computer network ...” in International Class 38; “installation, maintenance and repair of computer software ...” in International Class 42; ¹⁵
BLAZING ANGELS	for “software and electronic games, namely, software games recorded on CD-ROM and digital video discs for computers; software games recorded on CD-ROMs, digital video discs, and cartridges for console and individual, portable gaming systems; software games that are downloadable from a remote computer site” in International Class 9; ¹⁶

⁹ Registration No. 3173251 issued on November 21, 2006; No claim is made to the exclusive right to use the words “Systems, Inc.” apart from the mark as shown.

¹⁰ Registration No. 2422857 issued on January 23, 2001; renewed.

¹¹ Registration No. 2790027 issued on December 9, 2003; Section 8 affidavit accepted and Section 15 affidavit acknowledged.

¹² Registration No. 3740226 issued on January 19, 2010.

¹³ Registration No. 3787484 issued on May 11, 2010; No claim is made to the exclusive right to use the word “Support” apart from the mark as shown.

¹⁴ Registration No. 3750022 issued on February 16, 2010.

¹⁵ Registration No. 3156131 issued on October 17, 2006; No claim is made to the exclusive right to use the word “Road” apart from the mark as shown.

¹⁶ Registration No. 3109869 issued on June 27, 2006; Section 8 affidavit accepted and Section 15 affidavit acknowledged.

Specifically, applicant points out that like the cited “*angelpc* and wing design” mark, the ANGEL mark (Reg. 3028640 above) covers technical support, troubleshooting of problems, maintenance and training, in the field of learning management software and hardware, and that ANGEL and ANGEL.COM (Reg. Nos. 3177337 and 3169032) concern multiple-use access to a global network in order to communicate a wide range of information.

In much the same way as we might use a dictionary entry, given more than a dozen registrations in the IT field featuring prominently the term “Angel,” we agree with applicant that this term in this context is suggestive of a rather routine commercial idea of being supportive (“be an angel and help me do this”). Even though the federal trademark register does not now have the twenty-two registrations in the IT field with marks having an “Angel” formative as was the case several years ago, we find that the term “Angel” is fairly dilute in the IT field such that the relevant purchasers are able to distinguish among those Angel-formative marks based upon small distinctions in the marks. This conclusion supports our giving the cited mark a narrower scope of protection than if we were to adopt the position of the Trademark Examining Attorney that the word “angel” is arbitrary in this field because it necessarily connotes spiritual beings.

D. The Similarity of the Marks

We turn next to a consideration of the marks. In determining the similarity or dissimilarity of marks, we must consider the marks in their entirety in terms of sound, appearance, meaning and commercial impression. *See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005).

While marks must be compared in their entireties, one feature of a mark may have more significance than another, and in such a case there is nothing improper in giving greater weight to the dominant feature. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In this context, the examining attorney argues that the respective marks are highly similar since both employ the word “Angel” as a dominant feature. She argues that the slogans and taglines are in much smaller letters, and that descriptive, generic and/or disclaimed matter is typically less significant in relation to other wording when comparing marks.

The examining attorney also contends that it is the common term “Angel” in both marks, rather than either design, that is entitled to greater weight, reasoning that the word “Angel” is more likely than the designs to be impressed upon purchaser’s memories and also that the word would be used by purchasers in calling for the goods and/or services. By contrast, applicant argues that the examining attorney has hewn much too closely to imposing a verboten *per se* rule that literal elements dominate over design features within composite marks.

Relative importance of design features

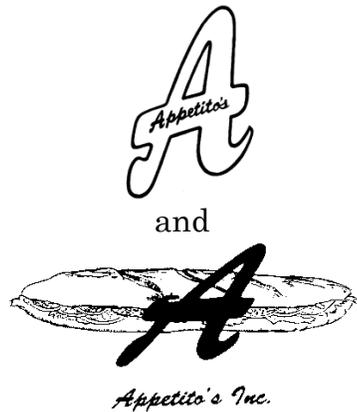
Applicant and the Trademark Examining Attorney disagree over whether the designs or the literal elements dominate in each of these composite marks. The examining attorney cites to cases such as *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); and *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 1729 (TTAB 1976). By contrast to any putative rule derived from *Amoco Oil Co.*, applicant points out that

our primary reviewing Court, the Court of Appeals for the Federal Circuit, has cautioned that “[t]here is no general rule as to whether letters or designs will dominate in composite marks; nor is the dominance of letters or design dispositive of the issue.” *In re Electrolyte Laboratories Inc.*, 929 F.2d 645, 647, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990).

In re Appetito Provisions Co is frequently cited for the principle that if a mark comprises both a word and a design, the word is generally accorded greater weight because it would be used by purchasers to request the goods or services. In the *Appetito* case, the Board found that the mark at right having the word APPETITO in block letters, prominently displayed between broad geometric stripes, as applied to Italian sausages, was likely to cause confusion with the word “Appetito’s” printed in small script letters across a large capitalized letter “A,” as well as with the term “Appetito’s Inc.,” below a large capitalized letter “A” and the design of a sandwich, both for restaurant services. However, unlike the instant case, in *Appetito* the conflicting marks had identical literal elements (A APPETITO) and an absence of any large, arbitrary imagery.

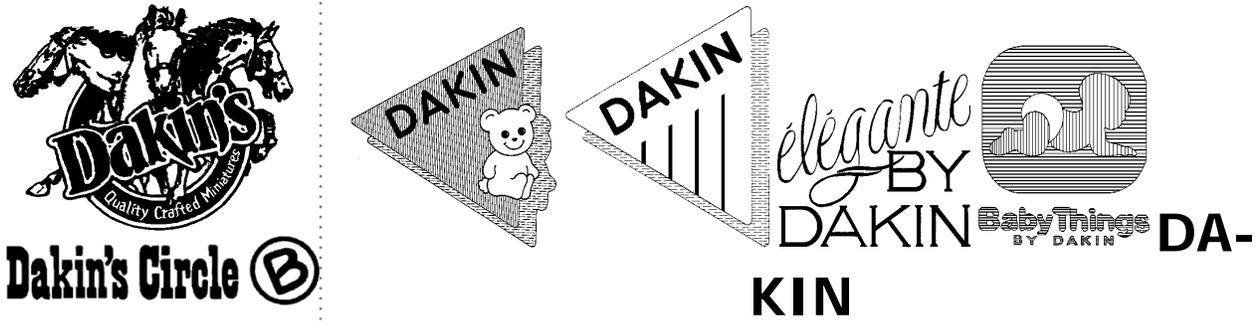


versus



The Trademark Examining Attorney also cites to *Dakin's Miniatures*, where the Board held that the presence of various design elements in the respective marks did not dispel likelihood of confusion because it is the nearly identical literal por-

tions that consumers will remember and use to call for both registrant's plush toys and applicant's figurines.



Applicant's marks

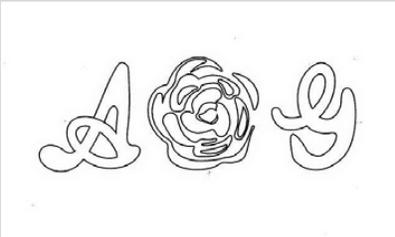
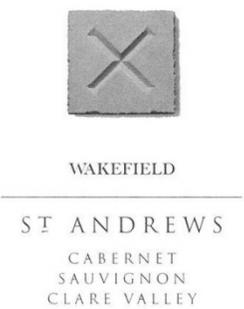
Registrant's marks

However, again the conflicting marks had dominant, arbitrary and nearly identical literal elements in the word DAKIN.

In the case at bar, registrant's mark features a large, heavy wings design, followed by the much smaller designation, "angelpc." Undoubtedly, the tagline "Permanent Online PC Support" has minimal source-distinguishing capabilities. In terms of appearance, it is the design element, rather than the words, that dominates registrant's mark. The wings design is much larger than the term "angelpc," and it is by far the most visually significant part of the mark. Accordingly, we disagree with the Trademark Examining Attorney that the word "Angel," drawn from the larger designation *angelpc*, is the dominant part of registrant's mark, or even that the *angelpc* designation is entitled to more weight than the wings design portion of registrant's mark.

Beyond precedential cases, the examining attorney has referred us to the following non-precedential Board cases from the past several years, purportedly to

demonstrate the relative unimportance of design features in determining likelihood of confusion:

<i>Case</i>	<i>Applicant's mark</i>	<i>Registrant's mark(s)</i>
<i>In re Allene Rose Gallagher</i> (TTAB March 9, 2007)		
<i>In re Guesthouse International, L.L.C.</i> (TTAB June 28, 2010)		
<i>In re Taylor Wines Pty Ltd.</i> (TTAB November 20, 2008)		
<i>In re Int'l Communication Services</i> (TTAB, Feb. 12, 2012)		DIRECTO IDEAS TEL-CEL DIRECTO DE TELCEL DIRECTO IDEAS
<i>In re Evolve Fitness</i> (TTAB June 18, 2009)		
<i>In re Saguaro Productions Inc.</i> (TTAB, January 13, 2012)		SAGUARO ROAD RECORDS

However, while many of these composite marks include incidental design features, we conclude that the common literal elements (e.g., “AG,” “S^T ANDREWS,” “Evolve,”

“Boomerang,” “SAGUARO” and “Directo”) appear to be strong, dominant features within the pairs of conflicting marks.

Accordingly, we find that registrant’s wings design is a dominant portion of its composite mark. To a lesser degree, applicant’s large letter “A” surrounded by a halo having a sunburst in its center is also a prominent portion of applicant’s mark that further distinguishes these respective marks.

The cited mark includes the term “angelpc,” while the term “Angel” is conceptually and commercially weak in this field.

As seen above, applicant has submitted 14 third-party registrations where it can be seen that the term “Angel” is used suggestively in the IT field. When comparing marks in their entireties, less weight should be placed on suggestive portions of the marks. *See Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694 (CCPA 1976). From these registrations, we conclude that the word “angel” alone may well engender several different possible interpretations in the context of IT goods and services. However, to the extent that the wings design is at all reminiscent of a pair of angel’s wings, it conveys the meaning of a celestial being with an attendant narrowing of the possible commercial impression of registrant’s mark among the multiplicity of third-party “Angel marks.”

As to sound, it is true that the marks include the two phonetically identical syllables, *ān-jəl*, and to that extent, the two marks contain similar sounds. However, the most prominent word portion of registrant’s mark is “angelpc,” not just “angel.” Presumably, potential consumers would articulate the registered mark as “Angel PC.” *Contra In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261 (TTAB 2011)

[where marks were found to be similar in appearance, to be identical in pronunciation, and the only element of the registered marks that could be articulated was the identical letter string, “HB”].



Hence, we find that when these respective marks are considered in their entireties, the differences in the marks in appearance, sound, meaning and commercial impression far outweigh the points of similarity. It is true that the literal portions of the composite marks in the present case consist, in part, of a common identifiable and pronounceable word. On the other hand, the mere fact that both marks contain the word “Angel” within them is not a sufficient basis for us to conclude that the marks are similar. We agree with applicant that when compared in their entireties, these two marks engender sufficiently different commercial impressions to tilt the balance toward no likelihood of confusion. See *Kellogg Co. v. Pack’em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991). The examining attorney argues that *Kellogg Co. v. Pack'em* can be



distinguished because that case involved “a common term that was non-distinctive.” However, we have found that in light of the third-party registrations with composite marks having prominent “angel” formatives, the common element is suggestive, and hence does not fall on either extreme on the continuum of distinctiveness. Hence, this critical *du Pont* factor favors a finding of no likelihood of confusion.

E. Conclusion:

Notwithstanding any arguable relatedness of the services, we find that in view of the dissimilarities between the marks combined with the relative weakness of the designation “Angel” for IT goods and services, even purchasers exercising only ordinary care in the purchase of these goods and services would be able to readily distinguish the two marks.

Decision: The refusal to register under Section 2(d) of the Trademark Act is hereby reversed.