

**This Opinion is Not a
Precedent of the TTAB**

Mailed: October 15, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re CreditPal, LLC
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Serial No. 77900983
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Erik M. Pelton of Erik M. Pelton & Associates PLLC,
for CreditPal, LLC.

Sanjeev K. Vohra, Trademark Examining Attorney, Law Office 110,
Chris A.F. Pedersen, Managing Attorney.

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Before Zervas, Kuczma and Masiello,
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

CreditPal, LLC (“Applicant”) filed an application to register the mark **CreditPal**
(in standard characters) on the Principal Register for:

Advisory services relating to credit and debit control,
investment, grants and financing of loans; Consumer
credit consultation in International Class 36.¹

¹ Application Serial No. 77900983 was filed on December 25, 2009, alleging dates of first use anywhere and first use in commerce since at least as early as February 13, 2004.

The Trademark Examining Attorney issued a final refusal to register the mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), citing the following Registration as a bar to registration:

Registration No.: 4137344²

Mark:  (non-standard character mark)

For: Computer software for credit, finance and insurance evaluation and analysis; software downloadable from the Internet for credit, finance and insurance evaluation and analysis; downloadable electronic publications, namely, reports in the field of credit, finance and insurance evaluation and analysis in International Class 9, and

Advertising services provided via the Internet; accountancy; data processing for credit, finance and insurance evaluation and analysis; provision of business information for credit, finance and insurance evaluation and analysis; providing sales leads for credit insurance industries; systemization of data into computer databases for credit, finance and insurance evaluation and analysis in International Class 35.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

² Registration No. 4137344 issued on May 8, 2012, based on a request for extension of protection pursuant to § 66(a) of the Trademark Act filed on July 28, 2009, seeking an extension of protection of International Registration No. 1035811 issued on July 28, 2009. The Registration includes the following description of the mark: “[t]he mark consists of the term ‘CREDITPAL’ with ‘CREDIT’ appearing in blue and ‘PAL’ appearing in orange next to the design of an orange check mark appearing on a grey rectangle with a folded corner. The color white in the mark appears for background purposes only and is not claimed as a feature of the mark.”

I. Likelihood of Confusion

Our determination under § 2(d) is based on an analysis of all 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 Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). Not all of the *duPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered. *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). Therefore, we focus our analysis on those factors for which we have evidence or that have been argued by Applicant and the Examining Attorney: similarity of the marks, similarity of the goods and services, the channels of trade and sophistication of the customers. *Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1241, 73 USPQ2d 1350, 1353 (Fed. Cir. 2004).

A. Similarity of the Marks

In any likelihood of confusion determination, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *du Pont*, 177 USPQ at 567; *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *also see In re 1st USA Realty Professionals, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007) (similarity in sound alone may be sufficient for

finding likelihood of confusion) citing *Krim-Ko Corp. v. The Coca-Cola Bottling Co. of New York*, 390 F.2d 728, 732, 156 USPQ 523, 526 (CCPA 1968).

Applicant's mark and the cited mark contain the identical single term "creditpal"; however, registrant's mark also includes a checkmark design. When a mark consists of a word portion and a design portion, the word portion generally may be the dominant and most significant feature of a mark because consumers will request the goods and/or services using the wording. See *In re Viterra*, 101 USPQ2d at 1908; *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1247 (TTAB 2010). For this reason, greater weight is often given to the word portion of marks when determining whether marks are confusingly similar. *Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999)).

Here, the word portions of the marks are identical in appearance, sound, and meaning. The design portion of the cited mark does not alter the meaning or commercial impression of the term "creditpal" nor does the absence of the design element from Applicant's mark obviate the similarity of the marks. See *In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993).

Indeed, Applicant does not contest the similarity of the marks arguing instead that the shared term "creditpal" is weak, diluted and entitled only to a narrow scope of protection.³ In support of this argument, Applicant relies on the definition of the word "credit" and numerous third-party registrations for various marks containing

³ Applicant's *Ex Parte* Appeal Brief at pp. 9-11, 7 TTABVUE 14-16.

the word “pal” for a wide variety of software goods as well as internet and/or on-line services, to show that the terms “credit” and “pal” are weak terms that are highly descriptive of the goods and services offered in connection with the cited mark. Applicant concludes that because this evidence shows the conceptual weakness of the term “credit” and the commercial weakness of the term “pal,” the cited mark which is formed from the combined terms is necessarily so weak that its scope of protection does not extend to Applicant’s mark.⁴

We note that weakness of a cited mark weighs against a finding of likelihood of confusion. *Jacobs v. International Multifoods*, 668 F.2d 1234, 212 USPQ 641, 642 (CCPA 1982); *Steve’s Ice Cream v. Steve’s Famous Hot Dogs*, 3 USPQ2d 1477 (TTAB 1987); *In re Central Soya Co., Inc.*, 220 USPQ 914 (TTAB 1984). However, as correctly noted by the Examining Attorney, the determinative issue here is not whether the individual terms “credit” and “pal” are weak, but whether the entirety of the term “creditpal” in the cited mark is weak. Evidence of weakness or dilution consisting solely of third-party registrations, such as those submitted by Applicant in this case to show the weakness of the word “pal,” is generally entitled to little weight in determining the strength of a mark, because such registrations do not establish that the registered marks identified therein are in *actual use* in the marketplace or that consumers are accustomed to seeing them. *See AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (CCPA 1973); *In re Davey Products Pty Ltd.*, 92 USPQ2d 1198, 1204 (TTAB 2009); *In re*

⁴ Applicant’s *Ex Parte* Appeal Brief at p. 11, 7 TTABVUE 16.

Thor Tech, Inc., 90 USPQ2d 1634, 1639 (TTAB 2009). Moreover, none of the marks in the third-party registrations submitted by Applicant comprise the term “creditpal.”

Even if we assume that the combined term “creditpal” is weak, “likelihood of confusion is to be avoided, as much between ‘weak’ marks as between ‘strong’ marks, or as between a ‘weak’ and ‘strong’ mark.” *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974). Given the identity of the literal portions of both marks and the absence of any evidence showing that the combined term “creditpal” is weak or diluted, we accord the cited mark an ordinary scope of protection in our likelihood of confusion analysis. Moreover, while third-party registrations may be used to demonstrate that a portion of a mark is suggestive or descriptive, they “cannot justify the registration of another confusingly similar mark.” *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987), quoting *Plus Products v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983).

B. Similarity of Goods and Services

Applicant contends that there is no relationship between Applicant’s advisory services and the computer software goods and advertising services in the cited registration other than all being broadly related to consumer credit.⁵ While conceding that its advisory services and the cited registrant’s software goods and advertising services fall under the same general product category of finance,

⁵ Applicant’s *Ex Parte* Appeal Brief at p. 12, 7 TTABVUE 17.

Applicant argues that “they operate in separate niches.”⁶ Applicant further argues that “when two products are part of distinct sectors of a broad product category, they can be sufficiently unrelated such that customers are not likely to assume the products originate from the same mark,” citing to, *Checkpoint Systems Inc. v. Check Point Software Technologies, Inc.*, 269 F.3d 270, 288, 60 USPQ2d 1609, 1620 (3d Cir. 2001); *Information Resources Inc. v. X*Press Information Services*, 6 USPQ2d 1034 (TTAB 1988) (no likelihood of confusion from simultaneous use of XPRESS on information software and X*PRESS for the transmission of information to computers); and further observes that “[t]o demonstrate that goods are related, it is not sufficient that a particular term may be found which may broadly describe the goods,” citing *In re W.W. Henry Co., L.P.*, 82 USPQ2d 1213 (TTAB 2007) (citing *General Electric Co. v. Graham Magnetics Inc.*, 197 USPQ 690 (TTAB 1977); and *Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517 (TTAB 1975)).⁷

In considering the similarity of the goods and services, the issue is not likelihood of confusion between the particular goods and services, but the likelihood of confusion as to the source or sponsorship of those goods and services. *In re Majestic Distilling*, 65 USPQ2d at 1205; *In re Shell Oil Co.*, 26 USPQ2d at 1689. Additionally, the greater the degree of similarity between the applied-for mark and the registered mark, as is the case here with the dominant and identical term “creditpal” comprising the literal portion of both of the marks, the lesser the degree of similarity between the services of the respective parties that is required to

⁶ Applicant’s *Ex Parte* Appeal Brief at p. 12, 7 TTABVUE 17.

⁷ Applicant’s *Ex Parte* Appeal Brief at pp. 11-12, 7 TTABVUE 16-17.

support a finding of likelihood of confusion. *In re Davey Products*, 92 USPQ2d at 1202; *In re Thor Tech*, 90 USPQ2d at 1636.

The services in the cited registration include: “provision of business information for credit, finance and insurance evaluation and analysis” while Applicant’s services include: “advisory services relating to credit and debit control, investment, grants and financing of loans.” The Examining Attorney maintains that the services identified in the cited registration cover a relatively broad swath of territory in the field of finance, which could be viewed as overlapping with Applicant’s advisory and consumer credit consultation services.⁸ Applicant agrees that “both the applicant’s and registrant’s services pertain to the provision of information and/or advice pertaining to credit and finance issues.” However, Applicant maintains that the field of finance is vast and the Examining Attorney has merely found a particular term, “finance,” which broadly describes the relevant goods and services.⁹ Attempting to distinguish the goods and services, Applicant characterizes the goods and services in the cited registration as computer software goods and online advertising and analytics services, ignoring the broader and more relevant language in the cited registration that recites providing business information regarding credit and finance matters.¹⁰

To support the relatedness of the services, the Examining Attorney submitted copies of numerous third-party registrations which individually cover, under the

⁸ Examining Attorney’s Appeal Brief, 9 TTABVUE 8.

⁹ Applicant’s *Ex Parte* Appeal Brief at p. 12, 7 TTABVUE 12.

¹⁰ Applicant’s *Ex Parte* Appeal Brief at p. 11-12, 7 TTABVUE 16-17 and Request for Reconsideration at pp. 7-8, 4 TTABVUE 18-19.

same mark, some of the services in the cited registration and in Applicant's application. "Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source" under a single mark. *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff'd*, 864 F.2d 149 (Fed. Cir. 1988). *See also In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Davey Products*, 92 USPQ2d at 1203. The vast majority of the registrations submitted by the Examining Attorney recite registrant's "accountancy services" as well as services that are equivalent to Applicant's "advisory services relating to . . . investment, grants and financing of loans." Many also include financial advice services that encompass Applicant's advisory services relating to credit and loan financing. For ease of review, the registrations which each recite accounting/accountancy services are grouped below according to the advisory services recited therein:

Financial consulting and investment advisory services

2799157

3316382

3330420/4078223¹¹

3464585

3536411

3613921

4019153

¹¹ Registrations owned by same owner.

4078223
4083703
4123986
4255031
4340189

Financial planning and investment advisory services

3585836
4312321

Financial advisory and consultancy services, financial planning and investment advisory services:

3641004
3894336
4154981
4284947
4295127

Investment advisory services

3049537/3348058¹²
3309687
3424365
3868362
4016607
4157539/4157540¹³
4210871

Providing consulting services in the field of investment advisory services

2724123

Consultancy of capital investment services

3910649

These numerous third-party, use-based registrations show that the services are closely related.

A further comparison of Applicant's advisory services relating to credit and loan financing with registrant's provision of business information for credit and finance

¹² Owners of these Registrations appear to be related.

¹³ Registrations are owned by the same owner.

evaluation and analysis also shows they are closely related. “Advisory” is defined by Applicant’s dictionary evidence to mean “having the power or right to make suggestions about what should be done.”¹⁴ Based on this definition, the scope of Applicant’s “advisory services” necessarily implies that the person providing the “suggestions” is imparting information to the recipient relating to credit and debit control, investment, grants and financing of loans. In other words, Applicant’s services, like registrant’s services, involve *providing information* regarding credit and financing. Applicant’s dictionary evidence further indicates that “advisory” is also a noun defined as “a report that *gives information* or a warning about something” (emphasis added).¹⁵ This definition reinforces our finding that Applicant’s “advisory services” are related to providing information relating to credit and financing of loans. Thus, the services in the subject application and the cited registration are closely related.

C. Channels of Trade

Because there are no limitations as to trade channels or classes of purchasers in the description of services in either the application or the cited registration, we must presume that the respective services travel through all usual trade channels for such services and to all classes of prospective purchasers for those services. *See Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76,

¹⁴ Request for Reconsideration, Exhibit C, at p. 135.

¹⁵ Request for Reconsideration, Exhibit C, at p. 135.

77-78 (CCPA 1973); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) and *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

As discussed above, the services are closely related. Applicant's argument that its services are distinct from those in the cited registration because its services are "restricted to consumers" while those in the latter are directed to "businesses,"¹⁶ ignores the plain language in its description of services. Only Applicant's "consumer credit consultation services" are arguably¹⁷ restricted to consumers; its "advisory services relating to credit and debit control, investment, grants and financing of loans" have no restriction and thus are presumed to be offered to all classes of prospective purchasers for those services.

Applicant contends that "the goods and services in the cited registration are for sophisticated consumers conducting their own credit, finance, and insurance evaluation and analysis. Likewise, Applicant's advisory services cater to consumers who are evaluating their financial means and planning their financial futures."¹⁸ Applicant's contention recognizes that the purchasers of the respective services have the same purpose, namely, financial evaluation and planning. Thus, the purchasers for Applicant's and registrant's services necessarily overlap as we must presume that Applicant's unrestricted advisory services are offered to all classes of prospective purchasers looking for financial evaluation and planning services. In

¹⁶ Applicant's *Ex Parte* Reply Brief at p. 4, 11 TTABVUE 6.

¹⁷ We see no reason why consultation in the field of consumer credit cannot be rendered to commercial lenders and businesses as well as to individual borrowers.

¹⁸ Applicant's *Ex Parte* Appeal Brief at p. 14, 7 TTABVUE 19. Applicant's reference to "consumers" in this argument appears to be referring broadly to the prospective purchasers of the respective services rather than to a specific type of purchaser.

view of the relatedness of the services, the lack of trade channel restrictions in connection with Applicant's advisory services, and the overlap of potential customers, this factor weighs against Applicant.


D. Sophistication of Purchasers

The fourth *duPont* factor considers “[t]he conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.” *duPont*, 177 USPQ at 567. Applicant contends that the relevant consumers are sophisticated and likely to be very careful in selecting a source of the respective goods and services.¹⁹ There is no evidence that the consumers of Applicant's services are sophisticated and, based on its recitation of services, its customers may include “consumers,” a term which could include members of the general public. Applicant did not introduce any evidence regarding the degree of care exercised by its customers in selecting an advisor. However, even assuming that Applicant's and registrant's services may involve a careful purchase after exercising due diligence, it is settled that the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion, especially in cases such as the instant one involving highly similar marks and related services. *See, e.g., Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d. 1317, 1325, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014); *Top Tobacco LP v. North Atlantic Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011).

¹⁹ Applicant's *Ex Parte* Appeal Brief at p. 14, 7 TTABVUE 19.

E. Conclusion

We have carefully considered all of the evidence made of record pertaining to the issue of likelihood of confusion, as well as all of the arguments related thereto, including any evidence and arguments not specifically discussed in this opinion. To the extent that any other *du Pont* factors for which no evidence or argument were presented may nonetheless be applicable, we treat them as neutral.

Based on the identity of the literal portions of the marks and the highly related services, we conclude that the Office has met its burden of demonstrating that purchasers familiar with registrant's accountancy services and provision of business information for credit, finance and insurance evaluation and analysis rendered under the mark CreditPal would be likely to mistakenly believe, upon encountering Applicant's mark "CreditPal" for advisory services relating to credit and debit control, investment, grants and financing of loans, that the services originate from or are associated with or sponsored by the same entity.

Decision: The refusal to register Applicant's mark **CreditPal** is affirmed.