

This Opinion is Not a  
Precedent of the TTAB

Mailed: February 15, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re CARWIZ International d.o.o.*  
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Serial Nos. 79261503, 79261504  
(consolidated)  
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Daniel P. Burke and Georgia Damoulakis of Daniel P. Burke & Associates, PLLC,  
for CARWIZ International d.o.o.

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Before Heasley, Thurmon and Allard, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

CARWIZ International d.o.o. (“Applicant”) filed two Requests for Extension of Protection, pursuant to Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), of international registrations for the standard character mark CARWIZ and the mark



**CARWIZ**

on the Principal Register, each identifying the following services:<sup>1</sup>

<sup>1</sup> Application Serial No. 79261504, for the standard character mark CARWIZ, filed March 20, 2019, based on International Registration No. 1387354, with a priority claim date of September 19, 2017 pursuant to Section 67 of the Trademark Act, 15 U.S.C. § 1141g.

Application Serial No. 79261503, for the mark  **CARWIZ**, filed March 20, 2019, based on

Transportation services for passengers by road, especially transport of travellers by car, hired car; vehicle rental; chauffeur driven vehicle hire services; chauffeur services; rental of private vehicles; rental of vehicle roof racks; rental of automobile trailers, in International Class 39.




Registration was finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding a likelihood of confusion based on the registered marks shown below, which are owned by the same entity, and registered on the Principal Register.

Mark	Registration No.	Pertinent Services
WIZZ	6585636	Airline transportation services; transport of passengers; transport of goods; coordinating travel arrangements for travelers; travel agency services, namely, making reservations and bookings for transportation; airline transport; airline check-in services, namely, priority boarding, check-in, seating and reservation services for frequent air travelers; booking of air tickets for travel; booking of travel tickets in the nature of airline bookings; airline ticket services, namely, online transportation reservation and travel ticket reservation services; booking of airport parking; airport services, namely, booking and arranging of access to airport lounges; car parking; car parking valet services; vehicle parking and storage; car rental; rental of car parking spaces; providing

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International Registration No. 1386717, with a priority claim date of September 19, 2017 pursuant to Section 67 of the Trademark Act, 15 U.S.C. § 1141g.

We consolidate the appeals and decide them in a single opinion because they involve common issues of law and fact with similar records. *See In re Anderson*, 101 USPQ2d 1912, 1915 (TTAB 2012) (Board sua sponte consolidated two appeals). All record references are to Serial No. 79261503, unless otherwise noted.

		information relating to car rental services, in International Class 39 <sup>2</sup>
	6044872	same as above <sup>3</sup>
	6044873	same as above <sup>4</sup>
	6039631	same as above <sup>5</sup>

Applicant appealed and requested reconsideration, which was denied. The appeal is fully briefed. We affirm the refusal to register.

**I. Likelihood of Confusion – Applicable Law**

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203

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<sup>2</sup> Registration No. 6585636, registered December 14, 2021.

<sup>3</sup> Registration No. 6044872, registered May 5, 2020. The mark is described as follows: “The mark consists of the term ‘WIZZ’ in stylized lettering with a circle design beneath the letter ‘I’ in the mark.” Color is not claimed as a feature of the mark.

<sup>4</sup> Registration No. 6044873, registered May 5, 2020. The mark is described as follows: “The mark consists of the term ‘WIZZ’ in stylized lettering with a circle design beneath the letter ‘I’ having the bottom half of the wording outlined in blue and the top half of the wording outlined in magenta. The color white is used to indicate background or transparent portions and is not part of the mark.” The colors blue and magenta are claimed as features of the mark.

<sup>5</sup> Registration No. 6039631, registered April 28, 2020. The mark is described as follows: “The mark consists of the term ‘WIZZ’ in stylized lettering with a circle design beneath the letter ‘I’ having the letters ‘W’ and the first ‘Z’ colored purple and having the ‘I’ and the second letter ‘Z’ colored magenta.” The colors purple and magenta are claimed as features of the mark.

(Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence or argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Shell Oil Co.*, 26 USPQ2d at 1688 (“the various evidentiary factors may play more or less weighty roles in any particular determination”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *see also In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper 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.”). These factors, and others, are discussed below.

We affirm the Section 2(d) refusal based solely on the registration for the standard character WIZZ mark, because that mark is most similar to Applicant’s marks. We do not reach, therefore, the question of whether a likelihood of confusion exists as between the other cited marks and Applicant’s marks. *See e.g., In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

## **II. Likelihood of Confusion - Analysis**

### **A. Similarity of the Marks**

To evaluate the similarity of the marks, we consider the marks in their entireties as to appearance, sound, connotation and commercial impression. *See, e.g., Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (citing *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d, 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516 (Fed. Cir. 2019). *Accord, Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

“The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression

such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally “retains a general rather than a specific impression of marks.” *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1630 (TTAB 2018).

### 1. Applicant’s CARWIZ mark

The cited mark WIZZ is similar to Applicant’s CARWIZ mark because the marks share the same dominant element, the term “Wiz”. This term, with an added “z”, constitutes the entire cited mark.<sup>6</sup> Applicant’s CARWIZ mark combines the words “car” and “wiz” for car rental and related services. The word “car” is descriptive of the services and less likely to be relied upon as a source indicator, leaving the “wiz” portion of Applicant’s mark dominant. *See, e.g., In re Denisi*, 225 USPQ 624, 624 (TTAB 1985) (“Thus, if the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences.”); *see also Palm Bay*, 73 USPQ2d at 1692; *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (less distinctive elements of a mark are “less significant in creating the mark’s commercial impression”). So, the dominant, and distinctive, part of each mark is the

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<sup>6</sup> The double “z” at the end of the cited WIZZ mark does not alter our analysis. While this difference in spelling is visible, it is unlikely to alter consumers’ recollection of the mark. And it makes no difference in the sound or meaning of the mark. It is somewhat similar to the minimal effect of adding an “s” to make a plural version of a singular term, and we have found this difference is often insignificant to the similarity of the marks analysis. *See, e.g., Swiss Grill Ltd., v. Wolf Steel Ltd.*, 115 USPQ2d 2001, 2011 n.17 (TTAB 2015) (“it is obvious that the virtually identical marks [the singular and plural of SWISS GRILL] are confusingly similar”); *Weider Publ’ns, LLC v. D & D Beauty Care Co.*, 109 USPQ2d 1347, 1355 (TTAB 2014) (finding the singular and plural forms of SHAPE to be essentially the same mark).

same. Consumers will notice that fact and it increases the likelihood of confusion. We further note that our focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). The shared “wiz” element of each mark makes the marks similar in appearance and sound.

The marks also have similar meanings. Applicant argues that the “wiz” element has a different meaning in the two marks.

The letters WIZ in Applicant’s C CARWIZ (& design) mark give the impression of someone who is an expert, e.g. “wizard”, in the field of cars since the mark includes the word CAR. On the other hand, the connotation and commercial impression of WIZZ in Registrant’s WIZZ marks give the impression of an object moving quickly or making a whizzing sound, particularly when taken into consideration with all of Registrant’s services, including airline transportation services, and especially since Registrant’s company name is Wizz Air and its website is wizzair.com.<sup>7</sup>

We do not find this argument persuasive. Indeed, the fact that Registrant uses the mark or name Wizz Air in reference to its air travel services, is further evidence of the similarity of the marks. If Registrant uses the WIZZ mark and also uses the variation WIZZ AIR for its air travel services, consumers familiar with these uses are likely to see Applicant’s CARWIZ mark as a similar extension, particularly given that the CARWIZ mark is used in connection with automobile travel services. The practices that Applicant argues reduce the risk of confusion—Registrant’s use of the marks WIZZ and WIZZ AIR—actually increase that risk.

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<sup>7</sup> 6 TTABVUE 17.

Applicant provided nothing other than argument to support the proposition that these marks have different meanings. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005); *Martahus v. Video Duplication Servs. Inc.*, 3 F.3d 417, 27 USPQ2d 1846, 1849 (Fed. Cir. 1993) (“[M]ere attorney arguments unsubstantiated by record evidence are suspect at best.”). Given that the services overlap in part, as we explain below, it is unlikely consumers will attribute different meanings to an essentially identical element in the two marks. *See In re Embiid*, 2021 USPQ2d 577, at \*21 (TTAB 2021) (no evidence the same word meant one thing with applicant’s goods and something else with a registrant’s goods). We find the marks have very similar meanings.


There is some evidence of the way the marks are used, as Applicant submitted screenshots of a website it attributes to the owner of the cited marks.<sup>8</sup> This evidence shows the marks are used together on a travel website that offers air travel and car rental services. Applicant argues this evidence shows the marks coexist in the market, and we will address that argument below. But this evidence is also relevant to our comparison of the marks, because it shows both marks are used in a similar way and likely create very similar commercial impressions from such uses. This evidence corroborates our finding that the marks are similar.

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<sup>8</sup> Request for Reconsideration dated May 5, 2023, at 27-72.



2. Applicant's  mark

Much of our analysis from above is equally applicable here, though this mark has a design element. The design element, however, consists of a very common shape (i.e., a circle) with a letter “C” in a stylized font. This element precedes the literal CARWIZ element of the mark and is likely to be noticed by consumers. But the letter “C” does not add any new meaning to the mark, as it is the first letter of the literal element of the mark. This design element, therefore, will not alter consumers’ likely recollection of the mark, and for that reason, this mark is also visually similar to the cited WIZZ mark. In addition, when this mark is used to ask for the services, only the literal CARWIZ part of the mark will be used. The marks, therefore, remain similar in appearance, sound, meaning and commercial impression. Applicant's  mark is slightly less similar to the cited mark, but there remains more than enough similarity to support a finding of confusing similarity.

To summarize, we have considered the marks as a whole, and we find them similar. This similarity increases the likelihood of confusion.

**B. Similarity of the Goods and Services and Trade Channels**

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 [or services] 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.

*Octocom Sys.*, 16 USPQ2d at 1787; *see also In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *Stone Lion Cap. Partners, L.P.*, 110 USPQ2d at 1162; *Shenzhen IVPS Tech. Co. Ltd. v. Fancy Pants Prods., LLC*, 2022 USPQ2d 1035, at \*44 (TTAB 2022). When we conduct this analysis in this appeal, we find the services overlap in part.

Applicant identifies the same services in both Applications, so we need conduct only one analysis of the similarity of the services and trade channels. The Applications identify a variety of car rental or hire services, including “vehicle rental” and “rental of private vehicles.” The cited Registration identifies air and vehicle travel services, including “car rental” and “providing information relating to car rental services.” The only difference here is that Applicant used “vehicle rental” in its identification, while the cited Registration used “car rental” in its identification. There is no effective difference between these services.

The Registration identifies several air travel services, in addition to the “car rental” services, but that is not the point. If any of the goods or services are identical, that fact greatly increases the likelihood of confusion as to those services. A likelihood of confusion as to any of the goods or services within a class is sufficient to support a Section 2(d) refusal. *Tuxedo Monopoly, Inc. v. General Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014).

With respect to similarity of the established trade channels through which the services reach customers, we presume identical services move in the same channels

of trade and are available to the same classes of customers for such services—here, members of the general public who rent cars. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (“[I]t is well established that, absent restrictions in the application and registration, [identical] goods and services are presumed to travel in the same channels of trade to the same class of purchasers.”) (internal quotation marks and citation omitted); *L. & J.G. Stickley, Inc. v. Cosser*, 81 USPQ2d 1956, 1971 (TTAB 2007) (“Because the goods of both parties are at least overlapping, we must presume that the purchasers and channels of trade would at least overlap.”). As discussed above, the Applications and cited Registration identify identical services, in part, and therefore this presumption applies.

The evidence Applicant submitted confirms that the trade channels overlap. This evidence shows a website Applicant attributes to the owner of the cited marks.<sup>9</sup> The website appears to offer car rental services under both the cited WIZZ mark and under Applicant’s CARWIZ marks. The same trade channel (a single website) is used to offer services under both marks. The trade channels overlap, as shown by the evidence and the presumption explained above, and this fact increases the likelihood of confusion.

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<sup>9</sup> Request for Reconsideration dated May 5, 2023, at 27-72. All the website screenshots show one of the cited marks and several also show Applicant’s mark. A screenshot showing both in close proximity is provided below. *See* text accompanying n.24, *infra*.

### **C. The Nature and Number of Similar Marks in Use on Similar Services**

If properly made of record, third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015). *See also Jack Wolfskin*, 797 F.2d 1363, 116 USPQ2d 1129, 1136; *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976) (even if “there is no evidence of actual use” of “third-party registrations,” such registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used”). “[E]vidence of third-party registrations is relevant to ‘show the sense in which . . . a mark is used in ordinary parlance.’” *In re Guild Mortg. Co.*, 2020 USPQ2d 10279, at \*3 (TTAB 2020).

Applicant submitted evidence of three Registrations and six Internet uses of “Wiz” or variants as part of marks for services allegedly similar to those identified in the cited Registration. While there is no specific number of third-party uses required to show conceptual weakness of a mark, nine is not a particularly large number of third-party uses. By way of comparison, in *Juice Generation*, there were at least twenty-six relevant third-party uses or registrations of record, 115 USPQ2d at 1672 n. 1, and in *Jack Wolfskin*, there were at least fourteen, 116 USPQ2d at 1136 n.2. So, even if all Applicant’s third-party evidence is probative, it may not be enough to materially

reduce the conceptual strength of “wiz” as an element of marks for these types of services.

And the similarity of the services is an important requirement. To be relevant, a third-party registration must identify services that are the same as or similar to those identified in the Applications and cited Registration. *See Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1694 (Fed. Cir. 2018) (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus “on goods shown to be similar”); *In re i.am.symbolic*, 123 USPQ2d at 1751 (disregarding third-party registrations for other types of goods where the proffering party had neither proven nor explained that they were related to the goods in the cited registration).

In *Omaha Steaks*, the Federal Circuit explained the importance of limiting the scope of the inquiry into third-party marks. *Omaha Steaks*, 128 USPQ2d at 1693-94. The parties in *Omaha Steaks* identified “meat” as their goods, but the third-party evidence included other foods, like popcorn and wine. *Id.* at 1694. Because the identified goods were limited to meat, the court held it was error to consider other registrations for other types of food. *Id.*

The most probative third-party uses, therefore, would identify car or vehicle rental services, as those are the services found in both the Applications and cited Registration. The Registration identifies many other travel-related services, and for that reason, third-party evidence showing overlap with other services found in the

Registrations are also probative, but will have an indirect impact on consumer perception of the term “wiz” when used with car rental services.

Applicant presented Internet evidence of the following third-party uses of “wiz” or variants as marks for car rental services.

- Wizz Car Hire<sup>10</sup>
- Wizz Rental Car<sup>11</sup>
- Whiz Car Rental<sup>12</sup>
- Whiz Rental Car<sup>13</sup>
- Wizz Cars<sup>14</sup>
- GWIZZ Auto Group<sup>15</sup>

While each of these Internet uses show the term “wiz” or a variant used in connection with car rental services, most of the evidence shows European rental services. Applicant argues this evidence is relevant because the websites are available in the United States and persons in the United States may secure rental cars for use in Europe using these websites.<sup>16</sup> While Applicant makes an interesting point, car rental services involve actually obtaining and using the rented car, and if the cars are all in Europe, then the car rental services are provided in Europe, not in

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<sup>10</sup> Request for Reconsideration dated May 5, 2023, at 73-76.

<sup>11</sup> *Id.* at 77-79.

<sup>12</sup> *Id.* at 80-96.

<sup>13</sup> *Id.* at 97-104.

<sup>14</sup> *Id.* 105-14.

<sup>15</sup> *Id.* at 115-22.

<sup>16</sup> 6 TTABVUE 10.

the United States. None of the European car rental services shown in Applicant's evidence appear to be offered in the United States.

Four of the six third-parties identified by Applicant appear to rent cars only in Europe, and for that reason are of limited relevance here. We note, as did Applicant, that the websites are available in the United States and may be used from the United States. Such practices result in some exposure of relevant U.S. consumers to these third-party uses. We will accord some weight to this evidence, but considerably less than we would if the car rental services were provided in the United States.

We further note that two of these four appear to be a single third-party user. Whiz Car Rentals appears to be the party behind the third and fourth uses listed above. The first batch of evidence concerning this use is difficult to understand, as it shows screenshots from travel websites with statements like "Whiz Car Rentals in North Bergen."<sup>17</sup> There is no clear indication, within this part of the evidence, of who operates the "Whiz Car Rentals." But closer examination reveals use of the following "Whiz" mark, and this mark is found in the evidence for both the third and fourth uses listed above.

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<sup>17</sup> *Id.* at 90.



We find the same mark used in the “Whiz Rental Car” section of Applicant’s evidence, as shown below:



This evidence shows that Applicant identified only five distinct third-party Internet uses. Of those five, only two appear to offer car rental services in the United States: Wizz Rental Car (showing cars available in Nashville, TN and Austin, TX)

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<sup>18</sup> *Id.* at 93.

<sup>19</sup> *Id.* at 98.



and GWIZZ AUTO GROUP (two locations in New York).<sup>20</sup> The GWIZZ AUTO GROUP appears to be primarily a car repair business that also rents cars.<sup>21</sup> This evidence is probative, but is not enough to show that the word “wiz” is weak when used in the United States in connection with car rental services.

Applicant identified three registrations for marks that include “wiz” or a variant and that identify travel-related services. One mark, PARKWHIZ, is for “parking space reservation services,” which are not car rental services, but are one of the services identified in the cited Registration. While relevant, this use is much less likely to affect consumers’ perceptions of the word “wiz” in the context of car rental services. Another of the three registrations is for the mark TRAVEL-WIZZ for “On-line retail store services featuring travel related goods” in International Class 35. While the cited Registration has services in International Class 35, we have relied only on the International Class 39 services in the Registration, and for that reason, this third-party evidence is not probative.

That leaves only the registration of the mark WHIZZRIDE for “Providing a website featuring information regarding transportation services and bookings for transportation services.” This third-party use is probative, because the mark is similar and the services are similar. But it is only one registration.

We find Applicant has submitted probative evidence of three third-party uses of “wiz” or variants with marks used with the same or similar services. These are

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<sup>20</sup> *Id.* at 77, 115.

<sup>21</sup> *Id.* at 118-19.

probative uses, but this evidence is simply too little to materially reduce the conceptual strength of the cited WIZZ marks.

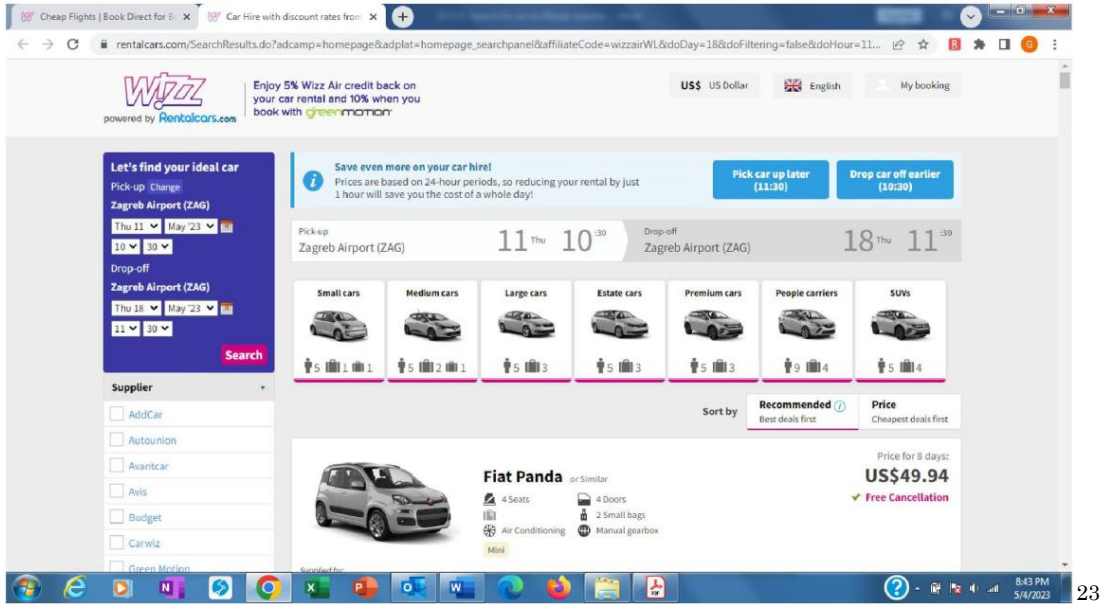
Finally, we note that this is an appeal and the Applicant cannot present a collateral attack on the cited Registrations. Those marks were registered without a showing of acquired distinctiveness and therefore, we must presume the marks are inherently distinctive. 15 U.S.C. § 1057(b) (registration is “prima facie evidence of the validity of the registered mark”); *In re Fiesta Palms, LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007) (when mark is registered on the Principal Register, “we must assume that it is at least suggestive”). *See also In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997). After giving careful consideration to Applicant’s evidence and arguments, we find the sixth *DuPont* factor is neutral.

#### **D. Other Considerations**

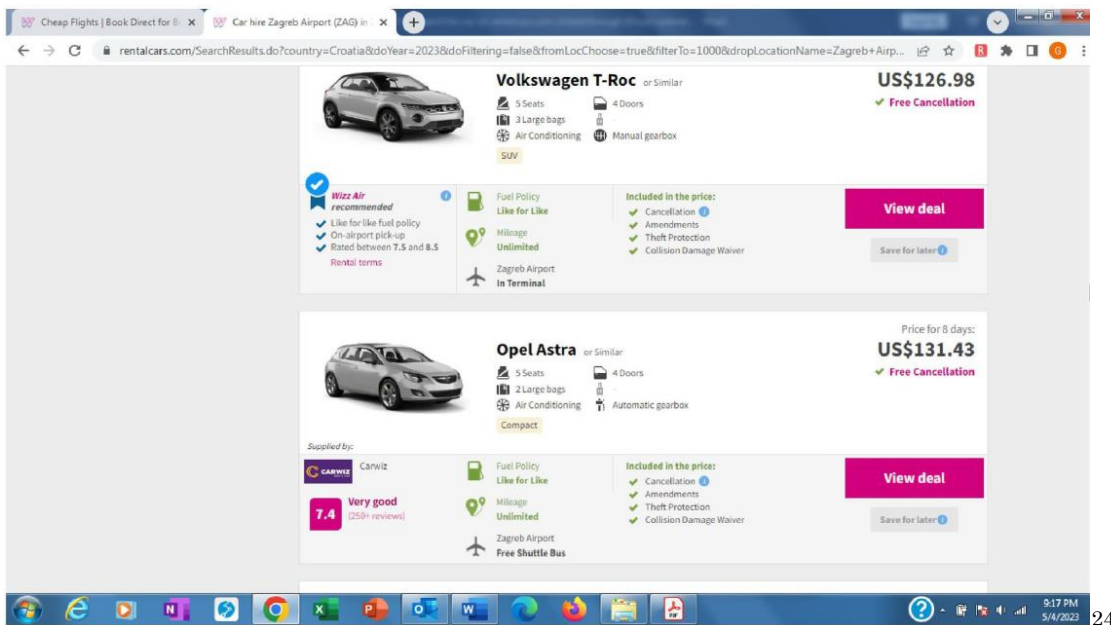
Applicant makes much of the fact that the owner of the cited Registrations operates a website for European travel that presents both the cited marks and Applicant’s CARWIZ marks.<sup>22</sup> Samples of this evidence are provided below.

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<sup>22</sup> 6 TTABVUE 14-15.



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This evidence shows use of both the cited marks and Applicant's mark on the same website and in close proximity. The image immediately above is particularly telling, as it shows a Wizz Air recommended rental car directly above an entry showing

<sup>23</sup> Request for Reconsideration dated May 5, 2023, at 33.

<sup>24</sup> *Id.* at 45.

Applicant's CARWIZ marks. As we noted above, this evidence confirms that the services use the same trade channels, at least in Europe. But does this evidence show that confusion is not likely?

No, Applicant's arguments prove too much. If Applicant wanted to submit evidence in the form of a consent agreement with the owner of the cited marks that explains why confusion is not likely and includes specific restrictions intended by the parties to ensure confusion does not occur in the future, such evidence might support Applicant's arguments under the tenth *DuPont* factor, which addresses "[t]he market interface between applicant and the owner of a prior mark." *DuPont*, 177 USPQ at 567; *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1967 (2016). But on the record before us, we cannot say what impact the concurrent uses of these marks is likely to have on consumers in the United States. Importantly, this evidence appears to come from a European website that offers and renders services in Europe.<sup>25</sup> That further reduces the probative value of this evidence.

We find Applicant's evidence of concurrent use of these marks is not persuasive. There are too many questions concerning the evidence and what it means. Having given all of Applicant's evidence and arguments on this point full consideration, we find this evidence fails to make confusion more or less likely.

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<sup>25</sup> Applicant is shown as a Croatian business, while Registrant is listed as a Hungarian business. It is not surprising, therefore, that evidence of uses of these marks comes primarily from Europe. But to be relevant in this appeal, the evidence must show something about how U.S. consumers perceive the marks.

**E. Conclusion – Weighing the *DuPont* Factors**

Our evaluation of the *DuPont* factors supports the refusal to register. The marks, when considered as a whole, are similar. The services are legally identical in part and the trade channels overlap. These three factors weigh very heavily in favor of confusion in the likelihood of confusion analysis here. Applicant's third-party evidence was insufficient to reduce the conceptual strength of the cited WIZZ mark. No *DuPont* factors support Applicant. Confusion is likely. 15 U.S.C. § 1052(d).

**Decision:** The Section 2(d) refusal to register Applicant's marks in connection with its Class 39 services is affirmed as to both Applications.