

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: April 10, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Robert David Moose

Serial No. 86930700

Robert David Moose, pro se.

Jay K. Flowers, Trademark Examining Attorney, Law Office 112,
Renee Servance, Managing Attorney.

Before Wolfson, Heasley, and Larkin,
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Robert David Moose (“Applicant”) seeks registration on the Principal Register of the mark depicted below:



for

Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring important political figures; Information relating

to entertainment and education provided on-line from a computer database or the internet; Providing biographical information of individuals via the Internet for educational purposes; Providing a web site featuring information on historic figures; Providing an Internet news portal featuring links to news stories and articles in the field of current events; Providing an Internet website portal featuring entertainment news and information specifically in the field of politics and current events

in International Class 41.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(a), 15 U.S.C. § 1052(a), on the ground that the term REAGAN in the mark "points uniquely and unmistakably to Ronald Wilson Reagan and his name is currently protected from use by anyone not associated or licensed by The Ronald Reagan Presidential Foundation and Institute." February 20, 2018 Office Action, TSDR 1.² The Examining Attorney also refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the mark RONALD REAGAN (in standard characters) for, inter alia, "Educational services, namely, arranging and conducting seminars and educational programs and

¹ Application Serial No. 86930700, filed March 7, 2016, based on Applicant's allegation of use of the mark in commerce pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming November 3, 2013 as both the date of first use and the date of first use in commerce. The description of the mark reads: "The mark consists of a stylized 3-dimensional representation of the two words 'Reagan' and 'World.' The two words are in an arch, with 'Reagan' on the left and 'World' on the right. There is an uppercase 'R' in 'Reagan' and an uppercase 'W' in 'World'. All other letters are lowercase. The face of all letters has an olive green color. The three dimensional parts of the letters are going to the back and have shading consisting of light blue and dark blue. Here and there are thin strips of white representing slight reflections of light." The colors olive green, dark blue, light blue, and white are claimed as features of the mark

² The TTABVUE and Trademark Status and Document Retrieval ("TSDR") citations refer to the docket and electronic file database for the involved application.

providing webcasts in the fields of history, civics, education, and government” in International Class 41.³ February 20, 2018 Office Action, TSDR 1. The registration is owned by The Ronald Reagan Presidential Foundation and Institute.

When the Examining Attorney made the refusal under Section 2(a) final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration, requested and obtained a suspension of the appeal and remand of the application, and then issued the second refusal under Section 2(d). When the Examining Attorney made the Section 2(d) refusal final and maintained the Section 2(a) refusal, this appeal resumed. We affirm the refusal to register on both grounds.⁴

I. False Suggestion of a Connection

Section 2(a) of the Trademark Act provides, in relevant part:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature

³ Registration No. 5167497, issued on March 21, 2017. The mark is also registered for goods and services in classes 6, 9, 14, 16, 18, 21, 25, 28, 35, 36 and 43, and for the following additional Class 41 services: “Arranging and conducting of concerts; Entertainment, namely, live music concerts; Library and museum services; Special event coordination and consultation services for social entertainment purposes.”

⁴ Applicant did not argue against the Section 2(d) refusal in his brief. Because arguments for and against registrability often shift or narrow during the course of examination, all issues on appeal must be raised and argued in an applicant’s opening brief. As the Examining Attorney bears the burden of proof, we have carefully reviewed the application file and have considered all of the evidence in the record, but we will not sift through the file in an attempt to divine which additional issues or arguments applicant might have made on appeal, but did not include in its brief. *Cf. Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1753 (TTAB 2013) (“Insofar as petitioner has not argued the descriptive or geographically descriptive claims in its brief, we find, in accordance with the Board’s usual practice, that those claims have been waived.”); *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1588 n.1 (TTAB 2011).

unless it —

- (a) Consists of or comprises ...matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols,

The language of the statute is clear. If a mark for which registration has been applied suggests a connection with any living or deceased person where none exists, the mark is unregistrable. Applicant's argument that Section 2(a) "has absolutely no realistic relevance to this exclusively internet-based trademark request," 7 TTABVUE 6, is misguided. It is irrelevant whether the medium used to convey the false messaging, in this case the internet, existed at the time the Trademark Act was written. The critical inquiry is whether an applicant's mark creates a false suggestion of a connection with a person, living or dead, howsoever the false suggestion is conveyed. Applicant's further argument that no one would believe that Ronald Reagan himself had "sanctioned, approved, or was endorsing or influencing the information" provided on Applicant's website, 7 TTABVUE 14, is also misplaced. "While protection of consumers is one of the bases of [Section 2(a)], another is protection of the person identified from losing the right to control his or her identity."

In re ADCO Indus.-Techs., L.P., 2020 USPQ2d 53786, *3 (TTAB 2020) (citing *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co., Inc.*, 703 F.2d 1372, 217 USPQ 505, 509 (Fed. Cir. 1983), aff'g 213 USPQ 594 (TTAB 1982)). Accordingly, even if there were no likelihood of confusion stemming from Applicant's use of the surname REAGAN, Applicant's use of a mark that falsely suggests a connection with Ronald

Reagan violates his rights of privacy and publicity.⁵ The word “connection” in this context means “association,” and where, as here, the applied-for mark suggests such an association, the mark is prohibited from registration under Section 2(a). Because there is a successor to President Reagan’s legacy, namely, the Foundation, the rights to exploit his “persona” are protected under Section 2(a). *See, e.g., Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1384 (TTAB 1991) (finding that after death of Ladislao Jose Biro, his estate and heirs had standing to pursue claim under Section 2(a) against application for the mark BIRO); *cf. In re MC MC S.r.l.*, 88 USPQ2d 1378, 1380 (TTAB 2008) (finding no estate vested with rights to control use of deceased opera singer Maria Callas’ name or persona and reversing refusal to register MARIA CALLAS for jewelry).

“For over twenty years, and following our principal reviewing court’s decision in [*Univ. of Notre Dame du Lac*], the Board has utilized a four-part test to determine whether a false suggestion of a connection under Trademark Act Section 2(a) has been established.” *Id.* at 1379. To establish a claim of false suggestion of a connection under Section 2(a), the Examining Attorney must prove:

- (1) that Applicant’s mark is, or is a close approximation of, Ronald Reagan’s name or identity, as previously used by him or identified with him;
- (2) that Applicant’s mark would be recognized as such by consumers of Applicant’s services, in that it points

⁵ As succinctly stated by the Board, “The right of publicity has developed to protect the commercial interest of celebrities in their identities. Under this right, the celebrity has an interest that may be protected from the unauthorized commercial exploitation of that identity. If the celebrity’s identity is commercially exploited without the consent of the celebrity, there has been an invasion of his/her right....” *In re Nieves & Nieves LLC*, 113 USPQ2d 1639, 1644 (TTAB 2015) cited in *ADCO Indus.*, 2020 USPQ2d 53786, *3-4.

uniquely and unmistakably to Ronald Reagan;

(3) that Ronald Reagan is not connected with the services that are sold or will be sold by Applicant under its mark; and

(4) that Ronald Reagan's name or identity is of sufficient fame or reputation that when used by Applicant as a mark for its services, a connection with Ronald Reagan would be presumed.

In re ADCO Indus.-Techs., 2020 USPQ2d 53786, *3; see also *In re Pedersen*, 109 USPQ2d 1185, 1188-89 (TTAB 2013); *In re Jackson Int'l Trading Co.*, 103 USPQ2d 1417, 1419 (TTAB 2012).⁶

A. Close Approximation

Applicant's mark closely approximates the surname of the 40th president of the United States, Ronald Reagan. Applicant's mark is made up of two words, the first of which is the surname "REAGAN," which is defined in Merriam-Webster's as the biographical name of the former president:

The image shows a screenshot of a Merriam-Webster dictionary entry for the word "REAGAN". The word is displayed in a large, bold, serif font. Below it, the definition is given in a smaller, italicized font: "biographical name Rea·gan \rā-gən\".

Definition of REAGAN

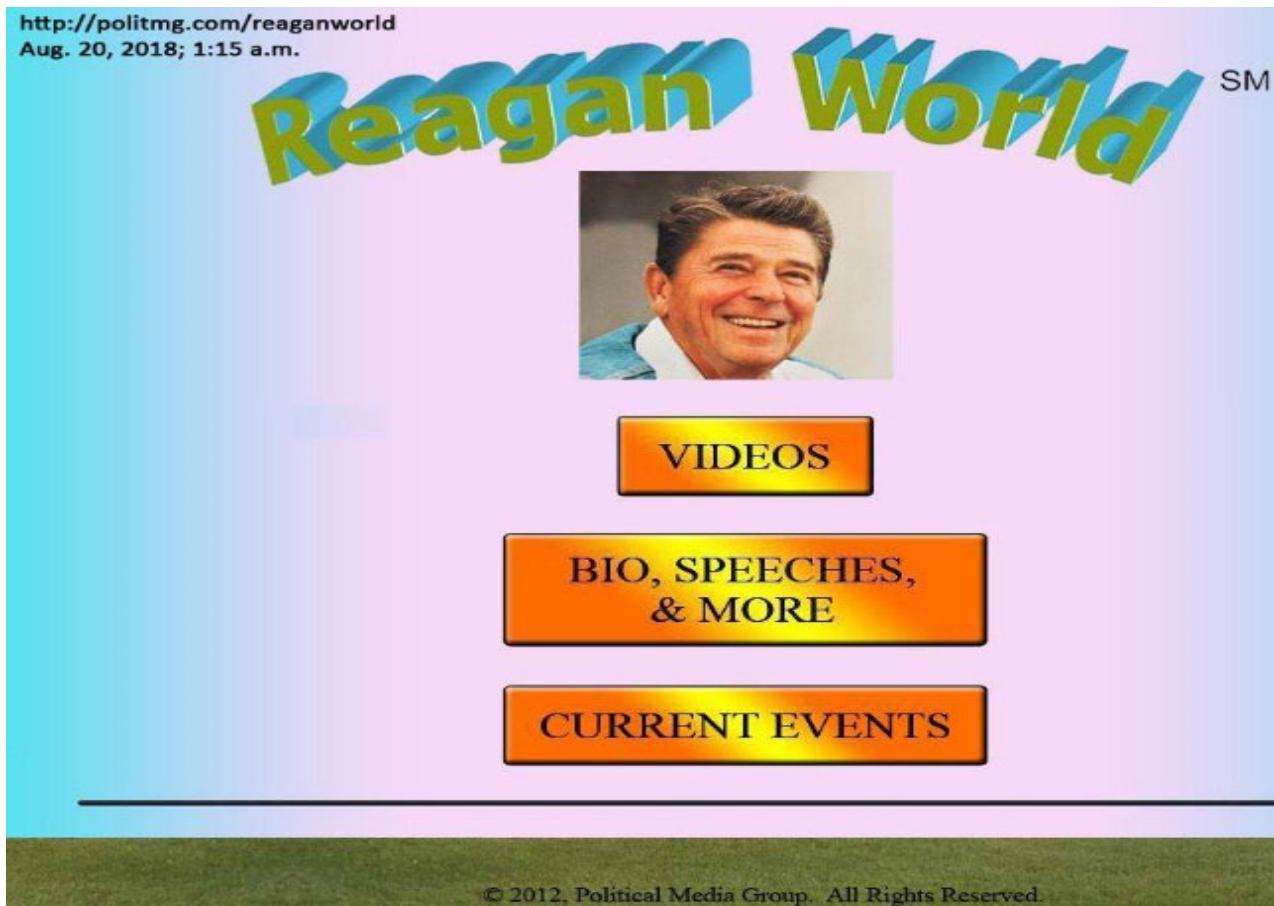
Ronald Wilson 1911–2004 American actor and politician; 40th president of the U.S. (1981–89)

⁶ "The right of publicity has developed to protect the commercial interest of celebrities in their identities." *In re Nieves & Nieves LLC*, 113 USPQ2d 1639, 1644 (TTAB 2015) cited in *ADCO Indus.*, 2020 USPQ2d 53786, *3-4.

January 18, 2017 Office Action, TSDR 2.

Although “dictionary definitions can be enough to demonstrate that an applied-for mark identifies a particular person or institution,” *In re Pedersen*, 109 USPQ2d at 1189-90, material obtained from an applicant’s website is acceptable as competent evidence to show the probable impression the mark will make on relevant consumers. See *In re N.V. Organon*, 79 USPQ2d 1639, 1642-43 (TTAB 2006) (finding admissible printouts from the applicant’s website to show that it touts the taste of its product); *In re Promo Ink*, 78 USPQ2d 1301, 1302-03 (TTAB 2006) (finding printouts of the applicant’s website properly of record even where application filed pursuant to Section 1(b)).

It is clear from Applicant’s specimen, a page from its website, that Applicant’s use of “Reagan” in his mark is intended to identify the former President.



The photograph of President Reagan directly under Applicant's mark underscores the meaning of the mark and its commercial impression as pertaining to the former president. The second word, "WORLD," considered in relation to the recited services, simply adds to the meaning of the mark that it is about the life and times of Ronald Reagan. As Applicant put it, "The exact use of the two combined words 'REAGAN WORLD' definitely implies a lighter reference to President Reagan." TTABVUE 20. The first part of the test is satisfied.

B. Points Uniquely and Unmistakably

There is no doubt that the "Reagan" to which Applicant's mark refers is the former U.S. president, Ronald Reagan. That is clear from the specimen Applicant attached

as evidence of its use of the mark (shown above). Applicant does not dispute that the mark points uniquely and unmistakably to President Reagan. The second part of the test is satisfied.

C. No Connection

The Examining Attorney has demonstrated that the “name REAGAN is currently protected and all rights of publicity ‘in the name, image, likeness, voice and signature of the late Ronald Wilson Reagan’ are owned by The Ronald Reagan Presidential Foundation and Institute.” *See* Reagan Publicity License attached to January 18, 2017 Office Action, TSDR 9-12. Applicant confirmed that there is no connection between himself and The Ronald Reagan Presidential Foundation and Institute. August 20, 2018 Response Office Action, TSDR 19 (“[T]he applicant does not have permission or an executed licensing agreement from The Ronald Reagan Presidential Foundation and Institute to use the REAGAN name in connection with its services, which directly relate to subject matters involving President Ronald Reagan.”).

Part three of the test is satisfied.

D. Fame

Under part four of the “false suggestion” test, the person to whom the mark refers must be so famous or of such repute that relevant consumers of the applicant’s services would presume that the applicant had a connection with that person. Applicant does not contest that former president Ronald Reagan has such a reputation, even though he died nearly 14 years ago. As noted above, the dictionary definition provided for “Reagan” by Webster’s solely identified the former president.

In addition, the Examining Attorney submitted a copy of the results of a Google search he conducted using the search term “Reagan.” The results prominently display information about Reagan as “the number one hit of over 93,000,000 possible results,” as shown below. 22 TTABVUE 11.

The screenshot shows a Google search results page for the query "Reagan". The search was performed on 01/18/2017 at 11:21:00 AM. The results are filtered by "All". The top result is a link to "Ronald Reagan - Wikipedia" with the URL https://en.wikipedia.org/wiki/Ronald_Reagan. The snippet describes Ronald Wilson Reagan as an American politician and actor who was the 40th President of the United States from 1981 to 1989. Below this are links for the "Reagan administration" (beginning January 20, 1981) and an "Attempted assassination" (involving John Hinckley Jr. and James Brady). To the right of the search results is a collage of several photographs of Ronald Reagan, labeled "Ronald Reagan" and "40th U.S. President".

Office Action dated January 18, 2017, TSDR at 13-15.

In addition to this first Google entry shown above, nine truncated search result “hits” are included. All but two of the excerpts refer to Ronald Reagan’s presidency; one refers to domain name registration services and the other to the airport that was named for President Reagan. The Google search results have some probative value because they show the context in which the term is used on the listed web pages. *See TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 710.01(b) (Oct. 2018).*

Accordingly, the evidence demonstrates that Ronald Reagan’s persona, reflected in the name REAGAN, is sufficiently famous that users of Applicant’s website would presume an association with the entity responsible for protecting that persona. The

Ronald Reagan Presidential Foundation and Institute. Part four of the test is satisfied.

E. Conclusion – False Suggestion of a Connection

The term REAGAN in Applicant’s mark points uniquely and unmistakably to Ronald Reagan. Consumers of Applicant’s services would presume, due to Reagan’s continuing fame even 14 years after his death, that Applicant was connected to the entity that inherited Reagan’s rights. Because there is no such connection, the mark falsely suggests a connection where none exists. The mark is thus unregistrable under Section 2(a).

II. Likelihood of Confusion

Our determination under Section 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) (“*DuPont*”); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). “[E]ach 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) (internal citations removed).

A. Similarity of the Marks

The first *DuPont* factor requires examination of “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). “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.” *In re i.am.symbolic*, 866 F.3d 1315, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017) (quoting *Coach Servs.*, 101 USPQ2d at 1721 (internal quotation marks omitted)).

Applicant’s mark is  . The cited mark is RONALD REAGAN.

Our comparison of the marks is determined based on the marks in their entireties. See, e.g., *Jack Wolfskin Ausrüstung Fur Draussen GmbH KGAA v. New Millenium Sports, S.L.U.*, 707 F.3d 1363, 116 USPQ2d 1129, 1134 (Fed. Cir. 2015) (The “touchstone of this factor is consideration of the marks in total”). Nonetheless, “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of

trademarks. *Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1430 (TTAB 2013); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012). In this case, because both Applicant and the Registrant provide information about historic political figures, the average purchaser is an ordinary consumer interested in civics, government, politics or history.

It is not improper to focus on the term REAGAN in Applicant’s mark because it is the first term in the mark. See *Presto Prods. Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”); see also, *Palm Bay Imps. Inc.*, 73 USPQ2d 1692; *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). Moreover, it is this term that modifies “world,” and defines the nature of the information provided by Applicant over his website. The term is clearly a surname; it is also clearly a reference to Ronald Reagan, the 40th president of the United States, as demonstrated above. Registrant’s mark is RONALD REAGAN, the former president’s first and last name. Because both marks refer to the same person by name, they are similar in sight, sound, connotation and overall commercial impression. The addition of the term “World” in Applicant’s mark does not differentiate the two marks; rather, it serves to reinforce the impression that the educational services provided by Applicant involve facts concerning Reagan’s life and the times and world in which he lived. Although the design features of Applicant’s mark distinguish it somewhat from the cited mark in appearance, because the cited mark is in standard character format, it may be used

in any color or font style, including one similar to Applicant's. *See In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1187 (TTAB 2018) (considering variations of a standard character mark with regard to font style, size, and color). In short, notwithstanding the design components of Applicant's mark, which distinguish it somewhat visually from the registered mark, we find the sight, sound, connotation, and overall commercial impression of the two marks, considered in their entireties, to be highly similar.

The first *DuPont* factor strongly favors a finding of likelihood of confusion.

B. Relatedness of the Services

In deciding whether the services in Applicant's application and Registrant's cited registration are related, we must look to the services as they have been identified, "regardless of what the record may reveal" as to their particular nature, the channels through which they reach consumers, or the particular classes of consumers to whom they are directed. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *see also In re i.am.symbolic*, 123 USPQ2d at 1749 ("In reviewing the second factor, 'we consider the applicant's goods as set forth in its application, and the [registrant's] goods as set forth in its registration.'") (quoting *M2 Software v. M2 Communs., Inc.*, 78 USPQ2d at 1947).

The services as identified in the application and cited registration are in-part legally identical. That is, Registrant's educational services of "arranging and conducting seminars and educational programs and providing webcasts in the fields of history, civics, education, and government" encompass Applicant's narrower services of providing a website "featuring important political figures," "biographical

information of individuals” and “information on historic figures.” This overlap is sufficient for a finding that the services are related. We need not find any other services in Applicant’s application to be related to those in the cited registration. *See In re Wacker Neuson SE*, 97 USPQ2d 1408, 1409 (TTAB 2010) (“It is sufficient if likelihood of confusion is established for any item encompassed by the identification of goods in the application.”) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981)).

The second *DuPont* factor favors a finding of likelihood of confusion.

C. Similarity of Trade Channels and Classes of Purchasers

The third *DuPont* factor considers “[t]he similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. It is well established that in the absence of restrictions in the application and registration, legally identical services are presumed to travel in the same channels of trade to the same class of purchasers. *In re i.am.symbolic*, 123 USPQ2d at 1750; *see also In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (“The third *DuPont* factor -- like the second factor -- must be evaluated with an eye toward the channels specified in the application and registration, not those as they exist in the real world.”) Here, neither the application nor the cited registration contains any restrictions on the channels of trade or classes of customers. As a result, the legally identical services are presumed to travel in the same channels of trade and be offered to the same or overlapping classes of purchasers. *See, e.g., In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (“[I]t is well established that, ‘absent restrictions in the application and registration, goods and services are presumed to

travel in the same channels of trade to the same class of purchasers.”) (citing *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)).

The third *DuPont* factor weighs in favor of finding a likelihood of confusion.

D. Applicant’s Prior Registrations

The thirteenth *DuPont* factor examines “any other established fact probative of the effect of use.” *DuPont*, 177 USPQ at 567. Typically, cases involving prior registrations under the thirteenth factor determine whether substantially similar marks should be allowed to co-exist because of an applicant’s prior registration of a similar mark. See, e.g., *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d 1790 (TTAB 2017) (finding mark USA WARRIORS ICE HOCKEY NONE TOUGHER and design likely to cause confusion with USA HOCKEY and design despite applicant’s prior registration of USA WARRIORS ICE HOCKEY NONE TOUGHER and design); *In re Strategic Partners, Inc.* , 102 USPQ2d 1397 (TTAB 2012) (finding that similarity between applicant’s prior registration of the mark ANYWEARS and its applied-for mark ANYWEAR (stylized) prevents likelihood of confusion with third-party cited mark ANYWEAR BY JOSIE NATORI and design). However, the thirteenth factor is intended to accommodate “the need for flexibility in assessing each unique set of facts.” *Strategic Partners*, 102 USPQ2d at 1399. Here, we address prior registrations that share only structural similarities with the subject mark, in that they each identify a former president by his surname and combine it with the term “WORLD,” but do not contain the name REAGAN.

Applicant argues that he holds registrations for the marks KENNEDY WORLD,⁷ NIXON WORLD,⁸ and JOHNSON WORLD;⁹ that these registrations also combine a former president's name with the term "WORLD"; are for the same recitation of services as the subject application; and depict the marks in the same color and font scheme as the subject mark. Therefore, Applicant reasons, he should be allowed to register REAGAN WORLD. In his August 20, 2018 Response, Applicant included informal copies of the registration certificates, which fail to show the current status and title of the registrations. *See TRADEMARK BOARD MANUAL OF PROCEDURE (TBMP) § 1208.02 (June 2019)* (for registrations that are not the subject of the appeal, a copy from either the electronic records of the USPTO or the paper USPTO record must be submitted). However, because the Examining Attorney did not object to the registrations and discussed them in his brief, we have considered Applicant's arguments under the thirteenth *DuPont* factor.¹⁰

We agree with the Examining Attorney that Applicant is not entitled to register the mark REAGAN WORLD simply on the basis of his ownership of registrations for marks referring to other United States Presidents. As the Examining Attorney notes, "Trademark rights are not static, and eligibility for registration must be determined

⁷ Registration No. 4551512, issued June 17, 2014.

⁸ Registration No. 4551513, issued June 17, 2014.

⁹ Registration No. 4551516, issued June 17, 2014.

¹⁰ We do not, however, consider Applicant's arguments with respect to two purportedly registered third-party marks containing the term "Reagan." *See* Applicant's Brief, 7 TTABVUE 18. Applicant did not properly introduce these registrations and the Examining Attorney did not discuss them in his brief.

on the basis of the facts and evidence of record that exist at the time registration is sought.” Examining Attorney’s Brief, 22 TTABVUE 13. Each case must be decided on its own facts, bearing in mind that the USPTO “is required to examine all trademark applications for compliance with each and every eligibility requirement . . . even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect.” *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (finding that prior registration of CHURRASCOS as a standard character mark did not preclude a finding that CHURRASCOS in stylized form was generic). The Board is not bound to reverse a refusal to register a mark in a pending application if that mark violates a statutory requirement simply because the mark shares some characteristics with marks in another registration issued for the same goods or services. While we recognize that consistency is highly desirable, “consistency in examination is not itself a substantive rule of trademark law, and a desire for consistency with the decisions of prior examining attorneys must yield to proper determinations under the Trademark Act and rules.” *In re Am. Furniture Warehouse CO*, 126 USPQ2d 1400, 1407 (TTAB 2018); *see also In re Cordua Rests.*, 118 USPQ2d at 1635. The USPTO must assess each mark on its own facts and record. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

The thirteenth *DuPont* factor is neutral.

E. Conclusion – Likelihood of Confusion

We have considered all of the arguments and evidence of record and all relevant *DuPont* factors. We find that the marks at issue are highly similar and that Applicant’s website content and Registrant’s website content are legally identical in

part and would move in the same or overlapping trade channels and be offered to the same class of purchasers. As such, we conclude that Applicant's stylized mark REAGAN WORLD, as used in connection with its entertainment and educational services, so resembles the cited mark RONALD REAGAN for legally identical services as to be likely to cause confusion or mistake, or to deceive, under Section 2(d) of the Trademark Act.

Decision: The refusals to register Applicant's mark *Reagan World* under Sections 2(a) and 2(d) of the Trademark Act are affirmed.