

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: February 9, 2018

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**

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*In re Spartan Detective Agency, Inc.*

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Serial No. 87172299

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Mark P. Stone of the Law Office of Mark P. Stone,  
for Spartan Detective Agency, Inc.

Jessica Hilliard, Trademark Examining Attorney, Law Office 120,  
David Miller, Managing Attorney.

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Before Adlin, Hightower and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Spartan Detective Agency, Inc. (“Applicant”) seeks registration on the Principal Register of the mark WE DO IT ALL! (in standard characters) for “detective agency services” in International Class 45.<sup>1</sup>

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the following two separately-owned registered marks:

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<sup>1</sup> Application Serial No. 87172299, filed on September 15, 2016, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming January 2, 2015 as both the date of first use and the date of first use in commerce.

- **JUST CALL – WE DO IT ALL!** (in standard characters) for “legal services” in International Class 45;<sup>2</sup> and
- **MAKE THE CALL WE DO IT ALL!** (also in standard characters) for “legal services; providing legal services in the field of injury law, workers' compensation law, and social security disability law” in International Class 45.<sup>3</sup>

When the refusal was made final, Applicant appealed. The appeal is fully briefed. We affirm the refusal to register.<sup>4</sup>

## **I. 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); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or services. *See 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.”).

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<sup>2</sup> Registration No. 5064290, issued on October 18, 2016.

<sup>3</sup> Registration No. 4878482, issued on December 29, 2015.

<sup>4</sup> The TTABVue and Trademark Status and Document Retrieval (“TSDR”) citations reference the docket and electronic file database for Application Serial No. 87172299. All citations to the TSDR database are to the PDF version of the documents.

**A. Similarities of the Marks**

We first address the *du Pont* likelihood of confusion factor focusing on “the similarity or dissimilarity of the marks in their entirety 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 *du Pont*, 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.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (quotation omitted).

Because this factor is based on the marks in their entirety, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). On the other hand, there is nothing improper in assigning more or less weight to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety. *In re Nat’l Data*, 224 USPQ at 751.

Applicant’s mark is WE DO IT ALL! The cited marks are JUST CALL – WE DO IT ALL! and MAKE THE CALL WE DO IT ALL! Applicant’s mark is incorporated in

its entirety within each of the cited marks, making each cited mark identical in part to Applicant's mark. Likelihood of confusion is often found where the entirety of one mark is incorporated within another. *See, e.g., In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (finding applicant's mark ML similar to registrant's stylized mark ML MARK LEES); *In re United States Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (finding CAREER IMAGE for women's clothing stores and women's clothing likely to cause confusion with CREST CAREER IMAGES for uniforms including items of women's clothing, observing: "Applicant's mark would appear to prospective purchasers to be a shortened form of registrant's mark.").

Applicant argues that its mark and the cited marks are visually and phonetically distinguishable and, therefore, confusion is not likely.<sup>5</sup> We disagree. While we recognize that the cited marks include the additional terms "JUST CALL" and "MAKE THE CALL," we nonetheless find these phrases to be more in the nature of an instruction to the consumer to contact the Registrants for their services. The inclusion of these common instructional phrases have little, if any, source-identifying significance, *see e.g., In re European-American Bank & Trust Co.*, 201 USPQ 788 (TTAB 1979) (slogan THINK ABOUT IT found to be an informational or instructional phrase that would not be perceived as a mark for banking services), and, therefore, notwithstanding that they appear first, they do not minimize the similarities in sound, appearance, connotation or commercial impression of the identical wording WE DO IT ALL! shared by Applicant's mark and the cited marks; a phrase that

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<sup>5</sup> Applicant's Appeal Brief, p. 4, 4 TTABVue 5.

conveys to consumers that the services provided by Applicant and the Registrants encompass all possible types of the identified services offered by them.

While we have not ignored the differences in the marks, we find that the similarities outweigh the differences such that Applicant's mark creates an overall commercial impression similar to each of the two cited marks. In view thereof, we find that the *du Pont* factor of the similarity or dissimilarity of the marks favors a finding of likelihood of confusion.

### **B. Strength of the Cited Marks**

Applicant argues that the wording WE DO IT ALL! in the two cited registrations for identical services indicates that this phrase is weak for legal services, thereby limiting the scope of protection to which the cited marks are entitled and reducing any likelihood of confusion with respect to Applicant's mark for "detective agency services."<sup>6</sup> Additionally, Applicant submitted the following evidence: (1) a listing of 61 third-party applications and third-party registrations for marks supposedly including the phrase WE DO IT ALL generated from the Trademark Electronic Search System ("TESS"); and (2) Google search results for the phrase WE DO IT ALL showing about 234,000 results.<sup>7</sup>

The Federal Circuit has stated that evidence of the extensive registration and use of a term by others can be "powerful" evidence of weakness. *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363,

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<sup>6</sup> *Id.* at 3-4, 4 TTABVue 5-6.

<sup>7</sup> Applicant's April 12, 2017 Response to Office Action, TSDR pp. 11-18.

116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015). Moreover, under the sixth *du Pont* factor, we must consider evidence of “[t]he number and nature of similar marks in use on similar goods [or services].” *In re E.I. du Pont de Nemours & Co.*, 177 USPQ at 567. This is sometimes referred to as market or commercial strength, referring to consumers’ association between a mark and the source of the goods or services. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1476 (TTAB 2014); *Tea Board of India v. Republic of Tea Inc.*, 80 USPQ2d 1881 (TTAB 2006).

With regard to the TESS listing, although it was submitted in an improper format (a mere listing), the Examining Attorney did not object to the list or advise Applicant that copies of the registrations identified therein were necessary. Therefore, we have considered the list. *See* TBMP § 1207.03 (June 2017). We will not, however, consider more than that. *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1264 n. 6 (TTAB 2011) (Board considered TESS listings for whatever probative value they had); *In re 1<sup>st</sup> USA Realty Profls, Inc.*, 84 USPQ2d 1581, 1583 (TTAB 2007) (Board treated listing of particulars of third-party applications/registrations as stipulated into record only to the extent that the specific data provided was considered); *In re Broyhill Furniture Indus. Inc.*, 60 USPQ2d 1511, 1513 n.3 (TTAB 2001) (listing of

registration information considered for whatever probative value it might have, noting that the listing did not indicate whether registrations issued on the Principal or the Supplemental Register). Indeed, a mere listing of third-party marks, without any accompanying indication of the goods and/or services associated therewith, has little, if any, probative value because there is no information by which we may assess how many of these registrations, if any, identify services related to those at issue herein. *See* TBMP § 1208.02 and the authorities cited therein. For this reason, while we have considered the list, its probative value is at best limited, and cannot demonstrate the strength or weakness of the phrase WE DO IT ALL for legal services.<sup>8</sup> *Id.*

As for the Google search results, we similarly find that this evidence has limited probative value because the printouts are too truncated to provide context. *See In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) (GOOGLE search results that provided very little context of the use of ASPIRINA deemed to be “of little value in assessing the consumer public perception of the ASPIRINA mark”); *In re Tea and Sympathy, Inc.*, 88 USPQ2d 1062, 1064 n.3 (TTAB

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<sup>8</sup> Twenty-one of the twenty-three third-party applications identified in the TESS list have been abandoned. Nevertheless, third-party applications, whether active or abandoned, have no probative value except to show that an application has been filed. *See Interpayment Services Ltd. v. Docters & Thiede*, 66 USPQ2d 1463, 1468 n.6 (TTAB 2003) (third-party applications are evidence only of the fact that they were filed). Similarly, fifteen of the thirty-eight third-party registrations identified in the list have been canceled. A canceled or expired registration has no probative value other than to show that it once issued. *See In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1264 (TTAB 2011) (“‘dead’ or cancelled registrations have no probative previous value at all”) Finally, out of the twenty-three live third-party registrations identified in the TESS list, ten do not include the phrase WE DO IT ALL; rather, many of the marks include wording that is not relevant to our analysis, *e.g.*, the phrase “IT’S ALL WE DO.”

2008) (truncated GOOGLE search results entitled to little probative weight without additional evidence of how the searched term is used).

We further find unpersuasive Applicant's argument that because the Office has allowed the two cited registrations to co-exist on the Principal Register, the wording WE DO IT ALL! is weak for legal services. However, the fact that the two cited registrations co-exist may be due to a consent agreement between the Registrants and is not necessarily a clear indication of weakness. In any event, prior decisions and actions of other trademark examining attorneys in registering other marks or approving marks for registration have little evidentiary value and are not binding upon the USPTO or the Board. *See In re Cordua Rests. Inc.*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016) (citing *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Design's application, the PTO's allowance of such registrations does not bind the Board or this court.")). Each case is decided on its own facts, and each mark stands on its own merits. *See In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) ("Applicant's allegations regarding similar marks are irrelevant because each application must be considered on its own merits."); *In re Binion*, 93 USPQ2d 1531, 1536 (TTAB 2009).

Thus, we find based on this record that the marks in the cited registrations have not been shown to be so weak as to justify registration of Applicant's similar mark. Accordingly, this *du Pont* factor is neutral.

### **C. Relatedness of the Services**

The next step in our analysis is a comparison of the services identified in

Applicant's application vis-à-vis the services identified in the cited registrations, the second *du Pont* factor. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.2d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002). It is settled that it is not necessary that the respective services be identical or even competitive in order to find that they are related. It is sufficient if the respective services are “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [services] emanate from the same source.” *Coach Servs. Inc.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); *see also In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991). The issue is not whether purchasers would confuse the services, but rather whether there is a likelihood of confusion as to the source of these services. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830, 832 (TTAB 1984).

The Examining Attorney made of record thirteen live third-party, use-based registrations identifying Applicant’s services listed in its involved application and the services identified in the cited registrations.<sup>9</sup> Although such registrations are not

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<sup>9</sup> December 23, 2016 Office Action, TSDR pp. 13-23; May 23, 2017 Office Action, TSDR pp. 21-51. Among the third-party registrations the Examining Attorney relies on is Registration No. 3907322 for the mark ARIXMAR. This registration, however, has been canceled and, therefore, has no probative value and has been given no consideration. *See Action Temporary Services Inc. v. Labor Force Inc.*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989); *In*

evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the services listed therein are of a kind which may emanate from a single source under a single mark. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988). As examples:

- I AM INNOCENT (Reg. No. 5088190) is registered on the Principal Register for “legal services and detective and private investigations for convicted individuals” in International Class 45;
- METRO INVESTIGATIONS, LLC THE “PITBULL OF PROCESS” (METRO INVESTIGATIONS, LLC disclaimed) (Reg. No. 4375673) is registered on the Principal Register for, *inter alia*, “detective investigations” and “legal services, namely, process serving” in International Class 45;
- 凤凰金融 (non-Latin characters transliterate to “FENG HUANG JIN RONG” and means “PHOENIX FINANCE” in English) (Reg. No. 5080711) is registered on the Principal Register for, *inter alia*, “detective agency services; legal research; legal services” in International Class 45;



- (Reg. No. 5086025) is registered on the Principal Register for, *inter alia*, “Detective agency services; Skip tracing services; Legal research; Legal services, namely, process serving; Private investigation; Public document filing services” in International Class 45;
- RECORD DEPOSITION SERVICE INCORPORATED (DEPOSITION SERVICE INCORPORATED disclaimed) (Reg. No. 2117464) is registered on the Principal Register for, *inter alia*, “detective and private investigation services, process serving services and videotaping of legal depositions” in International Class 42;

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*re Kysela Pere et Fils Ltd., supra.*

- EX-CEL INVESTIGATIONS (INVESTIGATIONS disclaimed) (Reg. No. 3457470) is registered on the Principal Register for, *inter alia*, “detective services; detective investigations” and “legal services, namely, process serving” in International Class 45;
- COVERT INTELLIGENCE (INTELLIGENCE disclaimed) (Reg. No. 3942412) is registered on the Supplemental Register for, *inter alia*, “legal services” and “detective investigation services featuring analysis of crime scenes, tracks, trace evidence and fingerprints” in International Class 45.
- KANGXIN (Reg. No. 4674959) is registered on the Principal Register for “legal services” and “detective agencies” in International Class 45;
- IHART (Reg. No. 4823843) is registered on the Principal Register for, *inter alia*, “detective investigations” and “providing customized legal information, counseling, and advice, and litigation services in the field of historical abuse within religious organizations” in International Class 45.

The Examining Attorney also submitted Internet evidence demonstrating that third parties offer both detective agency services and legal services under the same mark:<sup>10</sup>

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<sup>10</sup> December 23, 2016 Office Action, TSDR pp. 9-12; May 23, 2017 Office Action, TSDR pp. 7-20.

1. Screenshots from [www.capefearinvestigative.com](http://www.capefearinvestigative.com) noting that Cape Fear Investigative Services, Inc. provides “personal private investigation services,” as well as “a wide range of paralegal services,” including “Document/File Review,” “Deposition Page/Line Summaries,” and “Trial Preparation.”



2. Screenshots from [www.capitoldetective.com](http://www.capitoldetective.com) noting that Capitol Detective Agency, Inc. is “a premier provider of investigation services,” including surveillance, background checks, criminal investigations and legal services.

The screenshot shows the homepage of Capitol Detective Agency, Inc. The header features the company name and tagline "The Agency Respected Worldwide" above a world map. Navigation links include Home, About Us, Founder, and Services. The main content area is divided into two columns. The left column, titled "Home", includes a yellow box with the company name and "Confidential & Impeccable Service Since 1960", followed by a list of services: Surveillance, Electronic Countermeasures (Debugging), Child Custody, Domestic Services (Cheating Mates), Background Checks, Locate Anyone For Any Reason, Asset Searches, Undiscover Investigations, Missing Persons, Security Surveys, Due Diligence, Criminal Investigations, Legal Services, and Technology Solutions (Database Recovery). The right column, titled "Contact Information", provides the phone number (602) 264-9771, license information, and address. Below this is an "Affiliations" section showing logos for the National Association of Public Safety Officers and the National Council of Intelligence Security Systems (NCISS).

**Capitol Detective Agency, Inc.**  
The Agency Respected Worldwide

★ Worldwide Detectives  
★ No Investigation is too Large or too Small!  
★ Call today for your free 1 hour discreet consultation!  
(602) 264-9771

Home About Us Founder Services

**Home**

**Capitol Detective Agency, Inc.**  
Confidential & Impeccable Service Since 1960

"Affiliated Agents In 80 Countries"

Welcome to Capitol Detective Agency, Inc. proudly serving Phoenix, Arizona and the intermountain west since 1960.

Our unparalleled service, competitive prices, and overall professionalism are why our customers keep returning. We look forward to serving you.

Capitol provides cost effective services customized for your individual needs. We are here to help you!

We are a premier provider of investigation services who are totally committed to our clients. You can be assured that all investigations are 100% confidential. All efforts will be focused to satisfy your investigative objectives.

For over 50 years Capitol's reputation and high standards in the industry is known to be impeccable. We have resolved the most sensitive cases for corporate and domestic clients and will continue to build on that long-term relationship.

Capitol is staffed by highly skilled investigators who will provide a peace of mind during your time of need. We look forward to meeting with you.

- Surveillance
- Electronic Countermeasures (Debugging)

**Contact Information**

(602) 264-9771  
Licensed-Bonded-Insured!  
Call today for your Free 1 hour consultation!  
Arizona License # 1003525  
3217 E Shea Blvd, Suite 488  
Phoenix, AZ 85028-3365  
Email: [Larry@capitoldetective.com](mailto:Larry@capitoldetective.com)

**Affiliations**

Past President/Chairman of the Board.

One of the 5 founders of NCISS

This screenshot shows a different section of the website, focusing on services and affiliations. It includes a list of services such as Surveillance, Electronic Countermeasures (Debugging), Child Custody, Domestic Services (Cheating Mates), Background Checks, Locate Anyone For Any Reason, Asset Searches, Undiscover Investigations, Missing Persons, Security Surveys, Due Diligence, Criminal Investigations, Legal Services, and Technology Solutions (Database Recovery). It also features logos for the National Association of Public Safety Officers, the National Council of Intelligence Security Systems (NCISS), and the Arizona Federation of Officers (AFO). A map shows the location of the agency at 2922 N 18th Pl, Phoenix, AZ. The footer contains a disclaimer about the agency's services and a statement about its commitment to quality investigation.

be focused to satisfy your investigative objectives.

For over 50 years Capitol's reputation and high standards in the industry is known to be impeccable. We have resolved the most sensitive cases for corporate and domestic clients and will continue to build on that long-term relationship.

Capitol is staffed by highly skilled investigators who will provide a peace of mind during your time of need. We look forward to meeting with you.

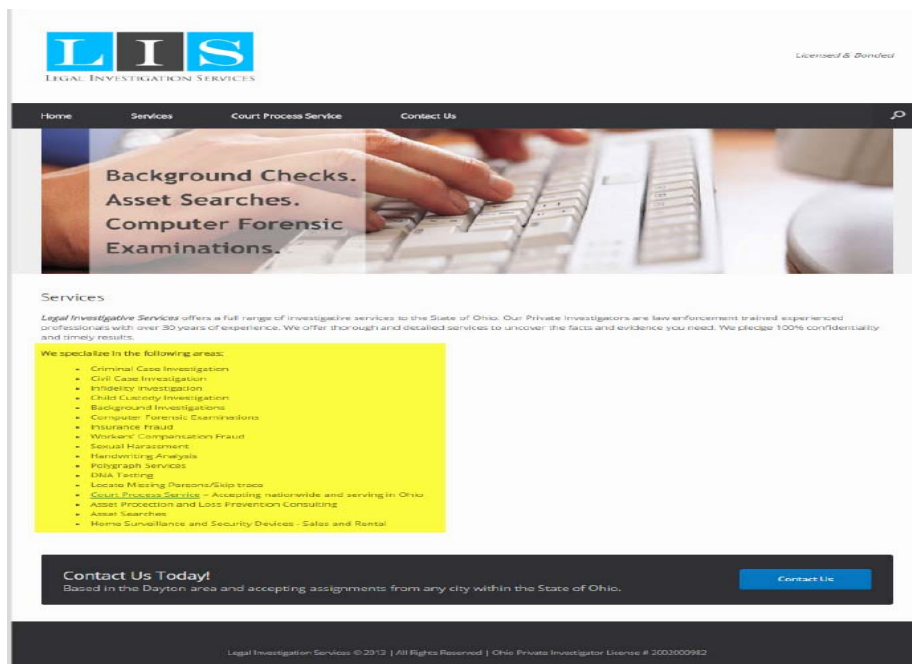
- Surveillance
- Electronic Countermeasures (Debugging)
- Child Custody
- Domestic Services (Cheating Mates)
- Background Checks
- Locate Anyone For Any Reason
- Asset Searches
- Undiscover Investigations
- Missing Persons
- Security Surveys
- Due Diligence
- Criminal Investigations
- Legal Services
- Technology Solutions (Database Recovery)

Member of the Assoc. for Intelligence Officers

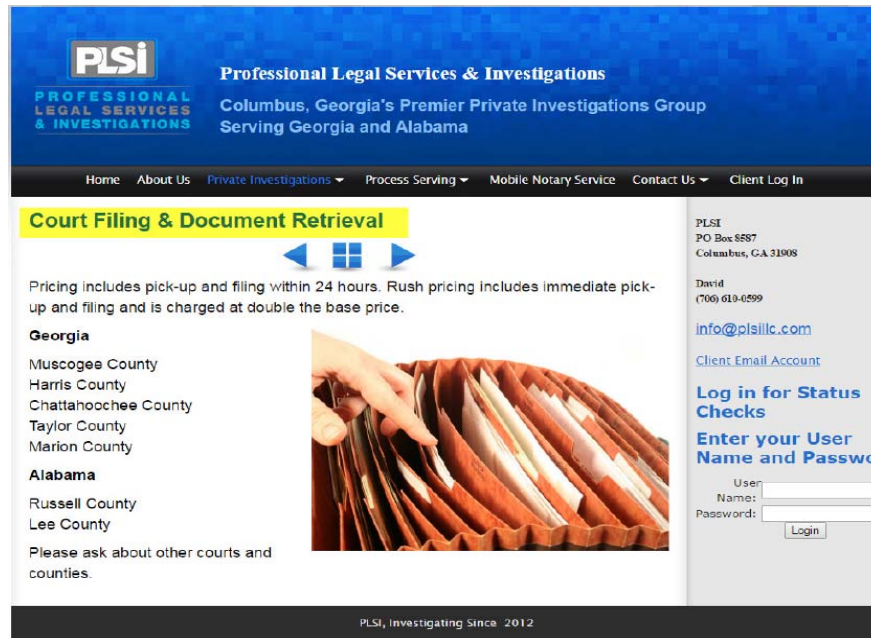
Arizona based, worldwide private investigators. Full service investigators conducting investigations throughout the world and the State of Arizona. Premier private investigators, background investigations, and specialists in difficult to obtain information. Licensed, Bonded, and Insured.

Based in Phoenix, Arizona, Capitol Detective Agency, Inc. is a professional investigation agency serving people, attorneys and corporations throughout Arizona, the U.S., and other countries. We focus on getting results and uncovering the truth for our clients. Focusing on the case at hand is one of the keys to a results oriented, quality investigation with over 50 years combined experience.

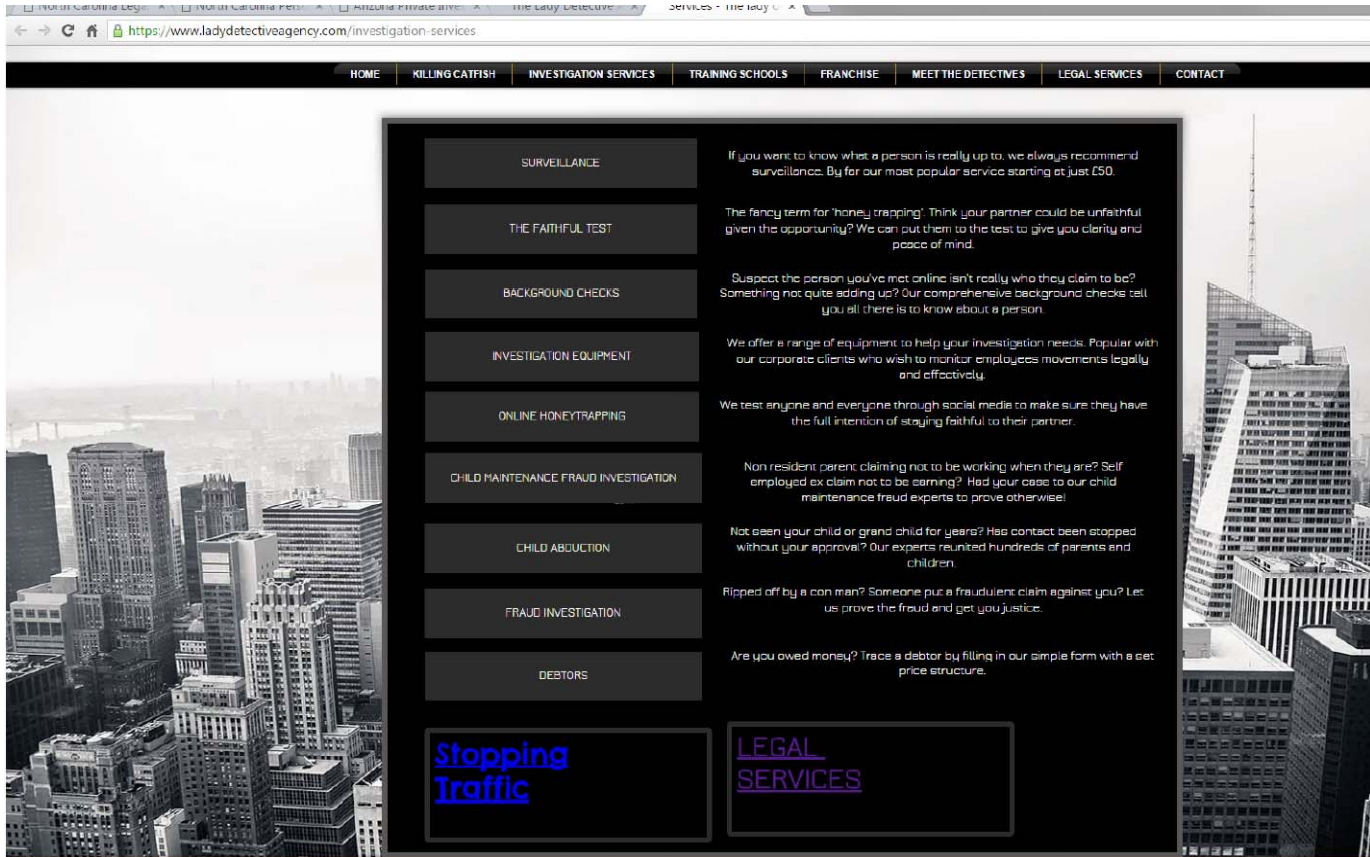
3. Screenshots from [www.ohio-lis.com](http://www.ohio-lis.com) noting that Legal Investigation Services provides a “court process service” and “a full range of investigative services” with private investigators that provide services such as “criminal case investigation” and “infidelity investigations,” among others.



4. Screenshots from columbusinvestigations.com stating that Professional Legal Services & Investigations (PLSI) provides legal services in the nature of “Court Filing & Document Retrieval”, and that it is “a full services private investigations firm” that provides investigative services such as “Computer and Phone Forensics,” as well as “Process Serving.”



5. Screenshots from [www.ladydetectiveagency.com](http://www.ladydetectiveagency.com) stating that Lady Detective Agency provides “investigation services,” that include surveillance, background checks, and fraud investigation, as well as “legal services” which include “a wide range of services from dispute resolution to litigation.”



## LEGAL SERVICES

If you're looking for legal help, our agency now offers a wide range of services from alternative dispute resolution to litigation.



### Mediation

Our team of trained mediators are experts in solving disputes without reaching a court, and keeping costs down.

#### Why Mediate?

Over 80% of cases are resolved in mediation.

They can be resolved within 2 weeks, the average court case will last 4 months.

The cost of mediation is a fraction of litigation.

We resolve work place disputes and family cases. Please contact head office to talk to one of our trained mediators about your situation/



### DIY Legalities

Want to know your rights? Ask us a question for a fixed fee.

We can have our trained solicitors advise you on all legal cases and inform you of the law and your rights on a case by case basis.

#### Arrange court papers

We can fill in all your court paperwork and lodge it with the relevant authorities, you just have to represent yourself.

#### McKenzie Friend

A McKenzie friend is someone who can attend court with you, offer limited advice, but cannot speak for you. A reassuring court support system for clients who wish to represent themselves and keep costs low.



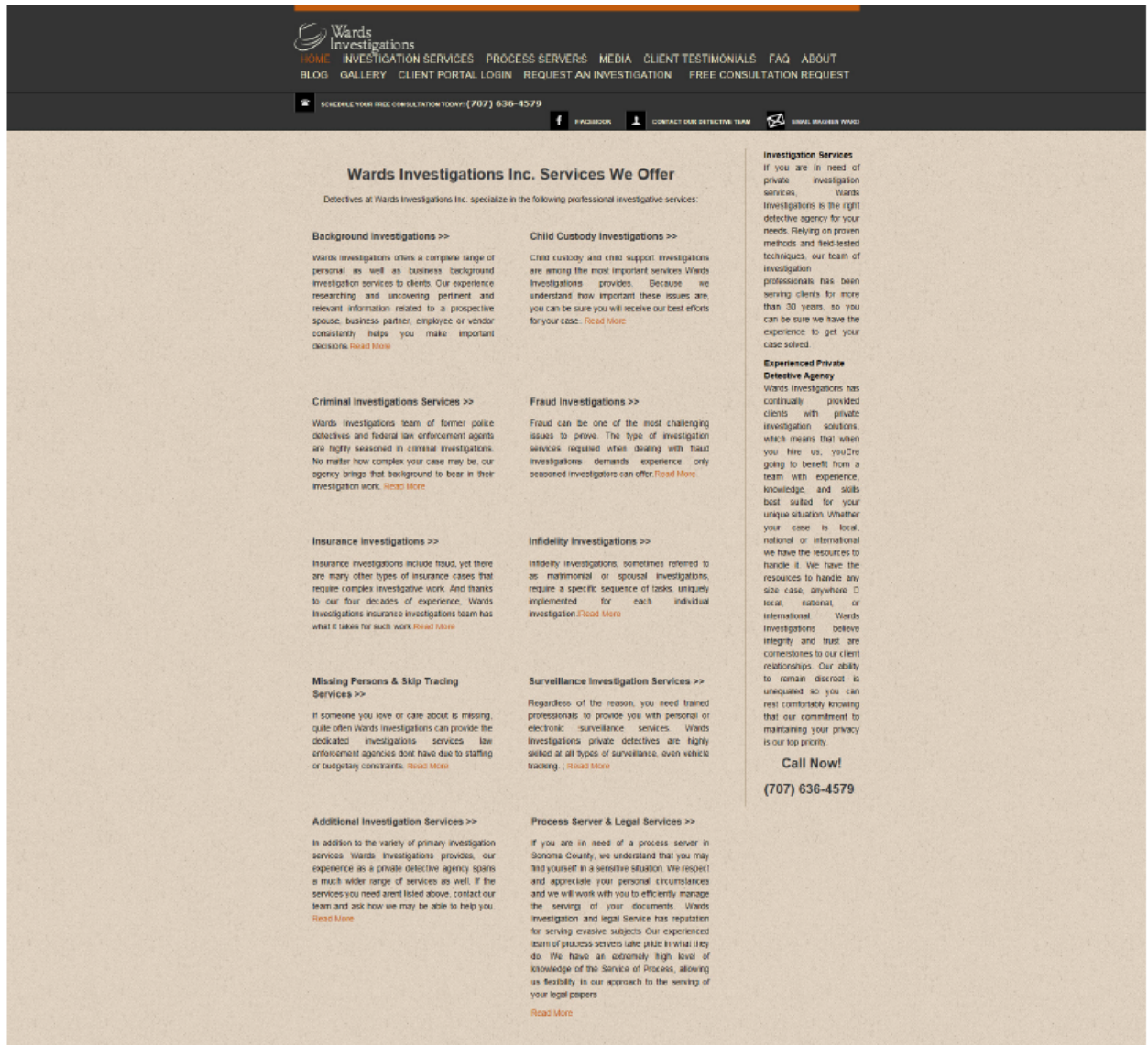
### Full Case Handling

We offer either a free or fixed fee initial consultation either at our offices, or, if circumstances require it, we are happy to visit clients at their home.

Depending upon the nature of the matter or case our charges are made either by reference to a fixed fee, an hourly charging rate, a Conditional or Contingency Fee Agreement (ie 'No Win - No Fee'), or payment by your legal expenses insurers, as appropriate.

Our main areas of work are divorce and family, personal injury, civil claims, employment, civil and commercial.

6. Screenshot from [www.wardinvestigations.com](http://www.wardinvestigations.com) stating that Ward Investigation Services Inc. is an “Experienced Private Detective Agency” that provides services such as “Background Investigations,” “Criminal Investigation Services,” as well as “Process Server and Legal Services.”



Applicant contends that this evidence does not show “legal services” because “detective agencies cannot represent clients in legal matters *per se* because detective agencies are not licensed to practice law.”<sup>11</sup> However, the cited registrations use broad

<sup>11</sup> Applicant’s Appeal Brief, p. 3, 4 TTABVue 4.

wording to describe the services, i.e., “legal services,” to which we must give “full scope.” *See Stone Lion Capital Partners, LP* 110 USPQ2d at 1163. We must presume that this identification encompasses all services of the type described, including court process serving, making court filings, and legal document retrieval. *See, e.g., Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015); *In re N.A.D., Inc.*, 57 USPQ2d 1872, 1874 (TTAB 2000). Additionally, determining likelihood of confusion is based on the description of services in the application and registrations at issue, not on evidence of actual use. *See Stone Lion Capital Partners, LP* 110 USPQ2d at 1162 (quoting *Octocom*, 16 USPQ2d at 1787).

The record establishes that Applicant’s “detective agency services” and Registrants’ “legal services” (which we must broadly define to include all types of legal services) are offered by third parties under identical marks. As such, when both services are offered under similar trademarks consumers are likely to believe that the services originate from the same source. Accordingly, the second *du Pont* factor also favors a finding of likelihood of confusion.

#### **D. Similarities in Trade Channels and Classes of Purchasers**

Next we consider established, likely-to-continue channels of trade, the third *du Pont* factor. Because the identifications in the application and cited registrations have no restrictions on channels of trade, we must presume that the services travel in all channels of trade normal for such services, and to all the usual customers of them. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981) (citing *Kalart Co., Inc. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958)).

The only evidence relating to the trade channels through which the services at issue travel is the third-party website evidence discussed above. This evidence shows that detective agency services and legal services may be provided in the same market to overlapping purchasers. Therefore the third *du Pont* factor also weighs in favor of finding a likelihood of confusion.

#### **E. Sophistication of Consumers**

We next consider Applicant's arguments under the fourth *du Pont* factor: the conditions under which and buyers to whom sales are made, i.e., “impulse” vs. careful, sophisticated purchasing. *du Pont*, 177 USPQ at 567. Applicant argues that its detective agency services are of “a highly personalized nature to consumers of such services,” that “consumers of such services are reasonably prudent and discriminating purchasers who are careful in their selection of the source of their services and unlikely to be confused regarding their selection.”<sup>12</sup>

Our precedent requires that we base our decision on the least sophisticated potential purchasers of the identified services. *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039 (TTAB 2016) (citing *Stone Lion Capital Partners, LP* 110 USPQ2d 1157 at 1163). The purchasers of legal services and detective services include the general public, which necessarily encompasses consumers with limited experience seeking legal advice or investigative services, perhaps including those involved in fender benders, divorces or basic property disputes. While we assume that some prospective consumers of Applicant’s and

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<sup>12</sup> Applicant’s Appeal Brief, p. 2, 4 TTABVUE 3.

Registrants' services would be highly educated and knowledgeable about the services, they are not the only consumers. This fourth *du Pont* factor is therefore neutral.

#### **F. Nature and Extent of Any Actual Confusion**

Applicant points to the absence of evidence of actual confusion, the seventh *du Pont* factor, as weighing in its favor.<sup>13</sup> A showing of actual confusion would of course be highly probative of a likelihood of confusion. The opposite is not true, however. The lack of evidence of actual confusion carries little weight. *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 144 USPQ 435, 438 (CCPA 1965). The issue before us is the likelihood of confusion, not actual confusion. *Herbko Int'l Inc. v. Kappa Books Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (actual confusion not required). Further, any suggestion that there has been no actual confusion between the marks based on the coexistence of Applicant's mark and the cited registrations is entitled to little probative value in the context of an *ex parte* appeal. *In re Majestic Distilling Co.*, 65 USPQ2d at 1205; see also *In re Kangaroos U.S.A.*, 223 USPQ 1025, 1026-27 (TTAB 1984). Therefore, this *du Pont* factor is neutral.

#### **II. Conclusion**

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, and all relevant *du Pont* factors. Because we have found that the marks at issue are similar and that Applicant's identified services are related to Registrants' services and that they would move in the same or overlapping trade channels and are offered to the same or similar classes of purchasers, we

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<sup>13</sup> Applicant's Reply Brief, p. 3, 7 TTABVUE 4.

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conclude that Applicant's mark, as used in connection with the services identified in the application, so resembles the cited marks as to be likely to cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act.

***Decision:*** The refusal to register Applicant's WE DO IT ALL! mark under Section 2(d) of the Trademark Act is affirmed.