

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Oral Hearing: August 6, 2019

Mailed: August 8, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re PCS Petroleum LLC*

Serial No. 87728983

Erik M. Pelton and Julie S. Shursky of Erik M. Pelton & Associates PLLC,  
for PCS Petroleum LLC.

Dana Dickson,<sup>1</sup> Trademark Examining Attorney, Law Office 113,  
Myriah Habeeb, Managing Attorney.

Before Taylor, Bergsman, and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

PCS Petroleum LLC (“Applicant”) seeks registration on the Principal Register of the mark KP QUIK STOP and design, as displayed below, for “retail convenience stores,” as amended, in International Class 35.<sup>2</sup>

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<sup>1</sup> The application was re-assigned to the identified examining attorney after an appeal had been filed.

<sup>2</sup> Application Serial No. 87728983, filed on December 20, 2017, based upon a claim of a bona fide intention to use the mark in commerce pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The application includes the following description of the mark: “The mark consists of a white highway sign, outlined in black, and partially shaded in red and blue. The wording ‘QUIK STOP’ appears in white on the upper portion of the highway sign



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 mark KWIK STOP (in typed form)<sup>3</sup> registered on the Principal Register for "retail convenience store services featuring gasoline, other petroleum products and alcoholic beverages" in International Class 35.<sup>4</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal resumed. The appeal is fully briefed. An oral hearing was held on August 6, 2019. We reverse the refusal to register.<sup>5</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

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that is shaded in red and the letters 'KP' appear in white on the lower portion of the highway sign that is shaded in blue." The colors red, white, blue, and black are claimed as a feature of the mark.

<sup>3</sup> Prior to November 2, 2003, "standard character" drawings were known as "typed" drawings. A typed drawing is the legal equivalent of a standard character mark. TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") § 807.03(i) (October 2018).

<sup>4</sup> Registration No. 2597731, registered on July 23, 2002; renewed.

<sup>5</sup> The TTABVue and Trademark Status and Document Retrieval ("TSDR") citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

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 have considered each *DuPont* factor that is relevant or for which there is evidence of record. *See 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 Services**

We initially turn to the comparison of the services at issue, the second *DuPont* factor. In making our determination regarding the relatedness of the services, we must look to the services as identified in Applicant’s application and the cited registration. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“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 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.”)); *see also In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011).

Applicant's identified services are "retail convenience stores." The services identified in the cited registration are "retail convenience store services featuring gasoline, other petroleum products and alcoholic beverages alcoholic beverages." In this case, the broadly worded "retail convenience stores" identified in Applicant's application encompasses Registrant's more narrowly defined services. *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). As such, the parties' respective services are identical in part.

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

#### **B. Similarity of Trade Channels and Classes of Purchasers**

Next we consider established, likely-to-continue channels of trade, the third *DuPont* factor. Because the identifications of Applicant's services and Registrant's services are identical in part and have no restrictions as to channels of trade or classes of customers, it is presumed that the trade channels and classes of purchasers are the same for these identical in part services. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods [or services] are presumed to travel in same channels of trade to same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods [or services], the channels of trade and classes of purchasers are considered to be the same); *In re Am. Cruise Lines, Inc.*, 128 USPQ2d 1157, 1158 (TTAB 2018).

Thus, the third *DuPont* factor also weighs in favor of finding a likelihood of

confusion.

### C. Strength of the Cited KWIK STOP mark

The fifth *DuPont* factor, the fame of the prior mark, and the sixth *DuPont* factor, the number and nature of similar marks in use for similar services, *DuPont*, 177 USPQ at 567, may be considered in tandem to determine the strength of the cited mark and the scope of protection to which it is entitled. *Bell's Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1345 (TTAB 2017).<sup>6</sup> “In determining strength of a mark, we consider both inherent strength, based on the nature of the mark itself, and commercial strength or recognition.” *Bell's Brewery*, 125 USPQ2d at 1345 (citing *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1476 (TTAB 2014)); *see also 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).”).

In an ex parte appeal such as this, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate the exposure or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, 120 USPQ2d 1504, 1512 (TTAB 2016). For that reason, “in an ex parte analysis of the *DuPont* factors for determining likelihood of confusion ..., the ‘fame of

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<sup>6</sup> The Federal Circuit has held that “[w]hile dilution fame is an either/or proposition—fame either does or does not exist—likelihood of confusion fame varies along a spectrum from very strong to very weak.” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 369 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005) (internal quotation omitted)).


the mark’ [fifth] factor is normally treated as neutral when no evidence as to fame has been provided.” TMEP § 207.01(d)(ix). Thus, because there is no evidence of record regarding the fame of the cited mark, the fifth *DuPont* factor is neutral.

The sixth *DuPont* factor requires us to consider the number and nature of similar marks in use on similar services. *DuPont*, 177 USPQ at 567; *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1033 (TTAB 2016). Third-party registrations and use of similar marks can bear on the strength or weakness of a registrant’s mark in two ways: commercially and conceptually. First, if a mark, or an element of a mark, is used extensively in commerce by a number of third parties, that could undermine its commercial strength, as the consuming public may have become familiar with a multiplicity of the same or similar marks, and can distinguish them based on minor differences. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015). “Evidence of third-party use of similar marks on similar goods [or services] is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” *Palm Bay Imps.*, 73 USPQ2d at 1693, *quoted in Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015). “The weaker [a registrant’s] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Juice Generation*, 115 USPQ2d at 1674.

Second, if there is evidence that a mark, or an element of a mark, is commonly adopted by many different registrants, that may indicate that the common element has some non-source identifying significance that undermines its conceptual strength as an indicator of a single source. *Jack Wolfskin*, 116 USPQ2d at 1136 (“[E]vidence of third-party registrations is relevant to ‘show the sense in which a mark is used in ordinary parlance,’ ... that is, some segment that is common to both parties’ marks may have ‘a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak’”) (quoting *Juice Generation*, 115 USPQ2d at 1674 (quoting 2 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:90 (4th ed. 2015))).




Applicant contends that the cited mark KWIK STOP itself, as well as components of the mark, comprise such weak, commonly-used elements that consumers will look to the other features in Applicant’s mark to differentiate the marks in appearance, sound, meaning and commercial impression. Specifically, Applicant maintains that the designation KWIK or its phonetic equivalents QUIK and QUICK are diluted when used in association with services similar to those identified in the cited registration. Applicant also argues that the entirety of the cited KWIK STOP mark is also diluted when used in connection with the services similar to those identified in the cited registration. To demonstrate such weakness, Applicant submitted numerous active, use-based third-party registrations for marks consisting of or containing the term QUICK or its phonetic equivalents, as used in connection with

services similar to those identified in the cited registration.<sup>7</sup> A representative sample is provided below:

Mark	Reg. No.	Relevant Services
QUICK STUFF	2232976	Retail store services featuring convenience store items and gasoline
OPTIMA QUICK MART	2778265	Retail convenience store services
KWIK BUCKS	2854739	Retail store services featuring convenience store items and gasoline
QUICK CHEK	2490372	Retail convenience store services
RITEQUIK	3504069	Retail convenience store services
	3566430	Retail gas station and convenience store services featuring gasoline, convenience items, and automotive and petroleum products
	2707063	Retail convenience store services
B-QUICK	3148758	Retail convenience store services featuring convenience store items and gasoline
KWICK PANTRY	4419806	Retail store services featuring convenience store items and gasoline
THINK QUIK	3900107	Retail stores featuring convenience store items and gasoline

<sup>7</sup> June 20, 2018 Response to Office Action, TSDR pp. 26-54. Applicant also submitted evidence of actual use in commerce of some of these registered marks. *See generally* Applicant's January 11, 2019 Request for Reconsideration, Exhibits AA-QQ, 4 TTABVue 61-221. Additionally, Applicant submitted the most recently-filed specimens of use for these third-party registrations. *Id.*, Exhibit KK, 4 TTABVue 84-207.



Mark	Reg. No.	Relevant Services
	5251402	Retail stores featuring convenience store items and gasoline
QUICK ZIP IN ZIP OUT	4920631	Retail stores featuring convenience store items and gasoline
QUICK ON THE WAY	4671643	Retail stores featuring convenience store items and gasoline
	5112561	Retail stores featuring convenience store items and food and beverage products for consumption on or off the premises; automobile station services
	1593571	Retail convenience store services
REDNER'S QUICK SHOPPE	2169971	Retail convenience store services

Additionally, Applicant submitted evidence demonstrating third-party use of the designations QUICK STOP, QUIK STOP, QWICK STOP and KWIK STOP for services similar to those identified in the cited registration, as illustrated below:<sup>8</sup>

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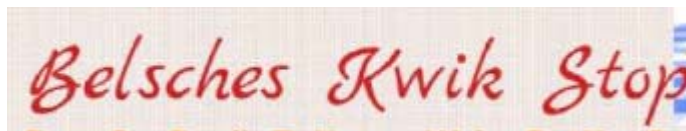
<sup>8</sup> Applicant also submitted evidence of third-party uses of the designations QUICK STOP and KWIK STOP used in connection with pharmacy services, ice cream shop services, automotive repair and parts services, retail store services featuring guns, ammunition and hunting supplies. These services, however, are not similar to those identified in the cited registration.



- for retail convenience store services in Pocatello, Idaho;<sup>9</sup>



- for convenience stores services in Leonardo, New Jersey;<sup>10</sup>



- for, among other things, retail convenience store services in Bumpass, Virginia;<sup>11</sup>



- for retail convenience store services and gas station services in Macon, Mississippi;<sup>12</sup>

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Accordingly, this evidence has little to no probative value and, therefore, this evidence has been given no consideration in our analysis.

<sup>9</sup> June 20, 2018 Response to Office Action, Exh. K, TSDR p. 77-78.

<sup>10</sup> *Id.*, Exh. C, TSDR p. 61-62.

<sup>11</sup> *Id.*, Exh. L, TSDR p. 79-81.

<sup>12</sup> *Id.*, Exh. M, TSDR p. 82-83.



- for convenience store services in Clinton, Massachusetts;<sup>13</sup>



- for a chain of retail convenience store services including the sale of gasoline in Nebraska and Colorado ;<sup>14</sup>



- for convenience store services in South China, Maine;<sup>15</sup>

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<sup>13</sup> *Id.*, Exh. O, TSDR pp. 88-90.

<sup>14</sup> Applicant's January 11, 2019 Request for Reconsideration, Exh. S, 4 TTABVUE 45-46.

<sup>15</sup> *Id.*, Exh. T, 4 TTABUVE 47-48.



- for retail convenience services featuring sodas, beer, cigarettes and self-serve gasoline in Vinton, Iowa;<sup>16</sup>



- for chain of retail convenience store services selling gasoline, candy, soda, beer, lottery tickets in north eastern Arkansas and Dundee, Mississippi;<sup>17</sup>



- for retail convenience store services selling, among other things, gasoline, hot food, live bait, and clothing items in Harrison, Michigan;<sup>18</sup>



- for gas station and convenience store services in Malad, Idaho;<sup>19</sup>

<sup>16</sup> *Id.*, Exh. U, 4 TTABVUE 49-50.

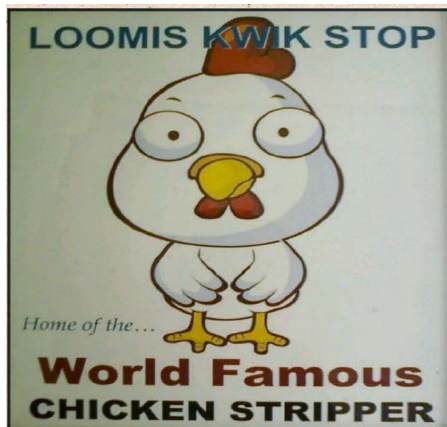
<sup>17</sup> *Id.*, Exh. V, 4 TTABVUE 51-52.

<sup>18</sup> *Id.*, Exh. W, 4 TTABVUE 53-54.

<sup>19</sup> *Id.*, Exh. X, 4 TTABVUE 55-56.



- for retail convenience store services featuring, inter alia, groceries, sandwiches, coffee and homemade salads in Goshen, New York;<sup>20</sup>



- for convenience store services featuring gasoline, diesel, propane, fishing supplies, groceries, cold beer and sodas, and hot deli foods in Loomis, Washington;<sup>21</sup>

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<sup>20</sup> *Id.*, Exh. Y, 4 TTABVUE 57-58.

<sup>21</sup> *Id.*, Exh. AA, 4 TTABVUE 61-62.



- for convenience store services featuring, inter alia, sodas, coffee, snacks, baked goods, candy products, tobacco products, transmission fluid and motor oils in Boston, Massachusetts;<sup>22</sup>



- for retail convenience store services in St. Carlisle, Pennsylvania;<sup>23</sup>



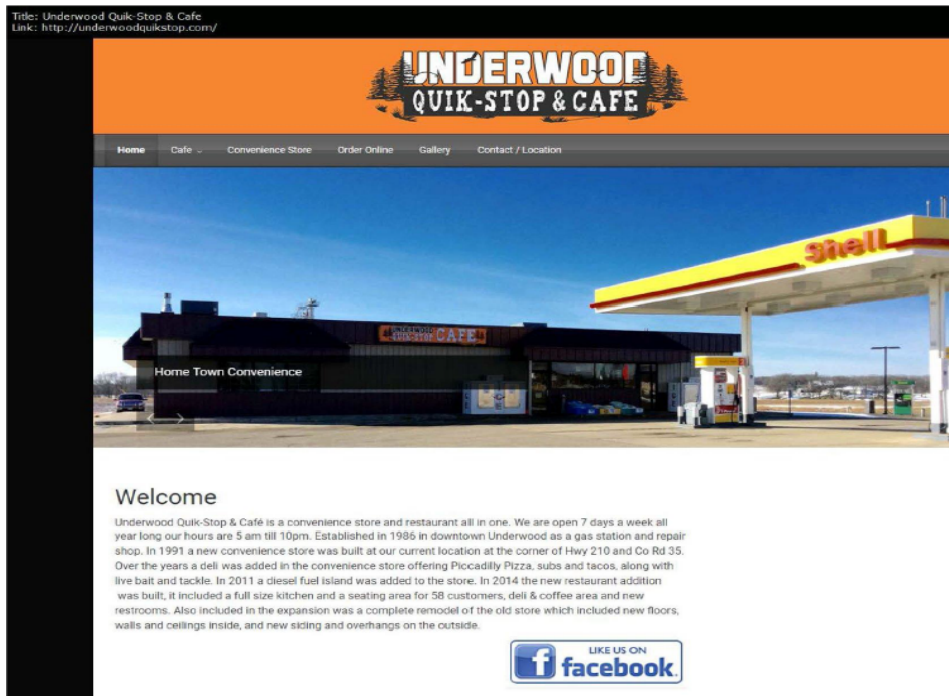
- for convenience store services including the sale of gasoline in Gate City, Virginia;<sup>24</sup> and

<sup>22</sup> *Id.*, Exh. BB, 4 TTABVUE 63-64.

<sup>23</sup> *Id.*, Exh. CC, 4 TTABVUE 65-66.

<sup>24</sup> *Id.*, Exh. EE, 4 TTABVUE 69-70.





for retail convenience store and restaurant services, including the sale of gasoline in Underwood, Minnesota.<sup>25</sup>

While we acknowledge that the third-party registrations submitted by Applicant that include the term QUICK or its phonetic equivalents for convenience store services do not demonstrate the extent to which consumers have been exposed to the marks subject to these registrations, “[t]hird party registrations are [nonetheless] relevant to prove that some segment of the composite marks which both contesting parties use has a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation*, 115 USPQ2d at 1675 (quoting 2 McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:90 (4th ed. 2015); see also *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976) (even if “there is no evidence

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<sup>25</sup> *Id.*, Exh. JJ, 4 TTABVUE 82-83.

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 use.”). In view thereof, we find, based upon the amount of third-party registrations submitted by Applicant, that the term QUICK or its phonetic equivalents are both weak and highly suggestive when used in association with convenience store services.<sup>26</sup>

Similarly, the evidence of third-party uses submitted by Applicant does not show the extent to which consumers have been exposed to such actual uses. However, the nontrivial amount and geographic extent throughout the United States of such third-party uses of the phrase QUICK STOP or its phonetic equivalents demonstrates that the phrase is highly suggestive of such services, leading us to the conclusion that that phrase is weak.

In view of the foregoing, we find that a mark comprising, in whole or in part, the phrase “QUICK STOP” or phonetically equivalent variations thereof, used in connection with convenience store services is highly suggestive of such services and therefore, weak. As such, the cited mark is entitled to only a restricted scope of protection. *Anthony’s Pizza & Pasta Int’l Inc. v. Anthony’s Pizza Holding Co.*, 95 USPQ2d 1271, 1278 (TTAB 2009), *aff’d*, 415 Fed. App’x. 222 (Fed. Cir. 2010); *Pizza Inn, Inc. v. Russo*, 221 USPQ 281, 283 (TTAB 1983). In other words, Registrant’s KWIK STOP mark is not entitled to such a broad scope of protection that it will bar

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<sup>26</sup> As noted above, in addition to the submission of the third-party registrations, Applicant also submitted evidence of use the marks subject to these third-party registrations.




the registration of every mark comprising, in whole or in part, the term “KWIK STOP” or variations thereof; it is, nevertheless, sufficient to bar the registration of marks “as to which the resemblance to [Registrant’s mark] is striking enough to cause one seeing it to assume that there is some connection, association or sponsorship between the two.” *Id. Compare In re Broadway Chicken, Inc.*, 38 USPQ2d 1559, 1566 (TTAB 1996) (wide-spread third-party use supported the finding that the marks were not likely to cause confusion because “at least half, if not more, of the third-party telephone directory listings of enterprises whose trade name names/marks contain the term BROADWAY have listed addresses on a street, road, avenue, etc., named ‘BROADWAY.’ To purchasers familiar with these enterprises, the term BROADWAY will have geographic significance”).


#### **D. Similarity of the Marks**

We finally consider the first *DuPont* factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *See Palm Bay Imps.*, 73 USPQ2d at 1691. “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, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017) (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)) (internal quotation marks omitted).



Applicant's mark is . The cited mark is KWIK STOP in typed form. Here, Applicant has incorporated the phonetic equivalent of the entirety of the cited mark as part of its mark. Likelihood of confusion has frequently been found where one mark incorporates the entirety of another mark, even where one mark includes a design feature. *See, e.g., Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (finding CALIFORNIA CONCEPT and surfer design and CONCEPT confusingly similar); *Coca-Cola Bottling Co., v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (finding BENGAL for gin and BENGAL LANCER and design confusingly similar); *In re Riddle*, 225 USPQ 650 (TTAB 1985) (RICHARD PETTY'S ACCU TUNE and design for automotive service stations held likely to be confused with ACCUTUNE for automotive testing equipment). There have been instances, however, where the Board has found that confusion is not likely even when an applicant has incorporated the entirety or a portion of a cited mark as part of its own mark. *See e.g., In re Covalinski*, 113 USPQ2d



1166 (TTAB 2014) (Applicant's mark  not confusing similar with cited RACEGIRL mark in standard characters); *In re White Rock Distillers, Inc.*, 92 USPQ2d 1282 (TTAB 2009) (Applicant's standard character VOLTA mark not



confusingly similar with the cited mark

We find that these latter

cases are more applicable under the particular circumstances of this case for the reasons explained below.

We initially note that the marks differ visually and aurally in light of Applicant's inclusion in its mark of the arbitrary letters KP appearing in much larger font than the phrase QUIK STOP, as well as the addition of the highway sign design. Another difference in appearance is that Applicant spells the term "quick" as QUIK while the cited mark displays the term as KWIK.

Notwithstanding the dissimilarities in appearance and sound noted above, we recognize that the marks convey similar connotations and commercial impressions in light of the shared use of the phonetic equivalents of the phrase QUICK STOP. The record demonstrates the word QUICK is defined as "acting or capable of acting with speed" or "done or happening in a short amount of time."<sup>27</sup> The term STOP is defined as "to cease activity or operation" or "a stopping place."<sup>28</sup> When viewed in the context of the parties' identical in part services, the definitions of the terms that make up the phrase QUICK STOP evoke and convey the same connotation and commercial impression, namely, suggesting that the parties' convenience stores are a place for swift stops and purchases of goods generally found at retail convenience stores. That

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<sup>27</sup> July 12, 2018 Office Action, TSDR pp. 6-7.

<sup>28</sup> January 11, 2019 Request for Reconsideration, Exh. Q, 4 TTABVUE 34-36.

being said, as discussed above, because of the highly suggestive nature of the phrase KWIK STOP when used in connection with retail convenience store services, we find that the cited mark is entitled to a narrower scope of protection. *See Drackett Co. v. H. Kohnstamm & Co.*, 404 F.2d 1399, 160 USPQ 407, 408 (CCPA 1969) (“The scope of protection afforded such highly suggestive marks is necessarily narrow and confusion is not likely to result from the use of the two marks carrying the same suggestion as to the use of closely similar goods.”).


Moreover, the ample amount of third-party registration and third-party use evidence of record demonstrates that the designations QUICK and QUICK STOP or their phonetic equivalents are weak or diluted when used in connection with services identical or very similar to those identified in the cited registration. As such, and as noted, the scope of protection to be afforded to the cited mark is much more narrow or limiting. We therefore find that the inclusion of the design element, as well as the arbitrary letters KP, in Applicant’s mark are sufficient to distinguish the marks for likelihood of confusion purposes, notwithstanding our finding that the services at issue are identical in part.

Accordingly, the first *DuPont* factor favors a finding that confusion is not likely.

## **II. Conclusion**

We have considered all of the arguments and evidence of record and all relevant *DuPont* factors. We have found that Applicant’s identified services are identical in part to Registrant’s services and, therefore, these identical in part services are presumed to move in the same trade channels and that they would be offered to the same classes of purchasers. Moreover, while we recognize that Applicant has

incorporated the phonetic equivalent of the entirety of Registrant's mark in its own mark, we find that the evidence of record demonstrates that the term QUICK and the phrase QUICK STOP or their phonetic equivalents when used in connection with services identical or very similar to those identified in the cited registration, are highly suggestive of Registrant's services and, therefore, weak. As such, the cited mark is entitled to only a restricted scope of protection. In view thereof, we conclude

that the inclusion of the other elements in Applicant's  mark, i.e., the design of the highway sign and the arbitrary letters KP appearing in a large font, are sufficient to distinguish Applicant's mark and the cited mark so as to avoid a likelihood of confusion.

**Decision:** The refusal to register Applicant's mark under Section 2(d) of the Trademark Act is reversed.