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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Western Workhorse Management, LLC

Serial No. 88008152

Todd E. Zenger of Duren IP PC, for Western Workhorse Management, LLC.

Davis Creef, Trademark Examining Attorney, Law Office 125,
Robin Mittler, Managing Attorney.

Before Zervas, Lynch and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, Western Workhorse Management, LLC, seeks registration of the mark NXT (in standard characters) on the Principal Register for

> management of multi-tenant living facilities owned by others, namely, building management

in International Class 36.[1]

The Trademark Examining Attorney has refused registration of Applicant's mark

[1] Application Serial No. 88008152 ("the Application") was filed on September 8, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intention to use the mark in commerce.

on the ground that it is likely to cause confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), with Registrant NXT Capital, LLC's mark NXT CAPITAL, in both standard-character and the stylized form (NXT CAPITAL), both with CAPITAL disclaimed, for

> commercial lending services and financial investment services; commercial real estate lending and investment services; and institutional investment management and advisory services related to the foregoing

in International Class 36.[2]

Applicant filed an appeal and requested reconsideration, which the Examining Attorney subsequently denied. Both Applicant and the Examining Attorney have filed briefs. For the reasons discussed below, we affirm the refusal to register.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark must be refused registration if it:

> [c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, … as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive....

15 U.S.C. § 1052(d), *quoted in In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at *2 (Fed. Cir. 2023).

To determine whether there is a likelihood of confusion between marks under Section 2(d), we analyze the evidence and arguments under the factors set forth in *In*

[2] Registration Nos. 6138880 (standard characters) and 6138881 (stylized) issued on September 1, 2020.

re E. I. duPont deNemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (the "*DuPont* factors"), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). "Whether a likelihood of confusion exists between an applicant's mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors." *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019). "The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods." *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (internal punctuation omitted).

We will focus our analysis on Registrant's standard-character mark NXT CAPITAL in Registration No. 4267307 (hereafter, "the Registration") because it is closest in appearance to Applicant's mark, as "the rights associated with a standard character mark reside in the wording per se and not in any particular font style, size, or color." *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018) (citing *Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011)). If we find a likelihood of confusion with respect to this mark, we need not find it with respect Registrant's stylized NXT mark. Conversely, if we do not find a likelihood of confusion with respect to this mark, we would not find it with respect to Registrant's stylized mark. *See In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243,

1245 (TTAB 2010).

A. Similarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014); *Palm Bay Imps.,* 73 USPQ2d at 1692. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd*, 777 Fed. App'x 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)). Here, all of the elements favor a finding of similarity.

Applicant's NXT and Registrant's NXT CAPITAL marks share the term NXT, which forms the entirety of Applicant's mark and the first part of Registrant's mark, where it is the most prominent and dominant element—the first word consumers would notice, remember, and use to call for Registrant's services. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018)). Because there is no evidence in the record that NXT has any meaning, we find it to be arbitrary. Further enhancing the marks' similarity, Registrant may display its standard character mark with emphasis on NXT, as shown below:

NXT
CAPITAL

See In re Mr. Recipe, LLC, 2016 WL 1380730, *7 (TTAB 2016).

We, of course, must consider the marks in their entireties, *In re Viterra,* 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012), which requires consideration of the entire wording – NXT CAPITAL – of Registrant's mark. "Capital" refers to "[w]ealth, especially in the form of financial or physical asserts, used in the production or accumulation of more wealth."[3] As the Examining Attorney points out, that term is descriptive of Registrant's services of commercial lending and investment services, and has been appropriately disclaimed in the Registration.[4] Wording that is descriptive of identified services and that has been disclaimed is typically less significant or less dominant when comparing marks. *See In re Detroit Athletic Co.*, 128 USPQ2d at 1050 (citing *In re Dixie Rests.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *41 (TTAB 2022).

As the Examining Attorney also notes, "merely omitting some of the wording from a registered mark may not overcome a likelihood of confusion."[5] Indeed, likelihood of confusion has frequently been found where one mark incorporates the entirety of another mark, as is the case with Registrant's mark. *See Coca-Cola Bottling Co. of Memphis, Tennessee, Inc. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (BENGAL for gin and BENGAL LANCER for

[3] *See* https://www.ahdictionary.com/word/search.html?q=capital (accessed October 10, 2024). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions, *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006), and we do so here.

[4] 10 TTABVUE 9 (Examining Attorney's Brief).

[5] *Id.* at 5.

nonalcoholic club soda, quinine water and ginger ale); *In re United States Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (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); *In re South Bend Toy Mfg. Co., Inc.*, 218 USPQ 479, 480 (TTAB 1983) (LIL' LADY BUG for toy doll carriages and LITTLE LADY for doll clothing); and *Johnson Publ'g Co. v. Int'l Dev. Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (EBONY for cosmetics and EBONY DRUM for hairdressing and conditioner).

We also account for consumers' penchant to shorten marks. *See, e.g., In re Mighty Leaf Tea*, 601 F.3d 1342, 1347-48, 94 USPQ2d 1257, 1260-61 (Fed. Cir. 2010) (affirming TTAB's finding that applicant's mark, ML, likely to be perceived as a shortened version of registrant's mark, ML MARK LEES (stylized), when used on the same or closely related skin-care products); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1961 (TTAB 2016) (finding the penchant to shorten marks "would lead many consumers to drop the highly descriptive/generic term 'Blonde' when calling for Applicant's [TIME TRAVELER BLONDE beer]"). Dropping the descriptive (and potentially generic) term CAPITAL from Registrant's mark when discussing or referring to Registrant's services would further emphasize the already-dominant NXT portion of that mark. We thus disagree with Applicant's contention that inclusion (or omission) of the word CAPITAL in the marks results in a "materially different connotation and commercial impression."[6]

[6] 8 TTABVUE 12 (Applicant's Brief).

Instead, we find the marks more similar than dissimilar in overall appearance, sound, connotation and commercial impression, and that the first *DuPont* factor weighs strongly in favor of finding a likelihood of confusion.

B. Similarity of the Services and Channels of Trade

We turn now to the second *DuPont* factor, which concerns the "similarity or dissimilarity and nature of the goods or services as described in an application or registration…," and the third *DuPont* factor, which concerns the similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 177 USPQ at 567. A proper comparison "considers whether 'the consuming public may perceive [the respective services of the parties] as related enough to cause confusion about the source or origin of the goods and services.'" *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)).

Evidence of relatedness may include excerpts from websites showing that the services are used by the same purchasers, and advertisements showing that the services are advertised together or offered by the same provider. *In re Embiid*, 2021 USPQ2d 577, at *8 (TTAB 2021) (citing *In re Ox Paperboard*, 2020 USPQ2d 10878, at *5 (TTAB 2020) and *Hewlett-Packard,* 62 USPQ2d at 1004 (evidence that "a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis")).

Applicant's services, once again, are:

> management of multi-tenant living facilities owned by others, namely, building management,

and Registrant's services are

> Commercial lending services and financial investment services; commercial real estate lending and investment services; and institutional investment management and advisory services related to the foregoing.

The Examining Attorney introduced website evidence from a number of third-parties to show that "'building management' services are commonly provided from the same sources, under the same brands or marks, as 'commercial lending services', 'financial investment services', 'commercial real estate lending and investment services', and related 'institutional investment management and advisory services.'"[7] *See Made in Nature v. Pharmavite,* 2022 USPQ2d 557, at *46 (third-party websites promoting sale of both parties' sorts of goods or services showed relatedness); *In re Embiid*, 2021 USPQ2d at *28-29 (evidence of third-parties offering goods or services of both applicant and registrant pertinent to relatedness of the goods). For example:

> ● Jennings Group (jenningsgroup.com) offers "multifamily property management" services and advertises that it has "over 35 years of experience in the management of apartment and other multifamily communities." It also offers real estate brokerage services under the same mark such as "representing [its] clients in acquiring new investment properties," "real time comparative and income property valuation," and "investment services."[8]
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> ● Chase Pacific (chasepacific.com) provides a number of building management services for residential properties, including "a thorough move in or move out inspection," issuing keys, "conduct[ing] and screen[ing] all maintenance and repair calls," being "on call 24/7 for emergencies," "pay[ing] all vendors." The company also provides "rental analysis" to "determine owner objectives and develop a plan to achieve them," and provides advisory services in the nature of tenant

[7] *Id.* at 11.

[8] October 25, 2018 Office Action, TSDR 27-32.

recommendations "to ensure optimum cash flow and property preservation."[9]

● Edge (edgecre.com) offers "property management" services such as "condo/association management," "lease administration," "custom preventive maintenance programs," and "vendor contractor management" while at the same time providing "commercial real estate investment sales & services," access to an "exhaustively maintained investor database," and "opinion-of-value underwriting analysis" and other services.[10]

● Markowsky Ringel Greenberg (mrgmemphis.com) offers "investment services," "property management," and "brokerage services" in connection with multi-family & commercial real estate. The company acts as a primary investor in the first properties it developed, and as a partner in the properties it developed since that time. "Coupling solid investment strategy with effective property management capability provides us with a high level of control over two of the most critical factors in driving investment profits to the bottom line for investors."[11]

● Northpoint Asset Management (northpointam.com), "a professional residential and commercial property investment management company," "manages both commercial and residential real estate for thousands across the US, including some of the world's largest-institutional investors." The company provides "property management," "real estate sales," and "real estate investment services," and states that it "has achieved strong results through security originated by highly selective and low-leverage investments."[12]

● Luxury Property Care (luxurypropertycare.com), which advertises itself as a "property management company," helps clients "target those commercial or residential properties that are the best fit for [their] skill level, available resource, risk tolerance and long term investment goals." The company also offers "complete multi-family property management under one room" including services such as "tenant management," rennet collection," and "property inspections."[13]

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[9] *Id.* at 33-35.

[10] August 8, 2022 Office Action, TSDR 11-12.

[11] October 25, 2018 Office Action, TSDR 40-41.

[12] August 8, 2022 Office Action, TSDR 13.

[13] *Id.* at 17, 19, 26-29.

> ● Anchor Realty (anchorrealtypa.com) acts as a "rental property management" with an individualized approach to commercial and residential property management." The company also provides "expert guidance" in "real estate investment," "allow[ing] you to reap the benefits of investing in residential and commercial real estate without the hassle, guesswork, and time commitment of a hands-on owner."[14]
>
> ● Avalon Group USA, LLC (avalongroupus.com) offers a number of property management services for "residential housing, apartment homes, mixed-use properties including commercial and retail space," providing property management, "financial services" and "property operations." The company advertises that it "generat[es] attractive risk-adjusted returns through the acquisition and development of rental housing, buying, selling and developing real estate assets" and "dedicated investment management efforts."[15]
>
> ● LEAP Property Management offers "Full-service Property Management" services for residential properties that include "Property Care and Maintenance," "Rent Collection," and "Tenant Screening and Placement," and is "happy to partner with your property's HOA" to ensure "adherence to HOA Rules and Regulations." The company also offers "real estate investment services." "LEAP's experience investment team makes real estate investing simple, cost effective, and timely," "guiding investors through the entire process so you can reach your goals and generate predicable cash flow fast."[16]

This evidence stablishes a relationship between (1) Applicant's management of multi-tenant living facilities owned by others, namely, building management on the one hand, and (2) Registrant's Commercial lending services and financial investment services; commercial real estate lending and investment services; and institutional investment management and advisory services related to the foregoing on the other. Indeed, the record shows that commercial real estate investment companies provide

[14] *Id.* at 4-12.

[15] *Id.* at 13-17.

[16] *Id.* at 24-35.

real estate investment advice regarding properties that include multi-family residential properties, and they manage those properties on behalf of their investors. The services are thus shown to be closely related.

Turning to the third *Dupont* factor, the channels of trade, we find that the same third-party use evidence in the record discussed above, including the evidence from Jennings Group, Chase Pacific, Edge, Markowsky Ringel Greenberg, Northpoint Asset Management, Luxury Property Care, Anchor Realty, Avalon Group USA, and LEAP Property Management supports a finding that both Applicant's and Registrant's kinds of services are offered and marketed in a least one common channel of trade, that is, the websites of property management and real estate investment providers.

Applicant submits a number of arguments against relatedness of the services, none of which are availing. Applicant first argues that the respective services are "distinctly different," and that there is no evidence that Registrant's services include Applicant's services, and vice-versa.[17] According to Applicant, "[t]he PTO has failed to present substantial evidence of record that the Applicant's services are the same as the registrant' [sic] services," and "[t]his most direct lack of evidence supports a finding of no likelihood of confusion."[18] We disagree. It is well-settled that services need not be identical in order to find a likelihood of confusion. Rather, the question is whether they are marketed in a manner that "could give rise to the mistaken belief

[17] 8 TTABVUE 12-13 (Applicant's Brief).

[18] *Id.* at 13.

that they emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) ("Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services."); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.").

Applicant also argues, citing *Jacobs v. Int'l Multifoods Corp.*, 668 F.2d 1234, 212 USPQ2d 641, 642 (CCPA 1982), that "[i]n situations like the present, in which the relatedness of goods and services is obscure or less evident, the PTO will need to show 'something more' that the mere fact that the … services are 'used together," and further, citing *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. Cir. 2003), that "[t]he something more standard requires a showing of substantial overlap between the competing services.[19] But "something more" is only required in the context of comparing goods with services, and then only where the relationship between the goods and services is not evident, well-known, or generally recognized. *See In re St. Helena Hosp.*, 113 USPQ2d at 1087; *In re Country Oven*, 2019 USPQ2d 443903, at *11-13 (TTAB 2019). Here, we compare services with services where both

[19] *Id.* at 10.

on their face involve real estate, and the third-party evidence of record shows a relationship between Applicant's multi-family residential building management services and Registrant's real estate investment services that is evident and not obscure.

Applicant decries the fact that the Examining Attorney "presented no other registrations showing overlap between Applicant's building management services and registrant's lending and investment services," and instead relies on "Internet advertising prepared by third-parties…."[20] According to Applicant, "the advertisements are self-serving statements without proof of actual use" and, "[m]ore importantly, … do not present the perception of the consuming public."[21] Further, quoting *In re St. Helena,* 113 USPQ2d at 1087 (internal quotations omitted), Applicant maintains that "[a]dvertising on the Internet is ubiquitous and proves little, if anything, about the likelihood that consumers will confuse similar marks used on [] goods or services."[22] Applicant also asserts that according to its analysis, there is a "lack of material overlap" between the respective services.[23]

These arguments are unpersuasive. As the Examining Attorney notes, "[m]aterials obtained from the Internet are … generally accepted as competent evidence." *See In re Bayer Aktiengesellschaft*, 488 F.3d 960, 966, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) ("Internet evidence is generally admissible and may be

[20] *Id.* at 14.

[21] *Id.*

[22] *Id.*

[23] *Id.*

considered for purposes of evaluating a trademark."), citing *Retail Servs. v. Freebies Publ'g*, 364 F.3d 535, 544-45 (4th Cir. 2004) (considering online dictionaries and websites as evidence of consumer perception of marks). In addition, Applicant's quotation from *In re St. Helena Hosp.* is misplaced. It is not simply that both Applicant's and Registrant's kinds of services are advertised through the Internet, but rather that they are advertised and promoted under the same marks, by the same companies, on the same websites. With this type of marketplace evidence showing consumer exposure to the respective services offered under the same marks, relatedness can be found regardless of whether the record also includes third-party registrations covering both types of services. *See, e.g., In re Detroit Athletic Co.*, 128 USPQ2d at 1051-52 (affirming relatedness of goods and services where the record included marketplace evidence of a single mark for both, but no third-party registrations listing the same goods and services under one mark). Finally, there is no requirement that services "material[ly] overlap" for relatedness to be found; they need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the services] emanate from the same source." *Coach Servs.*, 101 USPQ2d at 1722; *see also In re Embiid*, 2021 USPQ2d at *28-29.

Lastly, Applicant argues that its and Registrant's services "target distinct customers through distinct marketing channels."[24] However, Applicant offers no evidence in support of this assertion. "Attorney argument is no substitute for

[24] *Id.* at 22.

evidence." *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018). Moreover, as the Examining Attorney observes, the application and registrations in this case contain no language limiting the identified services to specific types of customers or channels of trade."[25] As such, we must presume that Applicant's and Registrant's services are, or will be, offered in all channels of trade usual for such services, including, as the record shows, via company websites, and are purchased by the usual classes of purchasers which, in this case, include ordinary consumers of Applicant's and Registrant's services. *See In re Viterra Inc.*, 101 USPQ2d at 1908; *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

The second and third *DuPont* factors both weigh in favor of finding of a likelihood of confusion.

C. Purchasing Conditions

Under the fourth *DuPont* factor, we consider "[t]he conditions under which and buyers to whom sales are made, i.e., 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 177 USPQ at 567. Applicant contends that purchasing conditions weigh against a finding of likelihood of confusion. Specifically, it argues that:

> Applicant's services call for management of multiple occupants of a living/residential building. As such, the owner of a multi-tenant living facility will diligently have in mind its contractual and legal obligations to a plurality of tenants when selecting a building manager. Such owners are likely to be sophisticated and exercise greater care when selecting a property manager.
>
> The same is likely true of customers of the registrant's services. Customers seeking capital-related commercial lending or financial investment services are unlikely to be making an impulse decision but

[25] 10 TTABVUE 16 (Examining Attorney's Brief).

> will diligently exercise sophisticated, careful shopping of services when committing capital obligations in commercial lending or financial investment services before making their purchases. This evidence supports a finding of no likelihood of confusion.[26]

However, as the Examining Attorney points out, "Applicant has adduced no evidence tending to show that consumers for [Registrant's and Applicant's] respective services are 'sophisticated,' or otherwise likely to exercise great care when selecting those services."[27] Furthermore, "precedent requires [our] decision to be based 'on the least sophisticated potential purchasers,'" *Stone Lion*, 110 USPQ2d at 1163, which may include small businesses and sole proprietors. Moreover, as the Examining Attorney further notes, "the fact that purchasers may be sophisticated or knowledgeable in a particular field … does not necessarily mean that they are sophisticated or knowledgeable in the filed of trademarks, or immune from source confusion."[28] *See Cunningham v. Laser Golf*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011) (finding that although "it stands to reason wholesale buyers should be accorded a higher degree of purchaser sophistication over the general public in terms of determining susceptibility to confusion," nevertheless, such consumers "are not immune from source confusion." (citations omitted)).

The fourth *DuPont* factor is neutral.

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[26] 8 TTABVUE 23 (Applicant's Brief) (citations omitted).

[27] 10 TTABVUE 17 (Examining Attorney's Brief).

[28] *Id.* at 17-18.

D. Conclusion

We have found that the first, second, and third *DuPont* factors weigh in favor of a finding of likelihood of confusion, the first heavily so, and the fourth *DuPont* factor is neutral. Accordingly, we conclude that Applicant's mark NXT for "management of multi-tenant living facilities owned by others, namely, building management" is likely to be confused with NXT CAPITAL in Registration No. 4267307 for "commercial lending services and financial investment services; commercial real estate lending and investment services; and institutional investment management and advisory services related to the foregoing."

***Decision*:** The refusal to register the mark NXT in Application Serial No. 88008152 under Section 2(d) is affirmed.