

This Opinion is Not a
Precedent of the TTAB

Mailed: March 8, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Billy Jack Carter

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Serial No. 88464536

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Erik M. Pelton of Erik M. Pelton & Associates PLLC,
for Billy Jack Carter.

Jamilla E. Galloway, Trademark Examining Attorney, Law Office 121,
Richard White, Managing Attorney.

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Before Kuhlke, Wolfson and Heasley,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Billy Jack Carter (“Applicant”) seeks registration on the Principal Register for the
mark CHAPTRE in standard characters for services ultimately identified as:

Real estate brokerage services; Real estate agency services;
Evaluation of real property; Real estate appraisal and
valuation; Business brokerage services pertaining to
procurement, buying, selling and tendering information
and opportunities; Franchising services, namely, providing
financial information and advice regarding the
establishment and/or operation of real estate brokerage
business; Providing an Internet website portal offering
information in the fields of real estate concerning the
purchase and sale of new and resale homes and condos;

Business brokerage services pertaining to procurement, buying, selling and tendering information and opportunities, in International Class 36.¹

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 that Applicant's mark, when used in connection with the identified services, so resembles the registered mark CHAPTER in standard characters for:

Rental and leasing of residential condominiums located within hotel development properties, building complexes, residential buildings and properties, housing estates, commercial buildings, office buildings and shopping centres; assessment and management of real estate; rental property management; rental of short-term furnished apartments; real estate acquisition services; real estate consulting services; real estate funds investment services; real estate insurance underwriting services; real estate investment services; real estate management consultation; real estate procurement for others; financial investment in the field of multifamily real estate; financial due diligence services in the field of real estate; providing real estate listings and real estate information via the Internet; information, advisory and consultancy services relating to all the aforesaid services; all the aforesaid services also provided online, from a computer database, via the Internet, via mobile telephone and via other means of communication," in International Class 36,²

¹ Application Serial No. 88464536, filed on June 7, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of an intention to use the mark in commerce.

² Registration No. 5706862, issued on March 26, 2019. The registration includes other services, "Real estate development services; real estate development and construction of hotel properties, building complexes, residential buildings and properties, housing estates, commercial buildings, office buildings and shopping centres; repair and maintenance services relating to hotels properties, building complexes, residential buildings and properties, housing estates, commercial buildings, office buildings, shopping centres and parking structures; cleaning services, namely, real estate property cleaning services, hotel cleaning services, commercial building cleaning services, cleaning services relating to building complexes, residential buildings cleaning services, cleaning services relating to shopping centres, cleaning services relating to office buildings; information, advisory and consultancy

as to be likely to cause confusion.

When the Section 2(d) refusal was made final, Applicant appealed and requested reconsideration. On August 9, 2021, the Examining Attorney denied the request. The appeal thereafter resumed and briefs have been filed. We affirm the refusal to register.³

I. Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *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).

services relating to all the aforesaid services; all the aforesaid services also provided online, from a computer database, via the Internet, via mobile telephone and via other means of communication,” in International Class 37 and “Entertainment services, namely, arranging, organizing, conducting, and hosting social entertainment events, musical events, live entertainment parties, entertainment in the nature of live musical performances, and social entertainment club services in the nature of arranging, organizing, and hosting social events, get-togethers, and parties for club members; information, advisory and consultancy services relating to all the aforesaid services; all the aforesaid services also provided online, from a computer database, via the Internet, via mobile telephone and via other means of communication,” in International Class 41; however, for purposes of the refusal, we focus on the services in International Class 36.

³ Citations to TTABVUE throughout the decision are to the Board’s public online database that contains the appeal file, available on the USPTO website, www.USPTO.gov. The first number represents the docket number in the TTABVUE electronic case file and the second represents the page number(s).

Citations to the examination record refer to the USPTO’s online Trademark Status and Document Retrieval system (TSDR).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the [services] and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“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 [services].’”) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. Similarity/Dissimilarity of the Marks

We compare the marks in their entirety as to “appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John's*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd mem.*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

In comparing the marks CHAPTRE and CHAPTER the similarities are self-evident. While for purposes of our analysis there is no correct pronunciation of a mark, at least one pronunciation of the marks is phonetically identical. *In re 1st USA*

Realty Professionals, Inc., 84 USPQ2d 1581, 1586 (TTAB 2007) (citing *Krim-Ko Corp. v. The Coca-Cola Co.*, 390 F.2d 728, 156 USPQ 523 (CCPA 1968)) (marks identical in pronunciation and similarity in sound alone may be sufficient for a finding of likelihood of confusion). The “RE” versus “ER” spelling is a distinction between British and American English, but the pronunciation is the same.⁴ In fact, CHAPTRE is the old spelling of CHAPTER.⁵ They also share the similar connotation of the word “chapter,” in particular in view of the phonetic similarity.

Applicant recognizes the similarity in sound, but argues they differ in appearance and commercial impression. App. Br., 7 TTABVUE 15. As to appearance, even though the last two letters in the marks differ, the first five are the same and will make a greater impression on consumers rather than the transposed letters at the end that are pronounced the same. Relying on the definition of CHAPTER as “something resembling a chapter in being a significant specified unit,”⁶ Applicant argues that Registrant’s mark CHAPTER suggests beginning a “new journey, portion, and/or period of their lives.” *Id.* Conversely, Applicant asserts, the ending of Applicant’s mark -RE “is intended to stand for ‘REAL ESTATE,’ suggesting that its services relate to real estate and brokerage services.” *Id.* In support of this possible meaning, Applicant points to third-party use of RE as an abbreviation of “real estate” in the

⁴ See August 9, 2021 Reconsideration Letter (<https://en.wikipedia.org>, www.lexico.com), TSDR 2-4.

⁵ See June 13, 2020 Office Action (www.freedictionary.com “Middle English chapter” <https://topmeaning.com> “chapter Obsolete form of chapter”), TSDR 74-75.

⁶ December 8, 2020 Response Exh. A, TSDR at 19.

field of real estate services (for example, RE/MAX and RE Technology).⁷ In addition, Applicant contends that it uses CHAPTRE as an acronym for “Computerized Handshake system for Advanced Performance Technology in the field of Real Estate” as a reference to “Applicant’s proprietary technology that allows for faster and more secure transactions between buyers and sellers of real estate. Applicant’s mark does not refer to an individual’s next life ‘CHAPTER,’ rather, it uses its mark to reference its real estate-related technology.” 7 TTABVUE 16.

We bear in mind that the “marks ‘must be considered . . . in light of the fallibility of memory.’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ2d 1, 3 (CCPA 1977)). While a close side-by-side comparison of the marks could reveal the slight differences between them, that is not the proper way to determine likelihood of confusion, as that is not the way customers will view the marks in the marketplace. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018); *see also In re Solar Energy Corp.*, 217 USPQ 743, 745 (TTAB 1983) and cases cited therein; *see also Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016).

To customers in the marketplace, the marks have similar appearance and would convey the same sound, connotation and commercial impression. The transposition of the marks’ last two letters does not dispel those similarities. Even if Applicant

⁷ December 8, 2020 Response Exhs. C-E, TSDR at 28-36.

intends “RE” to refer to real estate “we must look to the likely consumer perception of the mark in connection with the identified [services], rather than applicant’s intended connotation.” *UMG Recordings, Inc. v. Mattel, Inc.*, 100 USPQ2d 1868, 1886 (TTAB 2011). Here, there is no evidence that potential consumers will perceive “RE” as an abbreviation for “real estate” or as an acronym for Applicant’s real estate-related technology. We agree with the Examining Attorney’s observation that Applicant’s attempted distinction “is unpersuasive because the ‘RE’ is not separated or distinguished from ‘CHAPT’ in any way that gives the impression that ‘RE’ means ‘real estate.’” Examining Attorney’s Brief, 9 TTABVUE 8. In fact, upon viewing either mark, potential consumers may very well perceive the identical meaning and commercial impression of a “new journey, portion, and/or period of their lives.”

In terms of appearance, sound, connotation, and commercial impression, we find the similarity of the marks — considered in their entirety — outweighs their dissimilarities. In view thereof, the similarity of these marks weighs in favor of a finding of likelihood of confusion.




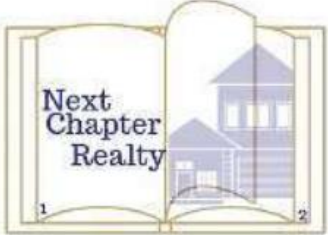




B. Weakness of CHAPTER

As Applicant argues, “[m]arks that are conceptually and commercially weak are entitled to a narrower scope of protection, such that differences in appearance and commercial impression can be enough to alleviate confusion [and] [i]f the common element (or elements) of two marks is ‘weak’ in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have other commonalities.” 7 TTABVUE 16.

1. Commercial Weakness

Applicant argues that use of the term CHAPTER by others in the field of real estate demonstrates that the term should be given a narrower scope of protection and that the public “may have become familiar with a multiplicity of the same or similar marks, and can distinguish them based on minor differences.” 7 TTABVUE 17. In support of this position, Applicant points to 17 third-party uses of marks “containing the term ‘CHAPTER’ in connection with services in the fields of real estate, housing, leasing, senior living, and home rental services.” 7 TTABVUE 17. Applicant submitted printouts from third-party websites. Applicant’s table of third-party uses is reproduced below:⁸

⁸ December 8, 2020 Response, TSDR 11-12.

	
	<p>Next Chapter Properties, LLC</p>
<p>New Chapter Realty Group</p>	
	
	



The Examining Attorney argues these examples show use of the word CHAPTER in combination with other terms, yielding unique commercial impressions that distinguish this case from the record in *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671 (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., Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005). Even considering the distinction pointed out by the Examining Attorney, i.e., where the marks in issue are single word marks and the examples include other distinctive elements, we find these third-party use

examples probative as to the somewhat common use of the term CHAPTER in connection with real estate services, all conveying the same connotation as the next period in a person’s life.

2. Conceptual Weakness

Applicant points to four third-party registrations to show that CHAPTER is conceptually weak. Third-party registrations are relevant evidence of the inherent or conceptual strength or weakness of a mark or term because they are probative of how terms are used in connection with the goods or services identified in the registrations. *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745-46 (TTAB 2016). Applicant’s table of third-party registrations is set forth below:⁹

Marks	Reg. No.	Services
BUILDING YOUR NEXT CHAPTER	5051335	<p>Class 36: Real estate agencies; Real estate brokerage</p> <p>Class 37: Construction services, namely, planning, laying out and construction of a planned residential community; Real estate development services in the field of retirement communities</p> <p>Class 41: Providing recreation facilities</p>
CHAPTER TWO	4768354	<p>Class 36: Insurance and financial services, namely, insurance underwriting, administration and agency services in the fields of life, property and casualty, disability, long term care, and annuities; pension fund and retirement plan management services, namely, investment of pension and retirement funds for others, and</p>

⁹ Copies of the registrations are attached to the December 8, 2020 Response, TSDR 37-41.

		administration of employee pension and retirement plans; corporate financing services; investment banking services; capital investment consultation services; investment brokerage services, namely, private and public sales of loans and loan portfolios; securities and commodities brokerage and underwriting services; mutual fund brokerage, distribution and investment services; financial clearing house services; banking services; credit card and debit card services; portfolio asset management services; investment advisory and management services; financial planning services; estate planning services; financial information provided by electronic means; financial research services; loan financing services; mortgage financing services; home equity loans; real estate brokerage, leasing and management services; and real estate investment services
INSURING YOUR LIFE ONE CHAPTER AT A TIME	2501233	Class 36: Insurance underwriting and insurance administration in the fields of commercial insurance, namely auto, truck and fleet, inland and ocean marine, fire and allied lines, multi-peril portfolios, general and product liability, commercial umbrella coverage, worker's compensation, business life insurance, group life, health, dental, disability, bonds, directors and officers liability, employment related practices liability, special and unique risks and business overhead protection; insurance underwriting and insurance administration in the fields of life insurance, namely personal needs, mortgage and family, college education funding, business needs, key person life and buy-sell agreements; insurance underwriting and insurance administration in the fields of homeowners insurance, namely dwellings, automobiles, boats, personal liability, valuable items, personal umbrellas, major medical, long term care, mortgage protection, and retirement funding; financial planning and administering financial plans in the fields of pensions, profit sharing, 401-k plans, sep and keough plans, deferred compensation, split dollar, disability income, individual retirement accounts, investment portfolios, including securities, bonds and mutual funds, and retirement planning; and estate planning
RETIREMENT CHAPTERS 10	4910084	Class 36: Underwriting, issuance and administration of annuities

Only two of the third-party registrations have similar services, limiting the probative weight of this evidence. However, the meaning, suggesting beginning a new period of one's life, is the same, and the two relevant registrations do underscore that meaning in the field of real estate.

The Federal Circuit has held that “extensive evidence of third-party use and registrations is ‘powerful on its face,’ even where the specific extent and impact of the usage has not been established.” *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). Here, while perhaps not extensive, the 17 third-party uses and two registrations in connection with real estate-related services do tend to show some weakness of this term in the field and we accord it a narrower scope of protection.¹⁰

C. Relatedness of the Services, Trade Channels, Classes of Consumers and Conditions of Sale

When considering the services, trade channels, classes of consumers and conditions of sale, we must make our determinations based on the services as they are identified in the application and cited registration. *See In re Dixie Rests. Inc.*, 41

¹⁰ Applicant also submitted several overlapping sets of third-party registrations “with identical dominant terms for services in the field of real estate where the owner of the marks is different.” 7 TTABVUE 23. Applicant argues this shows consumers make distinctions between marks with identical wording in the field of real estate. However, “[t]he pairs of subsisting registrations ... do not show that an element of the cited [CHAPTER] mark is conceptually weak because the registered [third-party marks] do not contain any such element.” *In re Joel Embiid*, 2021 USPQ2d 577, *37 (TTAB 2021) (use of sets of third-party registrations not probative of weakness or consumer distinction for a different mark or term) (citing *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266 (TTAB 2009).

USPQ2d at 1534. *See also Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Computer Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The issue is not whether the services will be confused with each other, but rather whether the public will be confused as to their source. *See Recot Inc. v. M.C. 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.”).

It is sufficient that the services of the applicant and the registrant are related in some manner or that the conditions surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1476 (Fed. Cir. 2000).

Applicant’s various real estate services are legally identical and closely related to Registrant’s real estate services. In particular, Applicant’s “real estate brokerage services,” “real estate agency services” and “real estate appraisal and valuation” encompass Registrant’s “real estate acquisition services” and “real estate consulting services.” Applicant’s “providing an Internet website portal offering information in the fields of real estate concerning the purchase and sale of new and resale homes

and condos” are encompassed by Registrant’s “providing real estate listings and real estate information via the Internet” and “information, advisory and consultancy services relating to all the aforesaid services; all the aforesaid services also provided online, from a computer database, via the Internet.” Applicant’s “business brokerage services pertaining to procurement, buying, selling and tendering information and opportunities” is encompassed by Registrant’s “real estate procurement for others.” It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of services within a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014).

Applicant does not dispute the general relatedness of the real estate services, but argues that they travel in different channels of trade because “Applicant targets individuals looking to become homeowners of properties that are already constructed and/or built, whereas Registrant’s consumers are individuals looking to lease properties and consumers (including businesses) looking to build a space for commercial use.” 7 TTABVUE 24. Applicant contends it “has amended its identification of services to narrowly tailored real estate and brokerage services, indicating that its services are intended to be offered to a niche segment of consumers” and “[a] consumer utilizing one of the Registrant’s services (i.e., leasing, financing for leasing, and/or property development services) would not be confused with Applicant’s services, because Applicant’s identification is narrowly tailored to

real estate services related to buying and selling residential properties.” 7 TTABVUE 25.

While Applicant’s services may be limited to buying and selling of residential properties, several of Applicant’s identified services are not limited solely to residential properties. For example, Applicant’s “real estate services” and “real estate agency services” are not so limited. In addition, several of Registrant’s services are not limited to rental or “consumers looking to build a space for commercial use.” *In re Midwest Gaming & Entm’t LLC*, 106 USPQ2d 1163, 1166 (TTAB 2013) (finding that, because a semicolon separated the two relevant clauses in registrant’s identification, its “restaurant and bar services” is a discrete category of services that stands alone and independently as a basis for likelihood-of-confusion analysis, and is not connected to nor dependent on the services set out on the other side of the semicolon). We may not read limitations into the identifications based on actual use. Here, where some of the services are legally identical and there are no limitations as to channels of trade or classes of purchasers for those services in either the application or cited registration, we must presume that Applicant’s and Registrant’s services will be sold in the same channels of trade and will be bought by the same classes of purchasers. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

In addition to the legal identity of some of the services and the presumption of overlapping trade channels, the Examining Attorney's evidence in the form of printouts of third-party websites shows the relatedness of the various real-estate related services and the overlap in the channels of trade. These websites show use of a single mark in connection with various real-estate related services. A representative sample from the Examining Attorney's brief is set forth below:

- Website excerpts from Howard Hanna (<https://www.howardhanna.com/>) demonstrating an entity that provides real estate brokerage and agency services and franchising services also provides real estate acquisition services, real estate consulting services, providing real estate listings and real estate information via the Internet. (See Office action dated June 13, 2020, TSDR, p. 4-13 and Final Office action dated January 21, 2021, TSDR, p. 16-23);
- Website excerpts from Taylor Financial LLC (<http://taylorfinancialllc.com/>) demonstrating an entity that provides real estate brokerage services, real estate funds investment services and real estate investment services. (See Office action dated June 13, 2020, TSDR, p. 14-16);
- Website excerpts from ONE Real Estate Investment (<https://onerealestateinvestment.com/>) demonstrating an entity that provides real estate brokerage and agency services, real estate appraisal and valuation services and provides online information concerning the purchase and sale of new and resale homes and condos while simultaneously offering property management services, asset management services, real estate investment and acquisition services. (See Office action dated June 13, 2020, TSDR, p. 17-18);
- Website excerpts from The Flynn Company (<http://www.flynnco.com/>) demonstrating an entity that provides real estate brokerage services while

simultaneously providing real estate investment services and construction and advisory services. (*See* Office action dated June 13, 2020, TSDR, p. 22-27); and

- Website excerpt from ARIS (<https://www.aris.cc/>) demonstrating an entity that provides real estate agency services while simultaneously offering rental property management services, real estate investment services, and real estate development services. (*See* Office action dated June 13, 2020, TSDR, p. 28-29).

9 TTABVUE 16.

These examples of third-party use show that in the context of the marketplace, consumers are exposed to the same mark used for the respective services, indicating a single source for both. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272-73 (TTAB 2009) (website evidence shows same or overlapping channels of trade). They also show how the trade channels overlap. *Id.*

In terms of the conditions of sale, Applicant argues that the services are expensive “and a sophisticated consumer would act with care when purchasing them.” 7 TTABVUE 22. In support, Applicant points to evidence discussing the general process of purchasing real estate. An online article refers to a study by *Better Homes & Gardens* finding that 68 percent of home buyers completed the process within six months, after viewing an average of nine homes.¹¹ Another online article on a report regarding real estate purchasing behavior noted that 88 percent of buyers use a real

¹¹ Response December 8, 2020 Exh. X, TSDR 108-109 (www.dominio.com).

estate agent or broker and take, on average, eight weeks to search for a home.¹² This evidence pertains to the purchase of a home, not the process of choosing a real estate professional. Nonetheless, consumers may well exercise more care in obtaining real estate services than in making everyday purchases. However, that degree of care does not rise to a level that outweighs the other factors.

We find the relationship between the services and the overlap in their channels of trade and classes of consumers favor a finding of likelihood of confusion, and the conditions of sale based on the nature of the services do not obviate likely confusion.

II. Conclusion

In sum, we hold that, despite a somewhat narrowed scope of protection, because the marks are highly similar, the services are legally identical and closely related, and the trade channels and classes of consumers overlap, confusion is likely between Applicant's mark CHAPTRE and Registrant's mark CHAPTER.

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

¹² December 8, 2020 Response Exh. Y, TSDR 116 (www.nar.realtor).