

This Opinion is Not a
Precedent of the TTAB

Mailed: April 11, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Avenida Partners Development Group, LLC
—

Serial No. 88834060

Serial No. 88833991
—

M. Alim Malik of Jackson Tidus, for Avenida Partners Development Group, LLC.

Gilbert M. Swift, Trademark Examining Attorney,¹ Law Office 109,
Michael Kazazian, Managing Attorney.

—
Before Shaw, Greenbaum, and Johnson,
Administrative Trademark Judges.

Opinion by Johnson, Administrative Trademark Judge:

Avenida Partners Development Group, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark AVENIDA PARTNERS,² and

¹ The applications were examined by Ms. Gina Fink prior to their assignment to Mr. Swift on November 16, 2021.

² Application Serial No. 88834060, filed on March 13, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s allegation of use of the mark in commerce. The application includes the following translation statement: “The English translation of ‘AVENIDA’ in the mark is ‘AVENUE’ or, figuratively speaking, ‘GATHERING’ or ‘TO GATHER.’” Applicant disclaims the exclusive right to use the word “PARTNERS.”

the AVENIDA PARTNERS composite mark,³ shown below, for “Real estate development services including the field of active, independent senior living communities,” in International Class 37 (“Applicant’s Services”).



The Trademark Examining Attorney refused registration of the marks under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s marks, as used in connection with Applicant’s Services, so resemble the standard character mark, AVENUE PARTNERS (“Registrant’s Mark”), registered on the Principal Register for “Real estate development; Real estate development and construction of commercial, residential and hotel property; Real estate site selection,”

³ Application Serial No. 88833991, filed on March 13, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s allegation of use of the mark in commerce. The mark is described as follows: “The mark consists of a stylized lower case orange and yellow ‘a’ above grey colored stacked words ‘AVENIDA PARTNERS’. The letter ‘a’ is orange RGB color code 242, 101, 49. The trim around the letter ‘a’ is yellow RGB color code 251, 176, 52. The words AVENIDA PARTNERS are written in the Blair font and are in grey RGB color code 88, 88, 90. The color(s) orange, yellow, and grey is/are claimed as a feature of the mark.” The application includes the following translation statement: “The English translation of ‘AVENIDA’ in the mark is ‘AVENUE’ or, figuratively speaking, ‘GATHERING’ or ‘TO GATHER.’” Applicant disclaims the exclusive right to use the word ‘PARTNERS.’”

Citations to the appeal record are from the publicly available documents in TTABVUE, the Board’s electronic docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). The number preceding “TTABVUE” corresponds to the docket entry number; the number(s) following “TTABVUE” refer to the page number(s) of that particular docket entry, if applicable. Citations to the application record are to pages in the Trademark Status and Document Retrieval (TSDR) database of the United States Patent and Trademark Office (USPTO). Citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents in the USPTO TTABVUE Case Viewer.

in International Class 37⁴ (“Registrant’s Services”), as to be likely to cause confusion, to cause mistake, or to deceive.

When the refusals were made final, Applicant appealed. The appeals have been fully briefed. We affirm the refusals to register.

I. Appeals Consolidated

These appeals involve common questions of law and fact and the records are similar. Accordingly, we consolidate and decide both appeals in this single decision. *See In re Anderson*, 101 USPQ2d 1912, 1915 (TTAB 2012) (*sua sponte* consolidation of two appeals); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (2021). We refer to the record in Serial No. 88834060 (the ’060 Application) for AVENIDA PARTNERS (Applicant’s Mark) unless otherwise indicated.

II. 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, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive” 15 U.S.C. § 1052(d).

⁴ Registration No. 5546891, issued August 21, 2018. Registrant disclaims the exclusive right to use the word “PARTNERS.”

To determine whether there is a likelihood of confusion between the marks under Section 2(d), we analyze the evidence and arguments under the *DuPont* factors. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). 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). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. ... Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, *3 (Fed. Cir. 2020). “In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services.” *Chutter, Inc. v. Great Mgmt. Grp., LLC*, 2021 USPQ2d 1001, *29 (TTAB 2021) (citing *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)).

A. The Similarity or Dissimilarity and Nature of the Services

We begin with the *DuPont* factor regarding the similarity of the services. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Applicant’s Services are “Real estate development services including the field of active, independent senior living communities.” Registrant’s Services are “Real estate development; Real estate development and construction of commercial, residential and hotel property; Real

estate site selection.” The services at issue overlap and are legally identical inasmuch as Registrant’s broadly worded “real estate development services” encompass Applicant’s narrower “real estate development services including the field of active, independent senior living communities.” *See In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”). Such overlap is sufficient to establish relatedness supporting a finding of a likelihood of confusion; the Examining Attorney need not prove, and we need not find, similarity as to each service listed in the respective identifications. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (a finding of likely confusion must be made with respect to at least one item in each opposed class of the application to establish likely confusion as to that class of goods); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (“[I]t is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application”).

Applicant contends that the services actually offered under its marks are distinct from the services actually offered under the Registrant’s Mark since Applicant and Registrant “offer services in disparate real estate segments that do not overlap” (Applicant’s Brief, 4 TTABVUE 9), and the users of the respective services and their respective markets are “completely different.” (4 TTABVUE 8-9). Applicant also contends that the Examining Attorney impermissibly broadened Registrant’s

Services because the identification does not include “senior living communities.” (Applicant’s Reply Brief, 7 TTABVUE 4). Applicant’s arguments, however, are unpersuasive. We must base our determination of likelihood of confusion on the identification of services in the application and registrations at issue, and not on extrinsic evidence of actual use. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, LLC*, 866 F.3d 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

Because the services are legally identical, this *DuPont* factor strongly supports a finding of a likelihood of confusion.

B. Established, Likely-to-Continue Channels of Trade and Classes of Purchasers

Next, we consider the similarity or dissimilarity of established, likely-to-continue channels of trade and classes of purchasers. Absent “specific limitations” regarding trade channels or purchasers, which are not present in the respective identifications, and given the identical nature of the identified services, we presume that those identified services move through identical channels of trade and are available to identical purchasers. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (identical goods are presumed to travel in same channels of trade to same class of purchasers); *see also In re i.am.symbolic*, 123 USPQ2d at 1750.

Registrant’s Services are not limited to a specific field of “real estate development services,” so Registrant could develop land for any legal use. We find that Applicant’s Services and Registrant’s Services are offered to the same purchasers in the same

channels of trade, based on the legal identity of the respective services. This *DuPont* factor also weighs heavily in favor of finding a likelihood of confusion.

C. Degree of Purchaser Care

Turning to the next *DuPont* factor, the conditions under which the goods or services are likely to be purchased, e.g., whether on impulse or after careful consideration (i.e., consumer purchasing care), we note that purchaser sophistication or degree of care when encountering marks may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items where consumers pay little attention to the source of the products may tend to have the opposite effect. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1695 (Fed. Cir. 2005).

Applicant speculates that any likelihood of confusion is “completely obviated” here, because purchasers who encounter Registrant’s Services are experienced, sophisticated, and highly unlikely to be confused as to the source of Applicant’s community development projects for adults age 55 and above. (4 TTABVUE 11). Moreover, Applicant posits that Registrant’s Mark is inherently weak. (4 TTABVUE 11).

In support of its purchaser sophistication argument, Applicant cites *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) and *In re Thor Tech, Inc.*, 113 USPQ2d 1546 (TTAB 2015). However, both cases are inapposite. Even though the parties’ “QR” marks were identical, in *Quartz Radiation*, the evidence of record clearly showed that the products offered under the marks were expensive,

markedly different in nature, promoted differently, and were purchased by different and discriminating purchasers with technical expertise, so the Board found confusion unlikely. *Id.* at 1669-70.

Likewise, the facts here can be distinguished from those in *Thor Tech*. There, the applicant's mark, TERRAIN, for "recreational vehicles, namely, towable trailers," was refused registration on the ground that applicant's mark so resembled the cited mark, TERRAIN, for "motor land vehicles, namely, trucks," as to be likely to cause confusion. *Id.* at 1546. The Examining Attorney proffered seven third-party registrations of marks for goods including "trucks" and "trailers" as evidence that those goods emanated from the same source. *Id.* at 1547. Upon closer inspection, the Board found that five of those seven registrations were of no probative value since they were for recreational vehicle towable trailers. *Id.* To rebut the Office's evidence, the applicant proffered fifty pairs of third-party registrations of identical or similar marks for land motor vehicles and for towable recreational vehicle trailers. *Id.* at 1548-49.

After evaluating all of the evidence, the Board reversed the refusal, reasoning that the existence of fifty pairs of substantially identical marks for land motor vehicles and towable recreational vehicle trailers suggested that these goods were distinctive in the marketplace, making confusion unlikely. *Id.* at 1549. In addition, the Board found that purchasers of the goods would exercise a high degree of care in making purchasing decisions since the evidence clearly showed that the land motor vehicles and towable recreational vehicle trailers were "not everyday purchases," but were

special and expensive ones, purchased with “care and deliberation.” *Id.* at 1551 (citation omitted).

Here, Applicant has not proffered evidence to support either argument.⁵ We cannot rely on counsel’s bald assertions, for “[a]ttorney argument is no substitute for evidence.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1376, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005)). The identifications in the applications and registration are not limited to professional purchasers of the services, so we must presume that the purchasers consist of both professionals and the public, and that the standard of care for purchasing the goods or services is that of the least sophisticated potential purchaser. *In re FCA US LLC*, 126 USPQ2d 1214, 1222 (TTAB 2018) (citing *Stone Lion*, 110 USPQ2d at 1163). On this record, we find that consumers of real estate development services and Applicant’s narrower “real estate

⁵ Throughout Applicant’s Appeal Brief the footnotes include embedded links, or “hyperlinks,” linking to evidence that, presumably, supports Applicant’s arguments. The Examining Attorney has not discussed or objected to these hyperlinks, *cf. In re MK Diamond Prods.*, 2020 USPQ2d 10882, *1 n.5 (TTAB 2000) (registration not made of record during examination treated as though it was of record where, inter alia, Examining Attorney addressed the registration in her appeal brief and did not object to its discussion), but given their pervasiveness throughout the brief, we remind Applicant that a URL address or hyperlink is insufficient to introduce underlying websites or web pages into the record. *In re ADCO Indus. – Techs., L.P.*, 2020 USPQ2d 53786, *2 (TTAB Feb. 11, 2020) (citing *In re Olin*, 124 USPQ2d 1327, 1331 n.15 (TTAB 2017); TBMP § 1208.03). “Because the information displayed at a link’s Internet address can be changed or deleted, merely providing a link to a website is insufficient to make information from that site of record.” *Olin*, 124 USPQ2d at 1332 n.15. In order to properly introduce Internet evidence into the record, an applicant must provide (1) an image file or printout of the downloaded webpage; (2) the date the evidence was downloaded or accessed; and (3) the complete URL address of the webpage. *In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1733 (TTAB 2018); TBMP § 1208.03. In order to make such evidence of record after appeal, a proper motion or request for remand must be made. *See generally* TBMP § 1207. We will consider evidence that was properly introduced into the record during examination of the ’060 Application.

development services including the field of active, independent senior living communities,” include ordinary consumers.

However, by their nature, real estate development services involve some degree of consumer sophistication. Accordingly, we find that purchasers of Applicant’s Services as well as Registrant’s Services are more likely to exercise a high degree of purchasing care when making purchasing decisions for the respective services. The high degree of care exercised by these purchasers weighs against a finding of likelihood of confusion.

D. The Similarity or Dissimilarity of the Marks

Finally, we consider the *DuPont* factor relating to the similarity or dissimilarity of the marks. In comparing the marks we must consider their appearance, sound, connotation and overall commercial impression when considered in their entirety. *Palm Bay Imps.*, 73 USPQ2d at 1692. Similarity as to any one of these factors may be sufficient to support a finding that the marks are confusingly similar. *See Krim- Ko Corp. v. Coca- Cola Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”); *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (“Similarity in any one of these elements may be sufficient to find the marks confusingly similar.”), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. Sept. 13, 2019) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)). In comparing the marks, we are mindful that where, as here, the services are identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a

recognizable disparity between the services. *See Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

“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*, 123 USPQ2d at 1748 (quoting *Coach Servs.*, 101 USPQ2d at 1721); *see also In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (“[M]arks must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison.”). Our analysis must focus on the recollection of the average purchaser — here, an ordinary consumer of real estate development services — who normally retains a general, rather than specific, impression of trademarks.

In addition, descriptive or disclaimed matter is often “less significant in creating the mark’s commercial impression,” *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001), and may be given little weight. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000). There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re Viterra*,

101 USPQ2d at 1908; *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

1. The Doctrine of Foreign Equivalents

Applying the doctrine of foreign equivalents, the Examining Attorney argues that the marks are similar in meaning and commercial impression because the Spanish language word “avenida” “translates directly to English as ‘avenue.’” (Examining Attorney’s Appeal Brief, 6 TTABVUE 7). Applicant, however, contends that the marks are not similar in meaning or commercial impression, because in Spanish “avenida” means, figuratively, “gathering” or “to gather,” and the ordinary American purchaser would not translate “avenida” as “avenue.” (4 TTABVUE 7). During examination of its application, Applicant offered the following translation statement: “The English translation of ‘AVENIDA’ in the mark is ‘AVENUE’ or, figuratively speaking, ‘GATHERING’ or ‘TO GATHER.’”⁶

When determining similarity of meaning or connotation, in order to ascertain whether foreign language word marks are confusingly similar with English language word marks, generally, foreign words from common modern languages are translated into the English language under the doctrine of foreign equivalents. *Palm Bay Imps.*, 73 USPQ2d at 1696; MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 23:36 (5th ed. March 2022 Update).

⁶ Dec. 4, 2020 Response to Office Action at 2. The Examining Attorney accepted Applicant’s translation statement and made it of record in the March 10, 2021 Final Office Action at 2.

The doctrine of foreign equivalents is not an absolute rule, however, so it should be viewed merely as a guideline. *Palm Bay Imps.*, 73 USPQ2d at 1696 (citations omitted). “The doctrine should be applied only when it is likely that the ordinary American purchaser would ‘stop and translate [the word] into its English equivalent.’” *Id.* (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)); see also *In re Thomas*, 79 USPQ2d 1021, 1024 (TTAB 2006). The “ordinary American purchaser” includes “all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” *In re Spirits Int’l N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009). When deciding whether consumers would perceive the marks as equivalents, we must consider the context in which consumers would encounter the respective marks in connection with the involved services. See *In re Tia Maria, Inc.*, 188 USPQ 524, 526 (TTAB 1975) (no likelihood of confusion between TIA MARIA for a Mexican restaurant and AUNT MARYS for canned vegetables).

Spanish is a common language in the United States, and the Board has routinely applied the doctrine of foreign equivalents to Spanish language marks. *In re Aquamar*, 115 USPQ2d at 1127; *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1648 (TTAB 2008) (“[T]here is no question that Spanish is a common, modern language”). According to the Census Bureau, 13.2% of the United States population speaks Spanish, and Spanish is the second most commonly spoken language in the United States.⁷ Also, we take judicial notice that the word “avenida” in Spanish translates

⁷“2020AmericanCommunitySurvey5-YearEstimates”(https://data.census.gov/cedsci/profile?g=0100000US)(last accessed Apr. 8, 2022). The Board may take judicial notice of U.S. Census

directly to the word “avenue” in English.⁸ We are unpersuaded by Applicant’s argument that the figurative translation of “avenida” should apply here, since even the translation proffered by Applicant shows that the primary, or direct, translation of “avenida” is “avenue” in English.⁹ *See In re Perez*, 21 USPQ2d 1075, 1076 (TTAB 1991) (“While the Spanish term ‘gallo’ may also have other English translations, there is no support for the argument that the other English meanings of ‘gallo’ would be ascribed to the marks by purchasers.”).

We find that consumers would encounter the involved marks, AVENIDA PARTNERS and AVENUE PARTNERS, for identical services. As previously discussed, we must presume that on this record, the same, ordinary purchasers encounter the marks in conjunction with real estate development services in the same

Bureau data and records. *See, e.g., In re tapio GmbH*, 2020 USPQ2d 11387, *13 n.46 (TTAB 2020) (Board took judicial notice of 2010 U.S. Census records for top 1,000 surnames). *See also* Mar. 10, 2021 Final Office Action at 5 (Google search snippet dated Mar. 9, 2020 from babel.com which states, “[i]n the United States, more than 43 million people speak Spanish as a first language (about 13 percent of the population),” and that “the United States is home to nearly 12 million bilingual Spanish speakers.”).

⁸ COLLINS DICTIONARY (2022) (<https://www.collinsdictionary.com/us/dictionary/spanish-english/avenida>) (last accessed Apr. 8, 2022); LEXICO DICTIONARY (2022) (<https://www.lexico.com/es-en/traducir/avenida>) (last accessed Apr. 8, 2022); NGLISH (2022) (<https://www.nglish.com/spanish/en/avenida>) (last accessed Apr. 8, 2022); CAMBRIDGE DICTIONARY (<https://dictionary.cambridge.org/dictionary/spanish-english/avenida>) (last accessed Apr. 8, 2022). *See also* June 6, 2020 Office Action at 12 (Google Translate Spanish to English results for the word “avenida”). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).

⁹ Dec. 4, 2020 Response to Office Action at 14. Applicant also offers a screen shot from its own website, at which Applicant represents that “avenida” means “to gather” in English. *Id.* at 5. However, we find Applicant’s website evidence to be self-serving and not probative.


trade channels for those services, which include commercial and residential trade channels. Thus, the environment in which the marks are encountered is the same.

Moreover, we find that ordinary American purchasers would translate “avenida” to “avenue” upon encountering the marks for real estate development services. These purchasers would view the legally identical services offered under the marks as emanating from a common source, and could even view AVENIDA PARTNERS as an extension of AVENUE PARTNERS for the Spanish speaking market.¹⁰

2. The Appearance of the Marks

Applicant’s standard character mark is comprised of the words AVENIDA PARTNERS. Applicant’s composite mark, , is also comprised of the words

“AVENIDA PARTNERS” in stylized grey lettering below a stylized orange and yellow lower case letter “a.” “PARTNERS,” which appears in smaller type, is descriptive¹¹ and disclaimed in both applications. Registrant’s Mark, AVENUE PARTNERS, is in standard characters. Again, “PARTNERS” is descriptive and disclaimed. Because Registrant’s Mark is in standard characters, it could appear in any font or color,

including the same font and color used in Applicant’s composite mark, . See *In re Viterra*, 101 USPQ2d at 1909 (holding that the specific font style of a mark

¹⁰ Likewise, these same purchasers could also view AVENUE PARTNERS as an extension of AVENIDA PARTNERS for the non-Spanish speaking market.

¹¹ “PARTNERS” is defined as “[o]ne that is united or associated with another or others in an activity or a sphere of common interest, especially: a. A member of a business partnership.” June 6, 2020 Office Action at 8.

cannot serve as the basis to distinguish it from a mark in standard character form); *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011) (registrant “entitled to depictions of the standard character mark regardless of font style, size, or color”). Thus, the stylization and color of Applicant’s composite mark cannot serve as points of distinction.

We find that the marks are similar in appearance. For rational reasons, we may give 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 Viterra*, 101 USPQ2d at 1908. Here, the first four letters of the first word of each mark consists of the “A-V-E-N” spelling pattern. “AVENIDA,” the first word in Applicant’s Mark, and “AVENUE,” the first word in Registrant’s Mark, are the dominant elements of each. *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1998) (first part of a mark “is most likely to be impressed upon the mind of a purchaser and remembered”); *see also Palm Bay Imps.*, 73 USPQ2d at 1692 (“VEUVE,” as first word of both parties’ marks, is dominant element). The second word in each mark, “PARTNERS,” is disclaimed and descriptive for the real estate development business services offered under both, thus reinforcing the first word of Applicant’s Mark and the first word of Registrant’s Mark while simultaneously reducing the significance of “PARTNERS” in the likelihood of confusion analysis, since consumers are less likely to rely on descriptive or generic wording to indicate source. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (in comparing THE DELTA CAFÉ and DELTA, the generic term

“CAFÉ” lacked sufficient distinctiveness to create a distinct commercial impression). So while we do not ignore “PARTNERS” in our analysis, “the non-source identifying nature of the word[] and the disclaimer[] thereof constitute rational reasons for giving [the] term less weight in the analysis.” *In re Detroit Athletic*, 128 USPQ2d at 1049.

As to the stylized, lower case orange and yellow “a” in Applicant’s composite mark,





we find that the “a” is subordinate to the words “AVENIDA PARTNERS.” We accord greater weight to “AVENIDA PARTNERS” because it is the wording that purchasers use to refer to or request the services. *See In re Viterra*, 101 USPQ2d at 1911. We find no reason to deviate from the general rule that “[i]n the case of a composite mark containing both words and a design, the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.” *In re Viterra*, 101 USPQ2d at 1908 (quoting *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983)); *see also In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184 (TTAB 2018) (“In the case of marks, such as Applicant’s, consisting of words and a design, the words are normally accorded greater weight because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the goods.”).

Given the identity of the marks in appearance, connotation, and overall commercial impression, we find the first *DuPont* factor weighs in favor of finding a likelihood of confusion.

III. Conclusion

Having considered all of the arguments and evidence relating to the relevant likelihood of confusion factors, we find that on this record, confusion is likely between

Applicant's marks, AVENIDA PARTNERS and  AVENIDA PARTNERS, both for "Real estate development services including the field of active, independent senior living communities" in International Class 37, and Registrant's Mark, AVENUE PARTNERS, given the legally identical services, identical trade channels, identical classes of purchasers (despite the purchasers' sophistication), and the similarities of the marks.

Decision: The refusals to register Applicant's marks, AVENIDA PARTNERS and  AVENIDA PARTNERS, in International Class 37 for "Real estate development services including the field of active, independent senior living communities," are affirmed under Trademark Act Section 2(d) on the ground of likelihood of confusion.