

This Opinion is Not a  
Precedent of the TTAB

Mailed: May 10, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Milstead Technologies, LLC*

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Serial No. 88933287

Randy Michels, Kevin Hartley, Bill Ferrell, and Kathryn Yoches of Trust Tree Legal PC, for Milstead Technologies, LLC.

Jessica Chong, Trademark Examining Attorney, Law Office 102,  
Mitchell Front, Managing Attorney.

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Before Lykos, Shaw and Hudis,  
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Milstead Technologies, LLC (“Applicant”) seeks to register on the Principal Register the composite mark shown below for “Application service provider (ASP) featuring e-commerce software for businesses for use as a payment gateway that authorizes processing of credit cards, gift cards debit cards or direct payments to merchants” in International Class 42.<sup>1</sup>

<sup>1</sup> Application Serial No. 88933287 was filed on May 26, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming January 1, 2019 as the date of first use anywhere and in commerce. The description of the mark in the Application is as follows: “The



Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the mark QUICKSALE, registered in standard characters on the Principal Register for “providing electronic processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments” in International Class 36 that it is likely to cause confusion or mistake or to deceive.<sup>2</sup>

Following issuance of the final refusal, Applicant timely appealed and requested reconsideration. The Board suspended the appeal. After the Examining Attorney denied Applicant’s request for reconsideration, the appeal was resumed. The appeal is now fully briefed. For the following reasons, we affirm the refusal to register.

### **I. Likelihood of Confusion**

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). *See*

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mark consists of a design consisting of a sales tag stacked on top of a sales tag. To the right of the design is the stylized literal element ‘SaleQuick.com’.”

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system. Citations to briefs refer to the actual page number, if available, as well as TTABVUE, the Board’s online docketing system. 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. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

<sup>2</sup> Registration No. 4261231; renewed.

also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence or argument. See, e.g., *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the services, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. See *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 26 USPQ2d at 1688 (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. See *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (“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].’”)); see also *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.”). These factors, and the others, are discussed below.

#### **A. Strength of the Cited Mark**

In determining the strength of a cited mark, we consider both its inherent strength, based on the nature of the mark itself, and, if there is evidence in the record of marketplace recognition of the mark, its commercial strength. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength ....”); *Top Tobacco, L.P. v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006).

Applicant postulates that the cited mark QUICKSALE is entitled to only a narrow scope of protection. However, without evidentiary support, Applicant challenges the inherent or conceptual strength of the cited mark as highly suggestive of payment processing services allowing users to make quick sales. For example, third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015) (internal quotation marks omitted). *See also See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New*

*Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135-36 (Fed. Cir. 2015). Yet, we have no third-party registration evidence that might demonstrate the inherent weakness of this element of the cited mark as a source identifier.

Likewise, Applicant has introduced no evidence (e.g., third-party uses of similar marks for similar services) pertaining to the diminished commercial strength of the cited mark. “The purpose of introducing evidence of third-party use is ‘to show that customers have become so conditioned by a plethora of ... similar marks that customers have been educated to distinguish between different [such] marks on the bases of minute distinctions.’” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005)).

The dictionary definitions of the words “quick” and “sale” show the suggestive nature of Registrant’s mark.<sup>3</sup> Nonetheless, the mark QUICKSALE is inherently distinctive as evidenced by its registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act. *Tea Bd. of India*

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<sup>3</sup> We take judicial notice that “quick” is defined as “acting or capable of acting with speed” and “sale” as “the act of selling.” THE MERRIAM WEBSTER DICTIONARY (www.merriam-webster.com, last viewed May 4, 2022). The Board may take judicial notice of online dictionaries that exist in printed format or have regular fixed editions. *See e.g., In re Cordua Rests. LP*, 110 USPQ2d 122, 1229 n.4 (TTAB 2014) (Board took judicial notice of the definitions of “churrasco” from English language dictionaries), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 nn.23-24 (TTAB 2013) (Board took judicial notice of the definitions of “tea” from English online dictionary and encyclopedia that exist in printed format or have regular fixed editions).

80 USPQ2d at 1899. The registration is “prima facie evidence of the validity of the registered mark ....” Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b).

On this record, Applicant has not shown that the mark has been weakened by third-party registrations or uses of similar marks by competitors in the industry offering the same or similar services. We therefore accord Registrant’s mark “the normal scope of protection to which inherently distinctive marks are entitled.” *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1347 (TTAB 2017).

### **B. The Marks**

The first *DuPont* likelihood of confusion factor involves an analysis of the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay*, 73 USPQ2d at 1692 (citing *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, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)). *Accord Krim-Ko Corp. v. Coca-Cola Bottling 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.”) (citation omitted).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356,

101 USPQ2d 1713, 1721 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). In addition, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”).

Applicant argues the marks have notable differences in sound, appearance, connotation and commercial impression. Applicant maintains that the Examining Attorney disregarded the anti-dissection rule by not giving sufficient weight to “the distinctive and attention-grabbing sales tag design” in Applicant’s mark.<sup>4</sup> Applicant also contends that the .COM top-level domain portion of its mark projects a different connotation and commercial impression, that of an online computer service.

Applicant’s arguments are unconvincing. When a mark consists of a literal portion and a design portion, the literal portion is usually more likely to be impressed upon a purchaser’s memory and to be used in calling for the services; therefore, the literal portion is normally accorded greater weight in determining whether marks are confusingly similar. *See, e.g., In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905,

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<sup>4</sup> Applicant’s Appeal Brief, p. 4; 6 TTABVUE 8.

1911 (Fed. Cir. 2012); *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999). See also *CBS Inc. v. Morrow*, 708 F.2d a1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983); *In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1267-68 (TTAB 2011).

Applicant suggests that the present case is similar to *In re Covalinski*, 113 USPQ2d 1166 (TTAB 2014) where the Board found the applicant's mark dominated by the large double-letter RR design feature over the mark's literal elements, REDNECK RACEGIRL. We do not find *Covalinski* persuasive here. The involved mark in that case included design features that played a much more prominent role than those of Applicant's mark:



The Board, in finding the design to be the dominant element, provided the following rationale:

Here, Applicant's design mark includes the very large, prominently displayed letters RR. The bodies of the Rs are filled with a checkerboard pattern resembling a racing flag. To each R an elongated horizontal "leg" of gradually increasing thickness is appended, each of which ends in a heart design. Inside the legs appear the rest of the letters (i.e., the letter strings "edneck" and "acegirl"), in a form in which the initial letters of each string are displayed in relatively tiny typeface and subsequent letters are displayed in increasing thickness. Together, these graphic devices serve not only to draw attention to the RR letters apart from the wording, but also make the letters that form the "a-c-e" of the word "RACEGIRL" difficult to notice. Since these goods are clothing, consumers would be likely to encounter the mark in a retail setting on



hang tags or neck labels. In that context, the visual impression of the mark is likely to be more important.

*Id.* at 1168. The factual scenario of *Covalinski* is not present in this case. That is to say, SALEQUICK.COM does not appear in “relatively tiny typeface” in a letter string “difficult to notice” vis-à-vis the sales tag design. *See id.* To the contrary, the font is in bold easy-to-read block lettering in almost the same size as the design element. While the sales tag design is distinctive, given the visual presentation of the Applicant’s mark, prospective consumers will be naturally drawn to the literal portion of the mark as opposed to this design feature appearing to the left of the wording.

Turning to the literal component of Applicant’s mark, we do not find the inclusion of the top-level domain .COM alters the commercial impression and meaning to such a degree that the marks are distinguishable. “[W]hen a mark incorporates generic or highly descriptive components [such as a top-level domain], consumers are less likely to think that other uses of the common element emanate from the mark’s owner.” *USPTO v. Booking.com B.V.*, 140 S. Ct. 2298, 2307, 2020 USPQ2d 10729, at \*7 (2020). We therefore agree with the Examining Attorney that the literal element SALEQUICK is the dominant feature in Applicant’s mark and that the top-level domain portion is subordinate to this wording.

Where, as here, the primary difference in the wording is the transposition of the literal elements that compose the marks, and where this transposition does not change the overall commercial impression, this supports a finding of a likelihood of confusion. *See, e.g., In re Wine Soc’y of Am. Inc.*, 12 USPQ2d 1139, 1142 (TTAB 1989)

(holding THE WINE SOCIETY OF AMERICA and design for wine club membership services including the supplying of printed materials, and AMERICAN WINE SOCIETY 1967 and design for newsletters, bulletins, and journals, likely to cause confusion); *In re Nationwide Indus., Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (holding RUST BUSTER (with RUST disclaimed) for rust-penetrating spray lubricant, and BUST RUST for penetrating oil, likely to cause confusion); *In re Gen. Tire & Rubber Co.*, 213 USPQ 870, 871 (TTAB 1982) (holding SPRINT STEEL RADIAL (with STEEL and RADIAL disclaimed) for pneumatic tires, and RADIAL SPRINT (with RADIAL disclaimed) for radial tires, likely to cause confusion). However, if the transposed mark creates a distinctly different commercial impression, then confusion may not be likely. *See, e.g., In re Best Prods. Co.*, 231 USPQ 988, 989-90 (TTAB 1986) (holding BEST JEWELRY and design (with JEWELRY disclaimed) for retail jewelry store services, and JEWELERS' BEST for bracelets, not likely to cause confusion).

We find that “quick sale” and its transposition, “sale quick,” project virtually the same connotation and commercial impression. In the cited mark QUICKSALE, “quick” serves as an adjective to the noun “sale.” “Quick” is defined as “acting or capable of acting with speed” and “sale” as “the act of selling.”<sup>5</sup> Thus, QUICKSALE conveys to the consumer that a sale transaction will take place with speed. The mere transposition of the adjective “quick” and noun “sale” to form SALEQUICK in

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<sup>5</sup> THE MERRIAM WEBSTER DICTIONARY ([www.merriam-webster.com](http://www.merriam-webster.com), last viewed May 4, 2022).

Applicant's mark engenders the same meaning since it would be nonsensical for the consumer to interpret "quick" as a noun in that context.

Although we have pointed to the identical dominant portions of the marks, we acknowledge the fundamental rule that the marks must be considered in their entireties. *See Jack Wolfskin*, 116 USPQ2d at 1134; *Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 273-74 (CCPA 1974). We find the specific differences pointed out by Applicant are outweighed by the similarities of the marks when considered and compared as a whole. Thus, when comparing the marks in their entireties, they are similar in sound, meaning, connotation and overall commercial impression. The similarity of the marks weighs in favor of finding a likelihood of confusion.

### **C. The Services**

Next we compare the services as they are identified in the involved application and cited registration, the second *DuPont* factor. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018); *Stone Lion Capital Partners, LP 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. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The services need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). 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 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

Based on the identifications alone, we can conclude that the services are related because each service involves electronic payment processing. *See Hewlett-Packard*, 62 USPQ2d at 1004 (finding the Board erred in concluding that there was insufficient evidence of relatedness, because it “[w]hile additional evidence, such as whether a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis, did not consider the important evidence already before it, namely the ITU application and [opposer’s] registrations.”). We highlight below the language in each identification showing that Applicant’s and Registrant’s services perform the identical functions of processing credit card, debit card, and direct or ACH payments:

Applicant’s Services: Application service provider (ASP) featuring e-commerce software for businesses for use as a payment gateway that authorizes **processing of credit cards, gift cards, debit cards or direct payments to merchants.**

Registrant’s Services: Providing **electronic processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments.**

Emphasis added. The fact that Applicant’s services are rendered via an ASP provider that utilizes e-commerce software is not a significant distinction since the function of the involved services is the same. Accordingly, this *DuPont* factor also weighs in favor of finding a likelihood of confusion.

**D. The Similarity or Dissimilarity of Established, Likely-To-Continue Trade Channels and Classes of Consumers**

We now consider the third *DuPont* factor, the similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers. Applicant contends that while it provides specialized computer services targeted to businesses seeking a software solution for mobile and invoicing payments, Registrant targets an entirely different class of consumers in a different trade channel.

Based on the identifications of the application and registration, we find otherwise. In Applicant's identification, the services are expressly limited to businesses and merchants that use credit cards, debit cards or direct payments for sales. The cited registration, however, contains no such restriction on the channels of trade or classes of purchasers. As such, the registered services presumptively move in all normal trade channels to all typical classes of consumers, including businesses and merchants who use electronic payment processing services. *See, e.g., Detroit Athletic Co.*, 128 USPQ2d at 1052 (“[T]he registration does not set forth any restrictions on use and therefore cannot be narrowed by testimony that the applicant's use is, in fact, restricted to a particular class of purchasers”) (citation omitted). This *DuPont* factor also weighs in favor of finding a likelihood of confusion.

**E. Conditions of Sale**

The fourth *DuPont* factor involves the conditions under which the services are likely to be purchased, *e.g.*, whether on impulse or after careful consideration, as well as the degree, if any, of sophistication of the consumers. Purchaser sophistication or degree of care may tend to minimize likelihood of confusion. Conversely, impulse

purchases of inexpensive services may tend to have the opposite effect. *Palm Bay*, 73 USPQ2d at 1695.

Without evidentiary support, Applicant argues that its services are not daily purchases or purchases made on a regular basis; rather, their services are highly specialized and complex. For these reasons, Applicant maintains its targeted consumers will exercise a relatively higher degree of care and knowledge when making purchasing decisions thereby weighing strongly against a finding of likelihood of confusion.

We look to the registration and application to ascertain Registrant's and Applicant's customers. See *Stone Lion*, 110 USPQ2d at 1161; *Octocom*, 16 USPQ2d at 1787 ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of [services] set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's [services], the particular channels of trade or the class of purchasers to which the sales of [services] are directed."); *Paula Payne Prods. v. Johnson Publ'g Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of [services]").

As identified, Applicant's services of "Application service provider (ASP) featuring e-commerce software for businesses for use as a payment gateway that authorizes processing of credit cards, gift cards debit cards or direct payments to merchants" are limited to businesses that use credit cards, debit cards or direct payments for sales.

Although Registrant’s “providing electronic processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments” are not expressly limited to businesses, we can glean from the nature of the services that businesses are direct consumers. Applicant’s specimen touts the ease with which its electronic payment services can be accessed.<sup>6</sup>

Business consumers and merchants fall on a wide spectrum from small-sized entities to large corporations. In the absence of evidence to show otherwise, we assume that such purchasers range in knowledge, expertise and sophistication. Consistent therewith, here we find that purchasing decisions will be based “on the least sophisticated potential [business or merchant] purchasers.” *Stone Lion*, 110 USPQ2d at 1163 (ordinary consumers seeking to invest in services with no minimum investment requirement encompass both sophisticated and less sophisticated investors). Accordingly, this *DuPont* factor is neutral.

#### **F. Absence of Actual Confusion and Co-existence**

Applicant argues that the involved marks have been in concurrent use since 2019 without evidence of actual confusion. *See In re Guild Mtg. Co.*, 2020 USPQ2d 10279 \*6 (TTAB 2020) (“The eighth *du Pont* factor, by contrast — ‘[t]he length of time during and conditions under which there has been concurrent use without evidence of actual confusion,’ *see du Pont*, 177 USPQ at 567 — requires us to look at **actual market conditions**, to the extent there is evidence of such conditions of record.”). *See also In*

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<sup>6</sup> Specimen submitted May 26, 2020 (“Enable your business to accept all major credit cards by using our best mobile credit card reader that wirelessly connects to your table or smartphone.”).

*re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278, 280 (CCPA 1971). The record, however, is devoid of evidence regarding the geographic extent or overlap of Applicant's and Registrant's services. *Guild Mtg.*, 2020 USPQ2d 10279, at \*7. In addition, "there has been no opportunity to hear from Registrant about whether it is aware of any reported instances of confusion. We therefore are getting only half the story." *Id.* (citing *In re Opus One, Inc.*, 60 USPQ2d 1812, 1817 (TTAB 2001) ("The fact that an applicant in an ex parte case is unaware of any instances of actual confusion is generally entitled to little probative weight in the likelihood of confusion analysis, inasmuch as the Board in such cases generally has no way to know whether the registrant likewise is unaware of any instances of actual confusion, nor is it usually possible to determine that there has been any significant opportunity for actual confusion to have occurred.") (citations omitted). We therefore deem this *DuPont* factor neutral.

## **II. Conclusion**

We have carefully considered all evidence of record and Applicant's arguments as they pertain to the relevant *DuPont* factors.

The first, second and third factors all weigh in favor of finding a likelihood of confusion, and the remaining factors discussed above are neutral. The terms "sale" and "quick" are suggestive; but there is no evidence in this record showing weakness of these combined terms in the payment processing field. The marks when compared as a whole are similar, and are applied to related services having a similar, if not identical function. These related services, in turn, are rendered to the same classes of customers. We therefore find that prospective consumers are likely to confuse the



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source of the involved services as originating from, associated with or sponsored by the same entity.

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