

This Opinion is Not a  
Precedent of the TTAB

Mailed: September 29, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Marlin Gas Services LLC*

\_\_\_\_\_  
Serial No. 90199801

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Abdul Basit of The Law Firm of AQ Basit,  
for Marlin Gas Services LLC.

Jessie Maihos, Trademark Examining Attorney, Law Office 121,  
Richard White, Managing Attorney.

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Before Taylor, Goodman and Lebow,  
Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Marlin Gas Services LLC (“Applicant”) seeks registration on the Principal Register of the mark MARLIN (in standard characters) for the following services, as amended:

Engineering services in the testing, analysis and evaluation of others to determine conformity with certificate standards for the field delivery of compressed natural gas from a land-based, mobile compressed natural gas system to a stationary land-based natural gas delivery system; engineering services in the design and testing for new product development for controlling compressed natural gas from a land-based mobile compressed natural

gas system to a stationary land-based natural gas delivery system; design and testing for new product development for controlling compressed natural gas from a land-based mobile compressed natural gas system to a stationary land-based natural gas delivery system; testing, analysis and evaluation of services of others to determine conformity with certification standards for controlling compressed natural gas from a land-based mobile compressed natural gas system to a stationary land-based natural gas delivery system; providing temporary use of online non-downloadable software for controlling compressed natural gas from a land-based, mobile compressed natural gas system to a stationary land-based natural gas delivery system; providing temporary use of online non-downloadable software for controlling a natural gas regulator system to deliver natural gas from a land-based, mobile compressed natural gas system to a stationary, land-based natural gas delivery system; engineering services in the field of delivery of compressed natural gas from a land-based, mobile compressed natural gas system to a stationary land-based, natural gas delivery system, in International Class 42.<sup>1</sup>

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that there is a likelihood of confusion with the marks in the following registrations, owned by two different entities:

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<sup>1</sup>Application Serial No. 90199801, was filed on September 22, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), with an alleged date of first use anywhere and in commerce of September 29, 1997. The application initially included additional goods and services in Classes 9, 12, 35 and 40, which were either deleted from the application or divided from this application and placed into a new one.

Registration No. 1331334 for the mark MARLIN (in typed form<sup>2</sup>) for “Prospecting services for speculative oil and gas drilling ventures” in International Class 42<sup>3</sup>; and

Registration No. 4259353 for the mark MARLIN (in standard characters) for, in relevant part, “Engineering and diagnostic services in the field of off-shore oil and gas exploration; Consulting services in the field of off-shore oil and gas exploration; Exploration, analysis and interpretation services, namely, inspection of off shore drilling rigs, platforms, underwater pipe lines; Computer services, namely, computer systems analysis for off-shore gas and oil exploitation.” in International Class 42.<sup>4</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration and the appeal resumed. Both Applicant and the Examining Attorney filed briefs. We reverse the refusal to register.

### I. Applicable Law

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177

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<sup>2</sup> Prior to November 2, 2003, “standard character” drawings were known as “typed” drawings. A typed mark is the legal equivalent of a standard character mark. TMEP § 807.03(i) (October 2018).

<sup>3</sup> Registration No. 1331334 issued on April 16, 1985, and has been renewed twice.

<sup>4</sup> Registration No. 4259353 issued on December 11, 2012, and has been renewed. The registration includes additional goods and services in Classes 9, 12, and 35, and additional services in Class 42 that were not cited as a bar to registration.

USPQ 563, 567 (CCPA 1973) (“*DuPont*”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). We discuss below these and other relevant factors. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019) (Board considers each *DuPont* factor for which there is evidence and argument).

We focus our analysis on the MARLIN mark and the recited services in Registration No. 4259353, because those services are closer to Applicant’s services than the services recited in the other cited registration. If confusion is likely between those marks and services, then there is no need for us to consider the likelihood of confusion with respect to Registration No. 1331334. On the other hand, if there is no confusion between Applicant’s MARLIN mark and services, and the MARLIN mark and services in Registration No. 4259353, then there would be no likelihood of confusion between Applicant’s mark and services as compared to the mark and services in Registration No. 1331334. *See Sock It To Me, Inc. v. Aiping Fan*, 2020 USPQ2d 10611, at \*6 (TTAB 2020) (confining 2(d) analysis to most similar pleaded mark); *In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010) (comparing applicant’s mark to most similar cited mark).

## II. Similarity/Dissimilarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant’s and Registrant’s marks in their entirety, considering their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. Because

Applicant's standard character MARLIN mark and Registrant's standard character MARLIN mark are identical, both are likely to engender the same connotation and overall commercial impression when considered in connection with Applicant's and Registrant's respective services. *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff'd*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017).

Accordingly, the similarity between the marks factor weighs strongly in favor of a finding of likelihood of confusion.

### III. Relatedness of the Services

We now turn to a comparison of the services under the second *DuPont* factor, keeping in mind that the greater the degree of similarity between Applicant's mark and the cited mark, the lesser the degree of similarity between Applicant's services and Registrant's services that is required to support a finding of likelihood of confusion. *Bd. of Regents v. S. Ill. Miners, LLC*, 110 USPQ2d 1182, 1189 (TTAB 2014); *see also Orange Bang, Inc. v. Ole Mexican Foods, Inc.*, 116 USPQ2d 1102, 1117 (TTAB 2015); *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). Where, as here, identical marks are involved, there need only be a viable relationship between the services to find that there is a likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) ("even when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source"); *In re Opus One*, 60 USPQ2d 1812, 1815 (TTAB 2001) (same).

For ease of reference, we repeat the respective services below.

Applicant's services are:

Engineering services in the testing, analysis and evaluation of others to determine conformity with certificate standards for the field delivery of compressed natural gas from a land-based, mobile compressed natural gas system to a stationary land-based natural gas delivery system; engineering services in the design and testing for new product development for controlling compressed natural gas from a land-based mobile compressed natural gas system to a stationary land-based natural gas delivery system; design and testing for new product development for controlling compressed natural gas from a land-based mobile compressed natural gas system to a stationary land-based natural gas delivery system; testing, analysis and evaluation of services of others to determine conformity with certification standards for controlling compressed natural gas from a land-based mobile compressed natural gas system to a stationary land-based natural gas delivery system; providing temporary use of online non-downloadable software for controlling compressed natural gas from a land-based, mobile compressed natural gas system to a stationary land-based natural gas delivery system; providing temporary use of online non-downloadable software for controlling a natural gas regulator system to deliver natural gas from a land-based, mobile compressed natural gas system to a stationary, land-based natural gas delivery system; engineering services in the field of delivery of compressed natural gas from a land-based, mobile compressed natural gas system to a stationary land-based, natural gas delivery system.

Registrant's services are:

Engineering and diagnostic services in the field of off-shore oil and gas exploration; Consulting services in the field of off-shore oil and gas exploration; Exploration, analysis and interpretation services, namely, inspection of off shore drilling rigs, platforms, underwater pipe lines; Computer services, namely, computer systems analysis; for off-shore gas and oil exploitation.

In making our determination regarding the relatedness of the services, we look, as we must, to the services as identified in Applicant's application and the cited

registration. See *In re Detroit Athletic Co.*, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ 1531, 1534 (Fed. Cir. 1997); see also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002).

Although we may not limit or restrict the descriptions of services based on extrinsic evidence, e.g., *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990), we must determine the meaning of the descriptions of services in order to analyze them. Thus, we may use extrinsic evidence to determine the meaning of the descriptions of services. *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1354 (TTAB 2015) (“When identifications are technical or vague and require clarification, it is appropriate to consider extrinsic evidence of use to determine the meaning of the identification of goods [or services].”); *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010); *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1638 n.10 (TTAB 2009) (using definitions to determine the meaning of the terms used in the description of goods) (citing *In re Trackmobile Inc.*, 15 USPQ2d 1152, 1154 (TTAB 1990) (“it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods has a specific meaning to members of the trade.”)).

Because the field of use to which Applicant’s recited services are limited, i.e., to “field delivery of compressed natural gas,” and to understand what is meant by that

limitation, we look to evidence made of record from Applicant’s website. According to the website,<sup>5</sup> “Marlin Gas Services provides mobile natural gas solutions to gas utilities, pipeline companies and industrial markets within the United States. ... Explore the potential for Marlin Gas Services to supply virtual pipeline services to meet your needs.”<sup>6</sup> The following web pages explain the nature of Applicant’s services:



Marlin Gas Services is one of the country’s leading providers of virtual pipeline solutions for gas utilities, pipeline companies, industrial facilities, and other markets across the United States.

A Florida-based company, Marlin Gas Services provides custom turnkey solutions — and utilizes customized, proprietary equipment and a highly trained team — to meet the needs of each customer.

Acquired in 2018 by Chesapeake Utilities Corporation, Marlin Gas Services is located in Spring Hill, Florida. Marlin Gas Services provides mobile gas delivery services nationwide, specializing in meeting the specific needs of local gas utilities, pipeline companies, local distribution companies (LDCs), municipal gas companies, intrastate and interstate pipeline companies, large industrial facilities, commercial businesses and other markets.



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<sup>5</sup> We note that Applicant included as evidence the same screenshots from its website multiple times, including three time in its Response, apparently as evidence of the types of services provided by Applicant. These duplicate submissions are unnecessary and discouraged, as they make it more difficult to review the file. We reference only the first submission in this decision.

<sup>6</sup> Second August 15, 2022 Response to Office Action at TSDR 16.



<https://marlingas.com/services/> 10/27/2021 05:13:30 PM



A full-service solution provider, Marlin Gas Services provides a range of virtual pipeline services to local distribution companies (LDCs), municipal gas companies, intrastate and interstate pipeline companies, large industrial customers, and other markets. Marlin Gas Services provides custom turnkey solutions – and utilizes unique, proprietary equipment – to meet the needs of each customer. Additionally, we are constantly innovating new technology and refining our services to serve new and different markets within the U.S. Explore the potential for Marlin Gas Services to supply virtual pipeline services to meet your needs.

As highlighted in the web pages, Marlin Gas Services specializes in virtual pipeline services to meet the specific needs of local gas utilities, pipeline companies, industrial facilities, commercial businesses, and other markets within the U.S.<sup>7</sup>

In making our assessment regarding the similarity of the services, we must presume Applicant’s and Registrant’s services encompass all services of the nature and type identified in the application and registration. *See In re Solid State Design Inc.*, 125 USPQ2d 1409, 1413-14 (TTAB 2018) (where the goods in an application or registration are broadly described, they are deemed to encompass all the goods of the nature and type described therein); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015), *aff’d mem.*, 652 Fed. Appx. 971 (Fed. Cir. 2016) (same).

Further, it is not necessary that the respective services be identical to or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. Confusion may occur if the respective services are “related in some manner and/or if the circumstances surrounding their marketing are such that they

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<sup>7</sup> *Id.* at TSDR 163 and 166; *see generally id.* at 157-162, 164-165 and 167-171.

could give rise to the mistaken belief that [the services] emanate from the same source.” *Coach Servs. v. Triumph Learning*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

The Trademark Examining Attorney need not prove similarity as to each and every service listed in the description of services. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of services in a particular class in the application. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *i.am.symbolic*, 116 USPQ2d at 1409; *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014).

The Examining Attorney posits that “Applicant and the Registrants identify services in the oil and gas industry; therefore, these services are related for likelihood of confusion purposes.”<sup>8</sup> The Examining Attorney further states that she has “provided evidence from thirty (30) third party websites demonstrating the relatedness of the services that establishes that the same entity commonly provides the relevant services and markets the services under the same mark and that the relevant services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use.”<sup>9</sup> We reproduce from the Examining Attorney’s brief the bulleted list (citations omitted) that highlights and summarizes the purported relevant services from these third-party websites:

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<sup>8</sup> 14 TTABVUE 10.

<sup>9</sup> *Id.*; *see also id.* at 10-14.

- The evidence from Sprague shows that they provide drilling fuel services and [sic] well as natural gas services.
- The evidence from Gray shows that they provide natural gas exploration, extraction, and exportation as well as engineering and design services.
- The evidence from SCS Engineering shows that they provide oil and gas exploration and production, consulting services, and oil and gas services.
- The evidence from Interact shows that they provide consulting services in the field of oil and gas and oil and gas engineering services.
- The evidence from Geosyntec shows that they provide engineering services in the fields of oil and gas as well as analysis services.
- The evidence from Gustavson Associates shows that they provide engineering services in the fields of oil and gas, oil and gas exploration services, and oil and gas prospecting services.
- The evidence from Mott Macdonald shows that they provide oil and gas engineering and consulting services.
- The evidence from RKK shows that they provide natural gas engineering and consulting services.
- The evidence from Snyder Gas shows that they provide natural gas engineering services, inspection services, consulting services, and quality control services including review of standards.
- The evidence from Stoke and Spiehler shows that they provide oil and gas consulting and engineering.

- The evidence from Stress Engineering Services Inc. shows that they provide design and testing services for new product development, subsea engineering services, offshore drilling services, and oil and gas engineering services.
- The evidence from Intertek shows that they provide oil and gas engineering services, oil and gas consulting services, oil and gas exploration and production services, offshore services, petroleum testing services, and technical inspection services.
- The evidence from SAP shows that they provide computer software services and computer systems analysis in the oil, gas, and energy industries.
- The evidence from Quorum Software shows that they provide cloud based oil and gas software for use with oil and gas drilling.
- The evidence from Avea shows that they provide oil and gas engineering, procurement, and production services.
- The evidence from Devon shows that they provide oil and gas exploration and production services.
- The evidence from Antero shows that they provide oil and gas exploration, development, and production.
- The evidence from PGS shows that they provide exploration, analysis, and marine acquisition services in the oil and gas industry.

- The evidence from EEIntl shows that they provide natural gas system engineering, compression and delivery of gas, and engineering and design services in the oil and gas industries.
- The evidence from Sapphire Gas Solutions shows that they provide compressed natural gas fueling systems, portable natural gas processing equipment, and gas supply.
- The evidence from Chevron shows that they provide drilling services, delivery of natural gas, and compressed natural gas retail sites.
- The evidence from ConocoPhillips shows that they provide delivery of natural gas, oil and gas exploration and prospecting services, and oil and natural gas onshore and offshore drilling.
- The evidence from IGS Energy shows that they provide delivery of compressed natural gas and engineering consulting services.
- The evidence from EnterSea Transport shows that they provide natural gas delivery, including offshore marine compressed natural gas delivery services and gas production and storing services.
- The evidence from Baker Hughes shows that they provide testing and diagnostic services and offshore drilling services.
- The evidence from Exxon Mobil shows that they provide natural gas engineering, offshore drilling, and prospecting services.

- The evidence from Halliburton shows that they provide testing and diagnostic services and software in the field of oil and gas and consulting services in the field of oil and gas.
- The evidence from Shell shows that they provide natural gas engineering services and offshore drilling services.
- The evidence from Siemens shows that they provide natural gas engineering services and offshore drilling services.
- The evidence from Weatherford shows that they provide diagnostic and testing and offshore drilling services.
- The evidence from TRC shows that they provide testing and diagnostic services, prospecting services, oil and gas engineering services, and consulting services.

Applicant, in traversing the refusal, argues that the rejection is improper because “the Examining Attorney could not find a registered mark of ‘Marlin’ for any of the description of services provided in the applied-for mark.”<sup>10</sup> Applicant contends:

the services provided by Applicant and the owner of the registered Marlin trademark (U.S. Registration No. 1331334 for oil drilling and 4259353 for offshore, underwater submarine exploration) are so different that a consumer of those services (or Applicant’s services) would never be confused as to the source of services.<sup>11</sup>

Applicant also questions the value of the third-party evidence, arguing that the Examining Attorney did not rely on the “primary” evidence [i.e., the descriptions of

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<sup>10</sup> 12 TTABVUE 8.

<sup>11</sup> 15 TTABVUE 3.

services for the registered marks and Applicant's mark, or marketing materials for the cited marks] but relies only on third-party evidence;<sup>12</sup> that "[t]he third-party webpage evidence, no matter how many are cited cannot be used if the registered marks or the applicant's applied for mark, own website, or marketing material do not show any evidence of a relationship";<sup>13</sup> and that even if the third-party evidence "could be used," it still fails to show any relationship between the offshore exploration and oil drilling services and the services associated with the applied-for mark.<sup>14</sup>

Applicant elaborates that:

[M]erely having the marks [that are the subject of the third-party registrations] in the energy industry is not sufficient to show a likelihood of confusion as the energy industry is not sufficient to show a likelihood of confusion as the energy industry has so many different services that are so varied, numerous, and unrelated. This is further shown by the very third-party evidence by the Examining Attorney.

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The Examining Attorney found two registered marks for "Marlin" but has not shown any evidence or arguments as to how they are "related in some manner" other than a broad and (and unreasonable) conclusion that the relationship exists merely based on the Applicant and the owners of the registered marks all being in the energy industry which is a vast industry providing many different services as evidenced by the third-party evidence submitted by the Examining Attorney.<sup>15</sup>

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<sup>12</sup> 12 TTABVUE 9-21.

<sup>13</sup> *Id.* at 14.

<sup>14</sup> *Id.* at 17.

<sup>15</sup> 15 TTABVUE 3-4.

Before analyzing the evidence of relatedness, we address Applicant's assessments of the persuasive value of the Examining Attorney's evidence. Because Applicant's arguments regarding the concept of "primary" evidence and the relevance of third-party evidence are somewhat confusing, we clarify below the legal framework under which we analyze the relatedness of the services and the appropriate weight to accord the third-party use evidence.

First, to the extent Applicant is arguing that the cited registration is not for services identical to those identified in its application, we agree, but as stated, it is not necessary that the respective services be identical to or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis; they need only be related in such a manner that would give rise to a mistaken belief that the respective services emanate from a common source.

Further, to the extent Applicant suggests we must review marketing material to determine the relatedness of the respective services, we cannot rely on extrinsic evidence to alter the services in the cited registration. *In re Embiid*, 2021 USPQ2d 577, at \*28 (TTAB 2021) ("[W]e may not import restrictions into the identification[s] based on alleged 'real world conditions' of the sort argued by Applicant, or consider extrinsic evidence regarding Applicant and Registrant themselves.") (internal citation omitted); *In re FCA US LLC*, 126 USPQ2d 1214, 1217 (TTAB 2018) ("Evidence of actual marketplace usages that seeks to limit or alter the usages encompassed by the marks, goods and services, or usages listed in the application and registration are not considered in assessing likelihood-of-confusion in the registration



context.”); *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1646 (TTAB 2008) (“[I]t is the identification of goods that controls, not what extrinsic evidence may show about the specific nature of the goods.”). Rather, we must compare the services as described in the Application and cited registration.

As to the value of third-party use evidence, “[e]vidence of relatedness may include news articles or evidence from computer databases showing that the relevant goods [or services] are used together or used by the same purchasers; **advertisements showing that the relevant goods [or services] are advertised together or sold by the same manufacturer or dealer**; or copies of prior use-based registrations of the same mark for both applicant’s goods [or services] and the goods [or services] listed in the cited registration.” *In re Embiid*, 2021 USPQ2d 577, at \*22-23 (emphasis added); *see also In re Detroit Athletic*, 128 USPQ2d at 1051 (relatedness supported by evidence that third parties sell both types of goods under same mark).

Turning then to the relatedness analysis, it is clear from a reading of Applicant’s identification, that Applicant’s engineering, testing, analysis, evaluation and software services are all limited to those involving a gas delivery system from “a mobile compressed natural gas system to a stationary land-based, natural gas delivery system.” Registrant’s services are also limited, and are for off-shore oil and gas exploration and exploitation. We keep these limitations in mind as we assess the evidence of relatedness of the services.

And, while the third-party references clearly show use of a single mark in connection with various services in the oil and gas industry, that does not, in and of

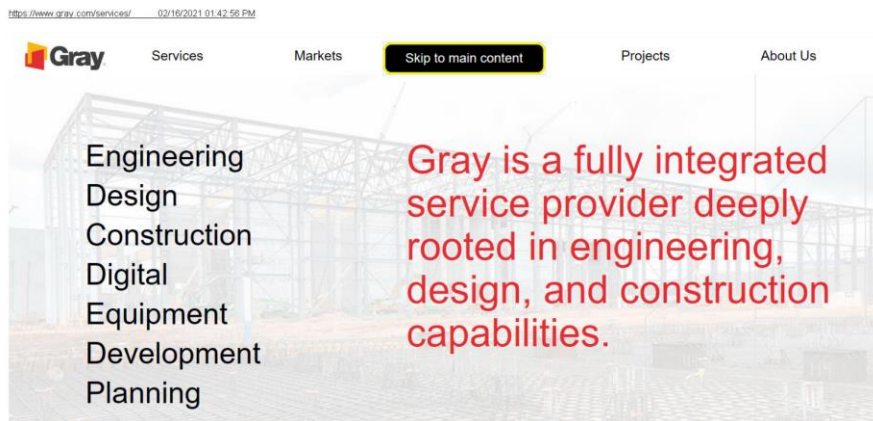
itself, convince us that consumers will view the respective services in this case as originating from a single source. Instead, to be probative, the third-party use evidence must demonstrate use by a single entity of the same mark in connection with services in the oil and gas industries of the types identified in both Applicant's application and the cited registration. *See Ricardo Media Inc. v. Inventive Software, LLC*, 2019 USPQ2d 311355, at \*3 (TTAB 2019) (“[I]t is settled that evidence of third-party use of the same mark for an applicant's identified goods and services (or similar goods or services) on the one hand, and an opposer's (or registrant's) identified goods and services (or similar goods and services) on the other, may establish a relationship between those goods and services.”); *see also In re Detroit Athletic*, 128 USPQ2d at 1050 (“[t]his [third-party] evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both”); *Hewlett-Packard Co.*, 62 USPQ2d at 1004 (evidence of third-party use of the same mark and goods “is relevant to a relatedness analysis”).

On review of the third-party use evidence, we find the following:

- The evidence from Sprague shows that it provides: “fuel support to the natural gas and drilling and fracturing (fracking) process” and “on-site fueling for drilling and fracturing operation, generators and related equipment. February 16, 2021 Office action, TSDR 14; *see also id.* at 15-19. This evidence only shows services related to supplying natural gas to drilling and fracking operations; it makes no mention of engineering, analysis or other related services in the field of natural gas delivery systems

of compressed natural gas from a land-based mobile compressed natural gas system to a stationary land-based natural gas delivery system.

- The evidence from Gray includes an article discussing the challenges of natural gas exploration, extraction and exportation, and includes the following screenshot:



February 16, 2021 Office action, TSDR 20-28. It is unclear from this evidence what particular services Gray provides in the oil and gas industry, and accordingly, this article has no probative value.

- The evidence from SCS Engineers shows that its “core capabilities are in solid and hazardous waste management, landfills, energy, remediation, and environmental compliance. ... SCS Engineers provide a wide array of services to help the [oil and gas] industry address these emerging issues.” The listed services include, for example, Spill and Accidental Release Plans, Spill Prevention Control and Countermeasure, or SPCC Plans, Oil Spill Contingency Plans, Certifications and Phase I and II Site Assessments.

February 16, 2021 Office action, TSDR 29-36. While these services effectuate environmental compliance, it is unclear from the evidence whether these services are the same as or related to the compliance services identified in Applicant's application and the cited registration.

- The evidence from Interact shows that it provides, among other services, environmental consulting services in the oil and gas industries to ensure regulatory compliance, and oil and gas engineering services, including for on- and offshore gas and oil projects. October 27, 2021 Office action, TSDR 9-11. However, neither Applicant's nor Registrant's identification recite environmental consulting services.
- The evidence from Geosyntec shows that it provides engineering, environmental and project management services in the fields of oil and gas, specifically "support[ing] upstream oil and gas companies with onshore and offshore environmental, safety risks analysis, and engineering support." October 27, 2021 Office action, TSDR 12-14. The evidence from Geosyntec do not reference any services relating to compressed natural gas delivery.
- The evidence from Gustavson Associates shows that it provides engineering advice and data for a variety of clients, including [o]il and gas companies, banks, and accounting firms that need reliable reserve estimates and production forecasts. October 27, 2021 Office action, TSDR 15-19. The evidence specifically states that "[o]ur team provides dedicated resources to facilitate petroleum exploration and help determine the oil and gas

potential of your developed and undeveloped properties.” *Id.* at 19. It is unclear from the evidence whether the services offered by Gustavson Associates include those of a type identified in either the application and registration, particularly services related to compressed natural gas delivery.

- The evidence from Mott Macdonald shows that it provides oil and gas engineering and consulting services, in both the offshore and onshore upstream sectors. The services include, for example, advisory, front end engineering and project management consulting. October 27, 2021 Office action, TSDR 22-26. The evidence does not show services in connection with compressed natural gas delivery.
- The evidence from RKK shows that it provides natural gas engineering and consulting services “to our natural gas distribution, transmission and pipeline clients.” October 27, 2021 Office action, TSDR 27-30. The evidence does not reference offshore engineering or consultation and otherwise appears to apply only to onshore oil and gas services.
- The evidence from Snyder Gas shows that it provides field personnel, field engineering, utility consulting, inspection and quality control consulting services, including review of standards. The evidence does not, however, show that these services are provided in connection with offshore oil and gas drilling operations. October 27, 2021 Office action, TSDR 31-41.

- The evidence from Stoke and Spiehler shows that it provides field personnel, engineers, logistics professionals and regulatory specialist for oil and gas operations, but it unclear if these services are provided in connection with natural gas delivery systems or offshore drilling operations. October 27, 2021 Office action, TSDR 42-47.
- The evidence from Stress Engineering Services Inc. shows that it is a subsea engineering consulting firm that provides subsea and pipeline/flowline engineering, particularly providing design and testing services for new product development, subsea engineering services, offshore drilling services, and oil and gas engineering services. October 27, 2021 Office action, TSDR 48-53. The evidence does not show the provision of any land-based gas delivery systems.
- The evidence from Intertek shows that it provides oil and gas engineering services, oil and gas consulting services, oil and gas exploration and production services, petroleum testing services, and technical inspection services from extraction through transportation of hydrocarbons, both on- and offshore. The web pages states that the sectors served include oil and gas exploration and production, pipeline transmission and distribution, downstream refineries and chemical processing facilities, power generation, mining and mechanical processing. October 27, 2021 Office action, TSDR 54-64. Although Intertek services cover pipeline transmission and services, there is no indication that they cover virtual pipelines or, as

identified in Applicant's application, compressed natural gas delivery systems.

- The evidence from SAP shows that it provides cloud services and computer systems analysis for the oil, gas, and energy industries October 27, 2021 Office action, TSDR 65-72. The evidence does not specify the type of analysis provided and therefore we cannot ascertain the probative value of this evidence.
- The evidence from Quorum Software shows that it provides cloud-based oil and gas software for use in connection with oil and gas drilling operations. See October 27, 2021 Office action, TSDR 73-78. It is unclear whether the software services are offered for use in connection with offshore drilling projects or with land-based gas delivery systems of the types identified in the application and cited registration.
- The evidence from Avea shows that it provides oil and gas engineering, procurement, and production services, both on and offshore. The webpage states: "AVEVA Engineering enables multi-discipline teams of engineers to work effectively together to develop and maintain the detailed definition of all the key engineering items involved in plant or marine products." October 27, 2021 Office action, TSDR 79-91. This evidence does not show use in connection with compressed natural gas delivery systems.
- The evidence from Devon shows that it provides oil and gas exploration and production services which are "focused onshore in the United States."

October 27, 2021 Office action, TSDR 92-94. The evidence demonstrates neither land-based compressed gas delivery services nor offshore gas exploration.

- The evidence from Antero shows that it provides oil and gas exploration, development, and production “of natural gas, NGLs, and oil properties located in the Appalachian Basin.” October 27, 2021 Office action, TSDR 95-97. Antero provides no offshore services.
- The evidence from PGS shows that it is “an integrated marine geophysics company” that provides exploration, analysis, and marine acquisition services in the oil and gas industry. October 27, 2021 Office action, TSDR 98-105. PGS offers no land-based services, including delivery of compressed natural gas.
- The evidence from EEIntl shows that it provides natural gas system engineering, compression and delivery of gas, and engineering and design services. October 27, 2021 Office action, TSDR 106-110. There is no indication that EEIntl provides its services in connection with offshore oil and gas projects.
- The evidence from Sapphire Gas Solutions shows that it provides compressed natural gas fueling “for utilities and LDC’s, pipeline integrity projects for pipeline operators, winter peak shaving operations for pipeline capacity or pressure issues, and supplemental gas supply for commercial or industrial customers, including electric plants”; portable natural gas



processing equipment; and gas supply “for oilfield applications across the U.S.” October 27, 2021 Office action, TSDR 113-118. The evidence shows no offshore applications.

- The evidence from IGS Energy shows that it constructs, owns, operates and maintains compressed natural gas and provides engineering consulting services for the construction of fueling stations. The record does not, however, show that IGS offers its services in connection with offshore drilling operations. October 27, 2021 Office action, TSDR 172-173.
- The evidence from EnterSea Transport, Inc. shows that it provides natural gas delivery for offshore marine compressed natural gas delivery services, and gas production and storing services. See October 27, 2021 Office action, TSDR 174-179. The evidence does not show land-based gas delivery services.
- The evidence from Baker Hughes shows that it provides “[i]ndustrial asset inspection and non-destructive testing (NDT) testing for various industries and diagnostic services for offshore drilling services. See July 4, 2022 Denial of Request for Reconsideration, TSDR 4-8. It is unclear whether the inspection and testing services include those in the field of land-based compressed natural gas delivery.
- The evidence from Exxon Mobil (“Exxon”) shows that it provides liquid natural gas for transport to “consumers around the world”; and engineering, offshore drilling, and prospecting services (exploring,

developing, marketing, and producing hydrocarbon resources). The evidence particularly shows that Exxon has made oil discoveries offshore Guyana and that it has entered into a partnership to provide “virtual pipeline systems [that] deliver liquified natural gas by road, rail and waterways to areas not connected by physical pipelines.” However, the partnership is with IndianOil and Chart Industries “to establish a system of transportation infrastructure to expand gas access in India.” There is no evidence that Exxon presently provides offshore drilling or “virtual pipeline” delivery systems in the United States. *See* July 4, 2022 Denial of Request for Reconsideration, TSDR 9-22.

- The evidence from Halliburton shows that it provides testing and diagnostic services and software in the field of oil and gas and consulting services, including pipeline and wellbore inspection (both onshore and offshore). *See* July 4, 2022 Denial of Request for Reconsideration, TSDR 23-42. Specifically, “Halliburton complements its best-in-class diagnostics service by deploying pumping, fluid handling, pressure testing, purging, dewatering, and drying solutions as required.” *Id.* at TSDR 24. The evidence from Halliburton further explains: “Halliburton has thousands of technical professionals around the world with experience in exploration, field development, production optimization, and sustainable energy. [Halliburton] deeply understand[s] the competencies required to find and produce oil and gas.” *Id.* at 29. The evidence does not, however, reference

testing and diagnostic services related to the delivery of compressed natural gas.

- The evidence from Shell shows that they are expanding the use of liquid natural gas (“LNG”) as a transport fuel for trucks and ships. The evidence also shows that Shell services include deep water energy projects, natural gas engineering services and offshore drilling services. *See* July 4, 2022 Denial of Request for Reconsideration, TSDR 43-54. There is no evidence that Shell provides services in connection with land-based compressed natural gas delivery operations in the United States.
- The evidence from Siemens shows that they “provide integrated Gas to Power solutions throughout the LNG value chain, offering pre-FEED services, traditional equipment supply, and trusted partnerships through EPC joint ventures[,] ... collaborat[ing] with owners, developers, liquefaction licensors, and EPCs, leveraging extensive capabilities in engineering, module fabrication, digital solution and financing.” July 4, 2022 Denial of Request for Reconsideration at TSDR 56. Siemens also provides offshore oil production *See generally id.* at TSDR 55-67. There is no indication that Siemens provides either liquid natural gas or compressed natural gas delivery systems or services.
- The evidence from Weatherford shows that they provide diagnostic and testing of surface well viability, including for offshore drilling operations. *See* July 4, 2022 Denial of Request for Reconsideration, TSDR 68-78. There

is no evidence that Weatherford provides any services in connection with the delivery of compressed natural gas.

- The evidence from TRC shows that they provide testing and diagnostic services, prospecting services, oil and gas engineering services, and consulting services. See July 4, 2022 Denial of Request for Reconsideration, TSDR 79-88. The services appear to be land-based, start-up operations.
- The evidence from Chevron shows that it provides drilling services, including both on- and offshore operations; delivery of natural gas; and compressed natural gas retail sites. October 27, 2021 Office action, TSDR 119-141.
- The evidence from ConocoPhillips shows that it transports oil and natural gas using pipelines, tankers, trucks and rail; engages in oil and gas exploration and prospecting services and oil and natural gas onshore and offshore exploration and drilling. October 27, 2021 Office action, TSDR 142-156.

Here, the Examining Attorney's third-party use evidence does not convince us that the respective services are related. Although the web pages of Chevron and Conoco Phillips show that they offer services of the types offered by both Applicant and Registrant, the remaining evidence from 28 discrete entities do not. The offering of the respective services by only two entities is insufficient to show the relatedness of the services, particularly in view of the breadth of services provided by both Chevron and Conoco Phillips. We accordingly find the services dissimilar and unrelated.

The second *DuPont* concerning the relatedness of the services strongly favors a finding of no likelihood of confusion.

#### IV. Relatedness of the Trade Channels/Classes of Consumers

Because there are no limitations as to channels of trade or classes of purchasers in Applicant's or Registrant's identifications of goods, we must presume that Applicant's and Registrant's services move, or will move, in all channels of trade usual for these services, and are, or will be, purchased by the usual classes of purchasers. *See Stone Lion In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). Here, although the record shows that Applicant solicits consumers on its website by inviting consultation services via a telephone number and email,<sup>16</sup> it is silent as to the usual trade channels of Registrant. We similarly find no evidence of record of overlapping consumers. While the record shows that Applicant's services are marketed to gas utilities, pipeline companies and industrial markets within the US, there is no direct evidence of Registrant's consumers, although a plain reading of the identification shows that Registrant's services are likely marketed to entities involved in off-shore oil and gas operations.

The third *DuPont* factor also weighs against a finding of likelihood of confusion.

#### V. Sophistication of the Purchasers

Although neither Applicant nor the Examining Attorney addressed the *DuPont* factor regarding the sophistication of, and care exhibited by, the purchasers of their

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<sup>16</sup> October 27, 2021 Final Office Action at TSDR 160.

respective services, we find, even in the absence of specific evidence regarding purchaser care, the very nature of the respective services suggests that they are marketed to sophisticated consumers who will exercise care in their selection of the respective services. *In re Info. Builders Inc.*, 2020 USPQ2d 10444, at \*4 (TTAB 2020) (“[I]n light of the inherent nature of the goods and services involved, some degree of purchasing care may be exercised by Applicant’s potential or actual consumers.”). As the record reflects, Applicant’s services are marketed to gas utilities, pipeline companies and industrial markets within the US, and a reading of the identification of the cited mark shows that Registrant’s services are marketed to entities involved in underwater oil and gas operations, and thus would be purchased by consumers with some level of care beyond ordinary care. We do not, however, believe that the degree of care exercised by the consumers in this case rises to a level that, in itself, would distinguish the marks. *See Refreshment Mach. Inc. v. Reed Indus., Inc.*, 196 USPQ 840, 843 (TTAB 1977) (selling to a sophisticated purchaser does not automatically eliminate the likelihood of confusion because “[i]t must also be shown how the purchasers react to trademarks, how observant and discriminating they are in practice, or that the decision to purchase involves such careful consideration over a long period of time that even subtle differences are likely to result in recognition that different marks are involved”).

We nonetheless find that this *DuPont* factor somewhat favors Applicant.

## VI. Weighing the *DuPont* Factors

We have considered all of the evidence and arguments pertaining to the relevant *DuPont* factors. Although the first *DuPont* factor strongly supports a likelihood of confusion, as the marks are identical, as discussed, this factor is outweighed by the second, third and fourth *DuPont* factors. There is insufficient evidence of record to demonstrate that prospective consumers of the respective services will believe that they originate from a common source or that the classes of consumers and channels of trade overlap. We accordingly find the services, channels of trade and classes of purchasers dissimilar, and, given the intrinsic nature of the respective services, consumers will exercise more than ordinary care in their purchasing decisions.

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