

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: March 11, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hartford Fire Insurance Company

Serial No. 90263124

Andrew N. Fredbeck of Fross Zelnick Lehrman & Zissu PC,
for Hartford Fire Insurance Company.

Justine Burke, Trademark Examining Attorney,¹ Law Office 121,
Richard White, Managing Attorney.

Before Zervas, Goodman and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, Hartford Fire Insurance Company, seeks to register the standard-character mark HIG on the Principal Register for “Offering securities for sale; offering stock for sale; offering stock securities for sale; stock securities; equity securities; providing information in the field of financial stock and equity securities

¹ The involved application was initially examined by Trademark Examining Attorney Hannah Gilbert. The application was subsequently assigned to Ms. Burke, who issued the final refusals to register from which the appeal was taken and filed the briefs of the USPTO. We will refer to them both as the “Examining Attorney.”

and markets; Compiling and providing financial, securities, stock exchange, trade and quote and other financial market information; providing stock and securities market information; Providing financial information; financial services” in International Class 36.²

The Trademark Examining Attorney has refused registration on the grounds that (1) Applicant’s mark, used in connection with the recited services, is likely to cause confusion with principally registered mark H.I.G., in typed form³ and as a composite,⁴



, both owned by the same entity, for “Investment services in the nature of venture capital and private equity financing, and investment banking services” in International Class 36; (2) Applicant’s specimen of use does not show a direct association between the mark and the services and fails to show the mark as actually used in commerce with the recited services; (3) Applicant failed to identify its services with sufficient specificity; and (4) certain activities recited in the recitation of

² Application Serial No. 90263124 (“the Application”) was filed on October 19, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and in commerce since at least as early as December 1995.

TTABVUE and Trademark Status and Document Retrieval (“TSDR”) citations in this opinion refer to the docket and electronic file database for the involved application and are to the downloadable .PDF version of the documents.

³ Registration No. 3058370, issued on February 14, 2006; renewed. “A typed mark is the legal equivalent of a standard character mark.” *Advance Mag. Publ’rs., Inc. v. Fashion Elecs., Inc.*, 2023 USPQ2d 753, at*25 n.19 (TTAB 2023), citing *In re Vitterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012) (“[U]ntil 2003, ‘standard character’ marks formerly were known as ‘typed’ marks, ...”).

⁴ Registration No. 3058371, issued on February 14, 2006; renewed. Color is not claimed in the mark.

services, when viewed in conjunction with the specimen of use, are not registrable services.

After the refusal was made final, Applicant filed a notice of appeal and requested reconsideration. After the examining attorney denied the request for reconsideration, the appeal proceeded.

For the reasons discussed below, we affirm the refusal based on likelihood of confusion and do not reach the other refusals.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark may 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 of the applicant, to cause confusion, or to cause mistake, or to deceive....

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

To determine whether there is a likelihood of confusion between marks under Section 2(d), we analyze the evidence and arguments under the factors set forth in *In re E. I. duPont deNemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (the “*DuPont* factors”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 135 S. Ct. 1293, 191 L. Ed. 2d 222, 113 USPQ2d 2045, 2049 (2015). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen

DuPont factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019). “The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.” *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (internal punctuation omitted).

We focus our analysis on Registrant’s typed form mark H.I.G. in cited Registration No. 3058370 which, of the two marks cited, is closest in appearance to Applicant’s mark HIG. If we find confusion likely between these marks, we need not consider the likelihood of confusion between Applicant’s mark and Registrant’s composite mark. On the other hand, if we find no likelihood of confusion between these marks, we would not find confusion likely based on the composite. *See Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at *12 (TTAB 2023) (confining likelihood of confusion analysis to most similar pleaded mark) (citing *Sock It To Me, Inc. v. Aiping Fan*, 2020 USPQ2d 10611, at *6 (TTAB 2020)) (subsequent history omitted).

A. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant’s and Registrant’s marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. “Similarity in any one of these elements may be sufficient to find the marks

confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) *aff’d* 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

The Examining Attorney asserts that Applicant’s mark HIG is “nearly identical” to Registrant’s mark H.I.G. “but for the slight difference in appearance between Applicant’s mark, which appears as a single term, that is, HIG, and the wording in and comprising the registrant’s marks, which appears as three letters with periods after each letter in the term, that is, H.I.G.”⁵ “As such,” she argues, “the marks are identical in sound and virtually identical in appearance, and are thus confusingly similar for the purposes of determining likelihood of confusion.”⁶ Additionally, she adds, “because Applicant’s and the registrant’s marks are comprised of the same letters, consumers are likely to perceive both Applicant’s and the registrant’s marks as acronyms or initialisms that reference the same entity or idea.”⁷

We agree and note, as the Examining Attorney does, that “[p]unctuation is generally not sufficient to alter the connotation and overall commercial impression of otherwise confusingly similar marks and, as such, is not sufficient to distinguish marks.”⁸ See *Peterson v. Awshucks SC, LLC*, 2020 USPQ2d 11526, *15-16 (TTAB 2020) (“Punctuation, such as quotation marks, hyphens, periods, commas, and exclamation marks, generally does not significantly alter the commercial impression

⁵ 10 TTABVUE 5 (Examining Attorney’s Brief).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

of the mark.”); *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016) (finding that the hyphen in the applicant’s mark MINI-MELTS did not distinguish it from the opposer’s mark MINI MELTS).” Applicant does not argue against the similarity of the marks.

The first *DuPont* factor weighs strongly in favor of finding of likelihood of confusion.

B. Similarity or Dissimilarity of the Services, Channels of Trade, and Classes of Customers

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...,” and the third *DuPont* factor concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. A proper comparison of the services “considers whether ‘the consuming public may perceive [the respective services of the parties] as related enough to cause confusion about the source or origin of the ... services.’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)). It is sufficient for a finding of likelihood of confusion if relatedness is established for any service encompassed by the identification of services within a particular class. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335 , 209 USPQ 986 (CCPA 1981).

Applicant’s services, again, are

Offering securities for sale; offering stock for sale; offering stock securities for sale; stock securities; equity securities; providing information in the field of financial stock and equity securities and

markets; Compiling and providing financial, securities, stock exchange, trade and quote and other financial market information; providing stock and securities market information; Providing financial information; **financial services,**

and Registrant's services are

Investment services in the nature of venture capital and private equity financing, and investment banking services.

(emphasis added).

The Examining Attorney observes, “the application uses broad wording to describe ‘financial services’ which presumably encompasses all services of the type described, including registrant’s more narrow ‘investment services in the nature of venture capital and private equity financing, and investment banking services. Thus, Applicant’s and registrant’s services are legally identical.”⁹

We agree. The services are identical in part and thus overlapping. *See e.g., 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.’”); *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1518, 2016 WL 3915986 (TTAB 2016) (“Inasmuch as Registrant’s goods are encompassed within the scope of Applicant’s goods, the respective goods are legally identical in part.”).¹⁰ Applicant does not argue against

⁹ *Id.* at 7 (citations omitted).

¹⁰ Because we have found that the [services] identified in the involved Application are in part legally identical to the goods identified in the cited registration, “there is no need for us to further consider the relatedness of the [services],” *In re FabFitFun*, 127 USPQ2d at 1672. But for the sake of completeness, we note that the Examining Attorney has introduced into the record website screenshots from E*Trade, Robinhood, Fidelity, Webull, Interactive Brokers, and Merrill Edge/Bank of America—all showing that the same entity commonly provides Applicant’s and Registrant’s kind of services under the same mark. December 18,

the relatedness of the services.

Legally identical goods or services are presumed to travel in same channels of trade to the same class of purchasers. *In re Viterro*, 101 USPQ2d at 1908 (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *see also In re Smith & Mehaffey*, 1994 WL 417267, 31 USPQ2d 1531, 1532 (TTAB 1994) (“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers”), *quoted in In re FabFitFun, Inc.*, 2018 WL 4043156, 127 USPQ2d 1670, 1672-73 (TTAB 2018).

Consequently, the second and third *DuPont* factors weigh in favor of finding a likelihood of confusion.

C. Applicant’s Arguments

Applicant presents little argument against the likelihood of confusion refusal, focusing instead primarily on the Examining Attorney’s refusal alleging that certain activities identified in the recitation of services in the Application (i.e., the offering of one’s own stock and securities) are not registrable services under Sections 1, 2, 3, and

2022 Office Action, TSDR 12-91. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (relatedness supported by evidence that third parties sell both types of goods under same mark, showing that “consumers are accustomed to seeing a single mark associated with a source that sells both....”).

45 of the Trademark Act—to the exclusion of the other refusals (i.e., unacceptable specimens, indefinite recitation of services, and unregistrable activities). Indeed, Applicant devotes a total of less than one and a half pages of its brief to the likelihood of confusion refusal.

Applicant also appears to concede that there is presently a likelihood of confusion between the marks:

Applicant states for the record that its primary intention with the application is to protect its stock ticker symbol. Since there is currently no approved identification relating to the sale of securities on a public exchange in the Official Identification Manual, Applicant described its services with both specific and broad terms. Once the U.S. Trademark Office approves an identification for stock ticker symbols, Applicant will amend its identification to exclude the broader wording. **Applicant respectfully submits that once this is done, there will be no likelihood of confusion.**¹¹

Applicant thus acknowledges, at least until such time as the USPTO adopts an identification for stock ticker symbols, that its recitation of services is currently broad enough to result in a likelihood of confusion.

Applicant does briefly argue two points, the first being the purported lack of actual confusion resulting from the coexistence of its mark and the cited marks:

[I]n the meantime, Applicant notes that its stock ticker symbol has been publicly listed on the NYSE since 1995. Applicant has been peacefully coexisting with the cited registrations since that time. Given the differences in the services and the length of coexistence, no confusion is likely.¹²

Applicant thus invokes the seventh *DuPont* factor, “the nature and extent of any

¹¹ 8 TTABVUE 24 (Applicant’s Brief) (emphasis added).

¹² *Id.*

actual confusion,” and the eighth *DuPont* factor, the “length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont*, 177 USPQ at 567.

However, “a showing of actual confusion is not necessary to establish a likelihood of confusion.” *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002). Additionally, any suggestion that there is no actual confusion based upon the coexistence of Applicant’s mark and the mark in the cited registration is entitled to little probative value in the context of ex parte examination as a registrant has no chance to be heard from, nor is the test one of actual confusion but of a likelihood of confusion. *See In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003) (citing *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 1965 Dec. Comm’r Pat. 167, 144 USPQ 435, 435, 438 (CCPA 1965)); *In re Kangaroos U.S.A.*, 223 USPQ 1025, 1026-27 (TTAB 1984). The seventh and eighth *DuPont* factors are therefore neutral.

Additionally, Applicant argues that its use of the mark HIG as a stock symbol on the New York Stock Exchange since 1995 “is a dramatically different use than the use made of the marks in the registrations.”¹³ Specifically, it asserts, “Registrant’s use is made in connection with financial services sold to consumers and promoted through its website,” whereas “Applicant’s stock securities are only available for purchase.”¹⁴ Thus, “[t]he refusal and the arguments by the Examining Attorney do

¹³ *Id.*

¹⁴ *Id.*

not take into account the dramatically different uses by Applicant and Registrant in this situation.”¹⁵

Applicant’s argument is unavailing. The question of likelihood of confusion must be determined based on an analysis of the services recited in Applicant’s application, rather than what evidence or attorney argument shows the services might be. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (citing *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”)). *See also Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987); *Chicago Corp. v. North Am. Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Nothing in Applicant’s recitation of services restricts its broadly worded “financial services” to the sale of stocks or securities. *See Octocom Sys., Inc. v. Houston Computers Sys. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s [services], [or] the particular channels of trade or the class of purchasers to which the [services] are directed.”).

D. Conclusion

The goods and trade channels overlap, and the marks are virtually identical in appearance, sound, connotation and commercial impression. The first, second, and

¹⁵ *Id.* at 25.

third *DuPont* factors thus weigh in favor of a finding of likelihood of confusion, with no factors weighing against a likelihood of confusion. Accordingly, we find Applicant's standard-character mark HIG for ""Offering securities for sale; offering stock for sale; offering stock securities for sale; stock securities; equity securities; providing information in the field of financial stock and equity securities and markets; Compiling and providing financial, securities, stock exchange, trade and quote and other financial market information; providing stock and securities market information; Providing financial information; financial services" is likely to cause confusion with the typed form mark H.I.G. for "Investment services in the nature of venture capital and private equity financing, and investment banking services" in Registration No. 3058370.

Because we affirm the refusal under likelihood of confusion, we do not reach the alternative bases for refusal asserted by the Examining Attorney. *See e.g., In re Mueller Sports Medicine, Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) ("Having found that Applicant's mark is merely descriptive of a feature or characteristic of the goods, we need not reach the alternative ground for refusal that Applicant's mark is deceptively misdescriptive.").

Decision: The refusal to register is affirmed under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).