

This Opinion is Not a
Precedent of the TTAB

Mailed: April 27, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Cancer Support Community Central New Jersey
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Serial No. 90432548
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Ira J. Hammer of Schenck Price Smith & King, LLP for Cancer Support Community
Central New Jersey.

Jeane Yoo, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

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Before Wellington, Larkin, and Lebow,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Cancer Support Community Central New Jersey (“Applicant”) seeks registration
on the Principal Register of the standard-character mark CROSSROADS4HOPE for
the following services (as amended):

Charitable fundraising to support the providing of support
services for patients with cancer, families of patients with
cancer and caregivers for patients with cancer; all of the
foregoing charitable fundraising services provided in-
person and online in International Class 36;

Providing nutrition and meal education services, namely,
providing workshops and classes with hands on learning

delivered by allied health professionals in the field of nutrition to enable patients with cancer, their family members and caregivers to achieve their goals with respect to changing their eating behaviors and improving their health, nutrition eating behaviors; Providing educational workshops, programs and seminars on topics of interest in the field of cancer to people with cancer, family members and caregivers; Providing a website featuring information, news and commentary in the field of current events relating to cancer to people with cancer, family members and caregivers; Meditation and stress reduction training for patients, family members and caregivers to assist in managing stress associated with cancer and cancer treatment; Arranging and conducting entertainment activities for social entertainment purposes that build social connections between people who are affected by cancer to reduce isolation; providing educational classes and training in the field of cancer, meditation, and nutrition delivered by licensed mental health professionals and certified allied health professionals to families with school age children affected by cancer; arranging and conducting special events for making social connections for social entertainment purposes delivered by licensed mental health professionals and certified allied health professionals to families with school age children affected by cancer; all of the foregoing educational, training, and entertainment services provided in-person and online in International Class 41;

Providing nutritional counseling to patients with cancer who have issues with tolerating various foods making it challenging to maintain healthy and nutritious eating habits; Providing medical advice in the field of cancer through a decision support program to assist patients with cancer, family members and caregivers in preparing for upcoming meetings with their oncology team, including discussion of medical questions they may want to ask their health care professionals to better understand cancer, proposed treatments and issues associated with proposed treatments; providing nutrition counseling delivered by licensed mental health professionals and certified allied health professionals to families with school age children affected by cancer; all of the foregoing medical advice and nutritional counseling services provided in-person and online in International Class 44; and

Providing personalized psychosocial cancer support services for patients with cancer, families of patients with cancer and caregivers for patients with cancer, namely, supportive individual emotional counseling and facilitated group emotional support and social support services, namely, case management services in the nature of coordinating legal, medical, physical, social, personal care and psychological services through non-medical personal assistance and community-based referrals to address practical and unmet needs that are beyond the scope of what the applicant is able to provide that includes coordination of services for transportation, financial assistance for medical related costs, durable medical equipment and wigs; Providing group emotional support facilitated by licensed mental health care professionals for patients with cancer, families of patients with cancer and caregivers for patients with cancer; Providing emotional counseling and emotional support services through a decision support program to assist patients with cancer, family members and caregivers in preparing for upcoming meetings with their oncology team, including discussion of questions they may want to ask their health care professionals to better understand cancer, proposed treatments and issues associated with proposed treatments; Providing emotional counseling and emotional support services for survivorship and emotional support to assist patients who have completed active cancer treatment and have no evidence of disease in moving to a life beyond cancer; Providing emotional counseling and emotional support services for bereavement and emotional support to assist family members in dealing with the loss of a loved one to cancer; Providing supportive emotional counseling and group emotional support delivered by licensed mental health professionals and certified allied health professionals to families with school age children affected by cancer; providing bereavement programs, namely, emotional counseling and emotional support services delivered by licensed mental health professionals and certified allied health professionals to families with school age children affected by cancer; all of the foregoing emotional counseling, emotional support, and case

management for coordination of services provided in-person and online in International Class 45.¹

The Trademark Examining Attorney has refused registration of Applicant's mark in all four classes under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that it so resembles the composite word-and-design mark shown below



registered on the Principal Register for “Eleemosynary services, namely, providing alcohol and drug rehabilitation services; meals; and clothing; short and long term accommodation; educational instruction; personal and family counseling; employment counseling; vocational instruction, and spiritual guidance” in International Class 42,² as to be likely, when used in connection with the services identified in the application, to cause confusion, to cause mistake, or to deceive.

¹ Application Serial No. 90432548 was filed on December 30, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intention to use the mark in commerce.

² The cited Registration No. 2624528 issued to Los Angeles Mission (“Registrant”), a California corporation, on September 24, 2002, and has been renewed. Registrant disclaimed the exclusive right to use MISSION apart from the mark as shown and claimed that the phrase LOS ANGELES MISSION had acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). Registrant described its mark as follows: “The mark consists of a rounded square containing a representation of roads intersecting, with a

Applicant appealed when the Examining Attorney made the refusal final. The case is fully briefed.³ We reverse the refusal to register.

I. **Record on Appeal**⁴

The record on appeal includes USPTO electronic records of the cited registration,⁵ dictionary definitions of the words “crossroad,” “hope,” “Los Angeles,” “mission,” “the,” “of,” and “for,” and a page from a slang dictionary regarding the meaning of the numeral “4;”⁶ third-party webpages that the Examining Attorney claims show that the involved services are commonly offered under the same marks;⁷ Applicant’s counsel’s declaration with screenshots of Registrant’s website;⁸ and declarations of Jean Marie Rosone, a licensed social worker, Amy Kamenir, a licensed professional counselor, and Dr. Marc D. Geller, a psychologist, regarding the activities of Applicant and Registrant.⁹

backdrop of a partially exposed rising sun, all of which is centered and set upon the stylized words ‘LOS ANGELES MISSION THE CROSSROADS OF HOPE.’”

³ Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant’s appeal brief appears at 4 TTABVUE and its reply brief appears at 7 TTABVUE. The Examining Attorney’s brief appears at 6 TTABVUE.

⁴ Citations in this opinion to the application record are to pages in the Trademark Status & Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office (“USPTO”).

⁵ July 8, 2021 Office Action at TSDR 2-4.

⁶ *Id.* at TSDR 5-12.

⁷ *Id.* at TSDR 13-70; February 3, 2022 Final Office Action at TSDR 2-149.

⁸ January 5, 2022 Response to Office Action at TSDR 2-11.

⁹ *Id.* at TSDR 12-20.

II. Analysis of Refusal

“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 [or] mistake, or to deceive.” *In re Charger Ventures LLC*, ___ F.4th ___, 2023 USPQ2d 451, at *2 (Fed. Cir. 2023) (cleaned up). Our determination of the 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 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

“In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services.” *Chutter, Inc. v. Great Mgmt. Grp., LLC*, 2021 USPQ2d 1001, at *29 (TTAB 2021), *appeal docketed*, No. 22-1212 (Fed. Cir. 2021) (citing *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)). Applicant argues here that “not only are those two factors the most important factors, but they are also the only two factors that are applicable,” 4 TTABVUE 9, and that “because the marks are so dissimilar, it is not necessary to go beyond the first factor.” *Id.*

A. Similarity or Dissimilarity of the Services

“The second *DuPont* factor ‘considers [t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration’” *In re Embiid*, 2021 USPQ2d 577, at *22 (TTAB 2021) (quoting *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051-52 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567)). The Board has viewed an applicant’s failure to address the second *DuPont* factor in its brief as an apparent concession of the issue. *In re Morinaga Nyugyo K.K.*, 120 USPQ2d 1738, 1740 (TTAB 2016). Applicant does not go that far, but it “concedes for purposes of this appeal that the wording used by Applicant and Registrant in their respective [recitations of services in the] application and registration suggests that there could be an overlap if the marks were indeed similar and targeted at the same people.” 4 TTABVUE 12. Applicant repeats this concession in its reply brief. 7 TTABVUE 9.

This is an ambiguous concession because Applicant goes on to argue that its declarations, and the specimen “submitted [by] registrant when recently renewing its registration in 2021,” 4 TTABVUE 12, which is not in the record, show “that there is no overlap in how the marks are used.” *Id.* Although this extrinsic evidence of the actual use of the involved marks is not relevant to our analysis under the second *DuPont* factor, *Embiid*, 2021 USPQ2d 577, at *28, and, contrary to Applicant’s argument in its reply brief, the Examining Attorney did not err “by focusing on just the wording of the services without taking into account the parties’ respective target markets,” 7 TTABVUE 9, Applicant’s discussion of the extrinsic evidence suggests

that Applicant has not entirely “conced[ed] the issue” under the second *DuPont* factor. *Morinaga Nyugyo*, 120 USPQ2d at 1740. Accordingly, we will briefly review the record evidence regarding the relatedness of the services.

The “services need not be identical or even competitive to find a likelihood of confusion.” *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at *4 (TTAB 2019) (citations omitted). “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 [they] emanate from the same source.’” *Id.* (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir 2012) (internal quotation omitted)).

“Evidence 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.” *Embiid*, 2021 USPQ2d 577, at *22-23. In addition, “[t]he application and registration themselves may provide evidence of the relationship between the services.” *Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at *14 (TTAB 2023) (citations omitted). *See also Country Oven*, 2019 USPQ2d 443903, at *6 (finding that “the identifications in the application and registration themselves support finding the goods and services are related.”).

We “begin with the identifications of [services] . . . in the registration and application under consideration.” *Id.*, at *5. The services identified in the cited registration are “Eleemosynary services, namely, providing alcohol and drug rehabilitation services; meals; and clothing; short and long term accommodation; educational instruction; personal and family counseling; employment counseling; vocational instruction, and spiritual guidance.” The application covers services in four different classes and three of the four classes contain multiple distinct services separated by semicolons.¹⁰ We need not concern ourselves with all of the services in each of those four classes, however, because the “Examining Attorney need not prove, and we need not find, similarity as to each [service] listed in the description of [services],” *In re St. Julian Wine Co.*, 2020 USPQ2d 10595, at *3-4 (TTAB 2020), because “it is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of [services] within [each] particular class in the application.” *Id.*, at *4 (quoting *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015)); *see also Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

At the same time, “[b]ecause each class in Applicant’s multi-class application is, in effect, a separate application, we consider each class separately, and determine whether [the Examining Attorney] has shown a likelihood of confusion with respect

¹⁰ Under current examining practice, semicolons are generally “used to separate distinct categories of goods or services within a single class” in an application. *Monster Energy*, 2023 USPQ2d 87, at *15 n.35 (quoting TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1402.01(a) (July 2021)).

to each.” *N. Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1228 (TTAB 2015). We must consider the issue of relatedness on a class-by-class basis to determine whether the Examining Attorney has shown that the services identified in the cited registration are related to the single service recited in Class 36 and to at least one of the multiple services recited in Class 41, Class 44, and Class 45 in the application.

We must construe the services identified in the cited registration as broadly as reasonably possible “to include all [services] of the nature and type described therein,” *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1413 (TTAB 2018) (quoting *In re Jump Design LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006)), and we must resolve any ambiguities regarding their coverage in favor of Registrant “given the presumptions afforded the registration under Section 7(b)” of the Trademark Act. *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1355 (TTAB 2015) (citing 15 U.S.C. § 1057(b)).

The services broadly identified in the cited registration as “educational instruction” and “personal and family counseling” encompass or are intrinsically related to at least the application’s Class 41 services identified as “Providing educational workshops, programs and seminars on topics of interest in the field of cancer to people with cancer, family members and caregivers,” Class 44 services identified as “Providing nutritional counseling to patients with cancer who have issues with tolerating various foods making it challenging to maintain healthy and nutritious eating habits,” and Class 45 services identified as “Providing emotional counseling and emotional support services through a decision support program to

assist patients with cancer, family members and caregivers in preparing for upcoming meetings with their oncology team, including discussion of questions they may want to ask their health care professionals to better understand cancer, proposed treatments and issues associated with proposed treatments.” These sets of services are thus similar on the face of the respective identifications, and the second *DuPont* factor supports a finding of a likelihood of confusion as to Classes 41, 44, and 45 in the application.

With respect to the charitable fundraising services in Class 36 in the application, we begin by noting that the “eleemosynary services” identified in the cited registration are, by definition, services that are “of, relating to, or **supported by** charity.”¹¹ Such services thus have some intrinsic relatedness to charitable fundraising services.

The Examining Attorney also cites five third-party websites to show that charitable fundraising services and one or more of the services identified in the cited registration are commonly offered under the same mark. 6 TTABVUE 8-9. Each of the cited websites allows visitors to donate funds to support the website owner’s mission, which we deem to be a form of charitable fundraising services, *cf. In re Suuberg*, 2021 USPQ2d 1209 (TTAB 2021) (discussing when a mark is used on a website in connection with charitable fundraising services), and provides at least one

¹¹ MERRIAM-WEBSTER DICTIONARY (merriam-webster.com, last accessed on April 25, 2023) (emphasis added). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *Monster Energy*, 2023 USPQ2d 87, at *20 n.41.

service that is encompassed within or otherwise similar to one or more of the services identified in the cited registration as “Eleemosynary services, namely, providing alcohol and drug rehabilitation services; meals; and clothing; short and long term accommodation; educational instruction; personal and family counseling; employment counseling; vocational instruction, and spiritual guidance.”¹²

The record is sufficient to show similarity between the Class 36 services identified in the application and the eleemosynary services identified in the cited registration, and the second *DuPont* factor also supports a finding of a likelihood of confusion as to Class 36 in the application.

B. Similarity or Dissimilarity of the Marks

“Under the first *DuPont* factor, we consider ‘the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.’” *Embiid*, 2021 USPQ2d 577, at *11 (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005)). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Id.* (quoting *In re Inn at St. John’s, LLC*, 126

¹² February 3, 2022 Final Office Action at TSDR 2-29 (website of Allegheny Health Network providing, inter alia, outpatient drug rehabilitation services); 44-57 (website of the Armstrong Center for Medicine and Health providing, inter alia, patient education, nutrition counseling, and pastoral care); 58-72 (website of Penn Medicine providing, inter alia, nutritional counseling, pastoral care, and drug and alcohol addiction recovery services); 73-98 (website of Jefferson Health providing, inter alia, outpatient substance abuse treatment programs); 99-149 (website of the Cleveland Clinic providing, inter alia, an alcohol and drug recovery center).

USPQ2d 1742, 1746 (TTAB 2018), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019) (quoting *In re Davia*, 110 USPQ2d 1801, 1812 (TTAB 2014)).

“The proper test regarding similarity ‘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.’” *Id.*, at *11 (quoting *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (internal quotation omitted)). “The proper perspective on which the analysis must focus is on the recollection of the average customer, who retains a general rather than a specific impression of marks.” *Id.* (quoting *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1630 (TTAB 2018)). The average customers of the various services identified in the four classes in the application include members of the general public.

The marks are CROSSROADS4HOPE in standard characters and the composite word-and-design mark shown again below:



Applicant argues that “[w]hen one looks at the appearance, listens to the vocalization of the marks, considers their respective connotations and finally considers the overall commercial impression, there can be no question that these are

very different marks.” 4 TTABVUE 10.¹³ Applicant argues that the Examining Attorney has dissected the mark, “ignoring the presence of the significant logo and words ‘Los Angeles Mission’ in order to find that the words ‘The Crossroads of Hope’ are the dominant portion of the mark,” *id.* at 11, and then “compar[ing] those words to applicant’s mark.” *Id.* Applicant further argues that “when one looks at the entirety of the registrant’s mark it is crystal clear that the words ‘The Crossroads of Hope’ are barely noticeable in the context of the entire mark.” *Id.*¹⁴ Applicant cites *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181 (TTAB 2018), in support of its arguments that “[t]he words Los Angeles Mission dominate the commercial impression of [the cited] mark, together with the logo,” 4 TTABVUE 11, and that “[t]here is simply nothing to suggest that the words ‘The Crossroads of Hope’ dominate the Los Angeles Mission’s mark.” *Id.* at 11-12. Applicant concludes that “[w]hen one looks at the entirety at [sic] applicant’s mark and the Los Angeles Mission Mark . . . there is no likelihood that applicant’s mark and the Los Angeles Mission mark will be confused. *Id.* at 12.

¹³ Applicant cites Registrant’s description of its mark, 4 TTABVUE 10, but Applicant’s reliance on the description is misplaced. A description of a mark, no matter how detailed, “cannot be used to restrict the likely public perception of [the] mark” because “[a] mark’s meaning is based on the impression actually created by the mark in the minds of consumers, not on the impression that the applicant states the mark is intended to convey.” *In re Dimarzio, Inc.*, 2021 USPQ2d 1191, at *20-21 (TTAB 2021) (citation omitted).

¹⁴ Applicant again cites “the 123 page specimen registrant submitted to the USPTO on November 2, 2021” as support for its claim that the words “Los Angeles Mission” are the dominant portion of the mark. Applicant claims in its reply brief that the specimen was included in the materials that were “submitted to the examining attorney and therefore form part of the record for this appeal,” 7 TTABVUE 9, but the specimen is not in the record and we cannot consider Applicant’s arguments about what it shows. *Cf. In re Allegiance Staffing*, 113 USPQ2d 1319, 1324 n.6 (TTAB 2015) (because the file histories of the cited registrations were not of record, the Board could not ascertain what happened during the prosecutions).

The Examining Attorney responds that “the marks are confusingly similar in sound, appearance, connotation and commercial impression due to the use of the distinctive wording ‘CROSSROADS4HOPE’ in applicant’s mark and ‘THE CROSSROADS OF HOPE’ in registrant’s mark.” 6 TTABVUE 4. The Examining Attorney argues that “Registrant’s mark has additional matter, that is, ‘LOS ANGELES MISSION’,” but that “this wording is geographically descriptive of and generic for the registrant’s services, as demonstrated by the claim of acquired distinctiveness under Trademark Act Section 2(f) in the registration for ‘LOS ANGELES MISSION’ and the disclaimer of the term ‘MISSION’ in the registration.” *Id.* According to the Examining Attorney, “this renders ‘THE CROSSROADS OF HOPE’ the more dominant part of registrant’s mark, which is highly similar in sound, appearance, connotation and commercial impression to applicant’s mark, ‘CROSSROADS4HOPE’.” *Id.* The Examining Attorney also argues that the “design features and stylized lettering of the registered mark do not obviate the similarities with the applied-for mark because the applied-for mark is in standard characters and may be displayed in any manner, including one similar to the registrant’s mark.” *Id.* at 5.

In its reply brief, Applicant argues that the Examining Attorney has failed to consider the marks in their entirety because

[t]he logo is ignored. The words Los Angeles (which are not disclaimed[]) are ignored. Finally, the word Mission (which is disclaimed) is ignored, even though it must still be considered in determining whether the marks are confusingly similar. . . Thus, the examining attorney

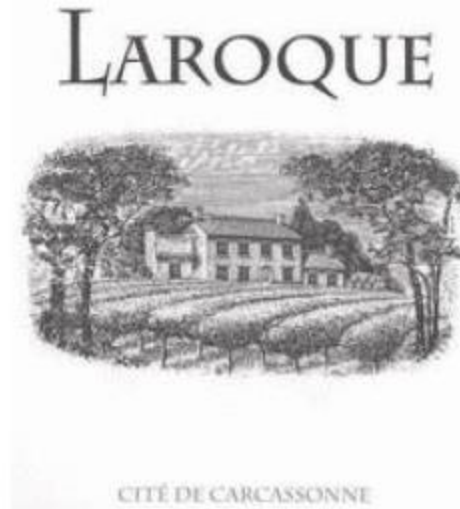
creates an artificial comparison of just The Crossroads of Hope with Crossroads4Hope.

7 TTABVUE 8 (citation omitted).

While the marks must be considered in their entireties, “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at *30-31 (TTAB 2021) (quoting *Detroit Athletic Co.*, 128 USPQ2d at 1050 (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985))). As discussed above, the Examining Attorney and Applicant disagree sharply on the issue of the dominant portion of the cited mark, so we turn to that issue first.

Applicant compares the cited mark in this case to the applicant’s mark in *Aquitaine Wine USA*. The issue of the similarity of the marks obviously involves only the marks in this case, but we agree with Applicant that *Aquitaine Wine USA* provides useful guidance in our analysis of the dominant portion of the cited mark.

In *Aquitaine Wine USA*, the Board analyzed the dominant portion of the applicant’s mark in that case, shown below:



The Board applied the principle that in the case of marks “consisting of words and a design, the words are normally accorded greater weight because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the goods.” *Aquitaine Wine USA*, 126 USPQ2d at 1184 (citing *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F.2d 1578, 218 USPQ 198, 200 (Fed. Cir. 1983))). The Board found that the word LAROQUE was the dominant element of the mark because it was “[d]isplayed in a large, bold typeface,” “comprise[d] the largest literal portion of the mark in terms of size, position, and emphasis,” and was “also the first term in the mark, further establishing its prominence.” *Id.* at 1184-85. The Board found that the words “CITÉ DE CARCASSONNE” were “entitled to less weight in the likelihood of confusion determination” because they were a geographically descriptive term that appeared in the mark “in significantly smaller lettering” than the word LAROQUE. *Id.* at 1185.

In this case, the cited registered mark shown below



shares a number of the characteristics of the applicant's mark in *Aquitaine Wine USA*. Like the mark in *Aquitaine Wine USA*, the cited mark here contains a large word element and a design element displayed above a smaller word element. Like the word LAROQUE in the mark in *Aquitaine Wine USA*, the phrase "Los Angeles Mission" "comprises the largest literal portion of the [cited] mark in terms of size, position, and emphasis," and is the "first term in the mark, further establishing its prominence." *Id.* Like the phrase "CITÉ DE CARCASSONNE" in the mark in *Aquitaine Wine USA*, the phrase "The Crossroads of Hope" appears in the cited mark in "significantly smaller letters" than the words "Los Angeles Mission." *Id.* Indeed, the words "The Crossroads of Hope" are difficult to read in the cited mark, particularly when the mark is viewed at a distance or hastily.

We agree with the Examining Attorney, 6 TTABVUE 11-12, that the characteristics of the cited mark here differ in some respects from those of the applicant's mark in *Aquitaine Wine USA*. The Board noted in *Aquitaine Wine USA* that "there is nothing on which [it] could conclude that the term [LAROQUE] is weak or not inherently distinctive and therefore entitled to only a narrow scope of protection." *Aquitaine Wine USA*, 126 USPQ2d at 1184. Here, Registrant disclaimed the exclusive right to use "Mission" apart from the mark as shown, and conceded that

the phrase “Los Angeles Mission” is not inherently distinctive by claiming that this portion of the mark had acquired distinctiveness under Section 2(f) of the Trademark Act. *See DC Comics v. Cellular Nerd LLC*, 2022 USPQ2d 1249, at *26 (TTAB 2022) (“A claim of distinctiveness under Section 2(f), whether made in the application as filed or in a subsequent amendment, may be construed as a concession that the matter to which it pertains is not inherently distinctive and, thus, not registrable on the Principal Register absent proof of acquired distinctiveness.”). But the disclaimer of “Mission” and the acquired distinctiveness claim as to “Los Angeles Mission” do not render other elements of the mark more significant as source identifiers because Registrant’s Section 2(f) showing establishes that the name “Los Angeles Mission” has come to identify Registrant as the source of the services provided under the mark.

In addition, unlike the geographically descriptive words “CITÉ DE CARCASSONNE” in the applicant’s mark in *Aquitaine Wine USA*, the words “The Crossroads of Hope” in the cited mark are not disclaimed and we agree with the Examining Attorney, 6 TTABVUE 10, that this phrase is distinctive. In determining the dominant portion of the cited mark, however, we must identify the elements that are most “likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the [services].” *Aquitaine Wine USA*, 126 USPQ2d at 1184. Given the visual prominence of the words “Los Angeles Mission,” their first position when the mark is viewed from top to bottom, and the very large disparity in size between those words and the phrase “The Crossroads of Hope,” we find that Registrant’s name “Los Angeles Mission” is more likely to “make a greater

impression upon purchasers, to be remembered by them, and to be used by them to request the [services],” *id.*, than the subsidiary slogan “The Crossroads of Hope.”¹⁵

We turn now to the required comparison of the marks in their entirety, giving greater weight in that comparison to the words “Los Angeles Mission” in the cited mark than to the other elements of the mark. In that regard, as discussed above, the Examining Attorney’s position that the marks in their entirety are similar in all means of comparison is premised almost entirely on her claim that “The Crossroads of Hope is “the more dominant part of registrant’s mark,” 6 TTABVUE 4, which we have rejected, because she relies on “the use of the distinctive wording ‘CROSSROADS4HOPE’ in applicant’s mark and ‘THE CROSSROADS OF HOPE’ in registrant’s mark,” *id.*, in arguing that the phrase “The Crossroads of Hope” in Registrant’s mark “is visually and aurally similar to applicants’ mark, ‘CROSSROADS4HOPE’, resulting in confusingly similar overall commercial impressions.” *Id.* at 12.

With respect to appearance, we must consider the marks from the standpoint of a consumer of Registrant’s services who has a general impression of Registrant’s composite mark and who separately sees Applicant’s CROSSROADS4HOPE compound mark, whose constituent words and numeral are somewhat more difficult

¹⁵ In *Aquitaine Wine USA*, the Board noted that the “verbal portion of a word and design mark ‘likely will appear alone when used in text and will be spoken when requested by consumers.’” *Aquitaine Wine USA*, 126 USPQ2d at 1184 (quoting *Viterra*, 101 USPQ2d at 1911). Registrant’s name “Los Angeles Mission” appears repeatedly in text on its website. January 5, 2022 Response to Office Action at TSDR 3-11.

to discern at first glance than if they were displayed separately as CROSSROADS 4 HOPE.

In determining what is likely to be in the mind's eye of that consumer, the fact that the phrase "Los Angeles Mission" is the first verbal portion of the cited mark when it is viewed makes the phrase the portion "most likely to be impressed in purchasers' memories." *In re Dare Foods Inc.*, 2022 USPQ2d 291, at *10 (TTAB 2022) (citations omitted). The phrase "Los Angeles Mission" is more likely to be visualized in the mind's eye, perhaps together with a recollection of the mark's design element,¹⁶ than the much smaller and less visible phrase "The Crossroads of Hope" when the cited mark is visualized and then compared with Applicant's compound mark. We find that the marks are more dissimilar than similar in appearance.

With respect to sound, there is no doubt that the phrases "Crossroads4hope" and "The Crossroads of Hope" sound similar when spoken together, but that begs the question of how the cited composite mark will be verbalized. Registrant's name "Los Angeles Mission" dominates the cited mark and there is no evidence that consumers

¹⁶ The Examining Attorney correctly notes that as a standard-character mark, CROSSROADS4HOPE "may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition." 6 TTABVue 5 (citations omitted). This means that we must assume that CROSSROADS4HOPE could be displayed in the same font style and size in which the words "Los Angeles Mission" or "The Crossroads of Hope" appear in the cited mark. But contrary to the Examining Attorney's argument that "[t]he fact that registrant's mark includes a design element or is displayed in stylized lettering does not overcome a likelihood of confusion because applicant's mark is in standard characters and may be displayed in any manner or rendition, including one similar to registrant's," *id.* at 10, we cannot assume that the applicant's mark could be accompanied by the design element in the cited mark. *Aquitaine Wine USA*, 126 USPQ2d at 1187. Viewing Applicant's mark through the lens of the assumption that it may be displayed in the same manner as the words are displayed in the cited mark does not make Applicant's mark any more similar in appearance to the cited mark in its entirety.

will verbalize the cited mark as the mouthful “Los Angeles Mission The Crossroads of Hope,” particularly given the “penchant of consumers to shorten marks.” *Sabhnani*, 2021 USPQ2d 1241, at *36 (quoting *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1961 (TTAB 2016)). To the extent that consumers indulge in this “universal habit of shortening full names — from haste or laziness or just economy of words,” *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 219 (CCPA 1978) (Rich, J., concurring), when verbalizing the cited mark, it is far more likely that the words “Los Angeles Mission” will be spoken than the words “The Crossroads of Hope,” especially because the words “The Crossroads of Hope” are difficult to read when the cited mark is viewed, making it unlikely that the slogan will be recalled when the mark is spoken. But even if all seven of the words in the cited mark are spoken, the first thing heard will be “Los Angeles Mission.”

Just as marks are not viewed side-by-side when comparing them in appearance, they are not pronounced sequentially when comparing them for aural similarity or dissimilarity. A consumer familiar with the cited mark whose “mind’s ear” contains the words “Los Angeles Mission” or (less likely) “Los Angeles Mission The Crossroads of Hope,” and who separately hears the words “Crossroads (for) Hope,” is not likely to hear the marks as sounding particularly similar. We find that the marks, considered in their entireties, are more dissimilar than similar in sound.

Finally, with respect to meaning, as with appearance and sound, the general impression created by the cited mark is driven by the dominant portion “Los Angeles Mission.” That portion of the mark identifies a “mission,” which means, in the context

of the services identified in the cited registration, “[a] welfare or educational organization established for the needy people of a district,”¹⁷ here Los Angeles, California. There is no connotation of Los Angeles, or a welfare or educational organization, on the face of Applicant’s mark CROSSROADS4HOPE. We find that the marks are more dissimilar than similar in meaning.

“Similarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003)). We agree with the Examining Attorney that there are some similarities between the compound word CROSSROADS4HOPE that comprises Applicant’s mark and the words “The Crossroads of Hope” that appear in the cited mark, but we find that those similarities are outweighed by the dissimilarities between the marks discussed above, and that the marks, considered in their entirety, are more dissimilar than similar in appearance, sound, and connotation and commercial impression. The first *DuPont* factor supports a finding of no likelihood of confusion.

C. Weighing the Two Key *DuPont* Factors

We have found above that the involved services are related, suggesting that confusion is likely, but we have also found above that the marks are more dissimilar than similar, suggesting that confusion is not likely. Accordingly, we must “weigh the *DuPont* factors used in [our] analysis **and** explain the results of that weighing.” *Charger Ventures*, 2023 USPQ2d 451, at *7 (emphasis in boldface originally in italics).

¹⁷ July 8, 2021 Office Action at TSDR 6 (THE AMERICAN HERITAGE DICTIONARY).

“In any given case, different *DuPont* factors may play a dominant role,” *id.*, at *4, and the “weight given to each factor depends on the circumstances of each case.” *Id.* (citation omitted). A “single *DuPont* factor may, for example, be dispositive of the likelihood of confusion analysis.” *Id.* (citing *Kellogg Co. v. Pack’em Enters., Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1999) (affirming Board’s grant of summary judgment to the applicant based on Board’s conclusion that the dissimilarity of the marks FROOT LOOPS and FROOTIE ICE in their entireties “made it unlikely that confusion would result from the simultaneous use of the marks.”)).

We find that the dissimilarity of the marks here outweighs the similarity of the services in our analysis of whether a consumer with a general rather than specific impression of the cited composite mark for various eleemosynary services, who separately encounters Applicant’s compound CROSSROADS4HOPE mark for similar services, is likely to believe mistakenly that the services have a common source or sponsorship. The marks are sufficiently dissimilar to make confusion unlikely when they are used in connection with the involved services.

Decision: The refusal to register is reversed.