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Mailed: March 21, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Appalachian Headwaters, Inc.
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Application Serial No. 90448759
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Derek Teaney for Appalachian Headwaters, Inc.

Julie Watson, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

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Before Bergsman, Wellington, and English,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Appalachian Headwaters, Inc. (“Applicant”) seeks registration on the Principal Register of the mark CAMP WALDO (in standard characters) for “summer camps,” in International Class 41.¹ Applicant disclaims the exclusive right to use the word “Camp.”

The Examining Attorney refused to register Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that it so resembles the

¹ Application Serial No. 90448759 was filed on January 5, 2021, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere and in commerce since at least as early as February 2019.

registered mark THE WALDO SCHOOL for “educational services in the nature of primary schools,” in International Class 41, and “child care services,” in International Class 43, as to be likely to cause confusion.² Registrant disclaimed the exclusive right to use the word “school.”

When we cite to the record, we refer to the USPTO Trademark Status and Document Retrieval (TSDR) system in the downloadable .pdf format by page number (e.g., July 14, 2021 Office Action (TSDR 7)). When we cite to the briefs, we refer to TTABVUE, the Board’s docketing system by docket entry and page number (e.g., 6 TTABVUE 5).

Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), prohibits the registration of a mark that:

[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.

We base our determination under Section 2(d) on an analysis of all the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, referred to as “*DuPont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). “Whether a likelihood of confusion exists between an applicant’s mark and a

² Registration No. 4551209, registered June 17, 2014; Sections 8 and 15 declarations accepted and acknowledged.

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). “In discharging this duty, the thirteen *DuPont* factors ‘must be considered’ ‘when [they] are of record.’” *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997) and *DuPont*, 177 USPQ at 567). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at *3 (Fed. Cir. 2020) (citing *Dixie Rests.*, 41 USPQ2d at 1533).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). “Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because the ‘fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.” *In re Embiid*, 2021 USPQ2d 577, at *10 (TTAB 2021) (quoting *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)). *See also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“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.”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004).



I. The similarity or dissimilarity and nature of the services

As noted above, Applicant is seeking to register its mark for “summer camps” and the mark in the cited registration is registered for (i) “educational services in the nature of primary schools” and (2) “child care services.” To prove that the services are related, the Examining Attorney submitted copies of 10 third-party use-based registrations for summer camps and educational services [not limited to primary schools] or child care services or both and copies of six third-party websites showing the same entity rendering the services under the same marks.

Third-party registrations which individually cover a number of different services that are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed services are of a type which may emanate from the same source. *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at *8 (TTAB 2019); *Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1432 (TTAB 2013); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86. The registrations with the relevant portion of their description of services are listed below:³

MARK	REG. NO.	SERVICES
LIVING WISDOM	2426993	Providing courses of instruction at the preschool, primary school, middle school, and high school levels; Summer camps

³ December 16, 2021 Office Action (TSDR 39-67).

MARK	REG. NO.	SERVICES
THE FRENCH INTERNATIONAL SCHOOL OF BOCA RATON	6578663	Language schools featuring English and French; teaching at elementary schools Summer camps
	5830133	Providing courses of instruction at the pre-kindergarten, kindergarten, elementary school, and middle school levels Providing summer camps and holiday camps
SKC EARLY EDUCATION CENTERS	5900461	Providing early education services, namely, nursery school and pre-school Child care services Summer camp
COA CHILDREN OF AMERICA EDUCATIONAL CHILDCARE	5767614	Providing courses of instruction at the infant, toddler, pre-school, kindergarten and elementary school levels Child care services Summer camps
CHILDCARE NETWORK THE WORKING PARENT'S BEST FRIEND	5947781	Child care services Educational services, namely, conducting pre-school, after-school educational programs for school-age children from kindergarten through elementary school and summer educational programs in the nature of summer camps
	5909005	Summer camps Child care services

MARK	REG. NO.	SERVICES
WHERE THERE'S A Y, THERE'S A WAY	6242986	Education services, namely, classes and individual mentoring and tutoring in the field of literacy, language, arts and humanities, science and technology, and health and wellness Child care services Summer camps
C	5969355	Educational services in the nature of early childhood instruction, preschools, before and after school educational programs Child care services Summer camps
JUMP! IMMERSION SCHOOL	6446193	Primary school services Summer camps

The Examining Attorney submitted excerpts from the six third-party websites listed below showing the third parties using the same mark to identify and advertise summer camps and educational services, child care services or both educational and child care services:

- Barrie School website (barrie.org) using the mark BARRIE SCHOOL for educational services for students age 12 months through grade 12⁴ and after-school care⁵ and BARRIE SCHOOL and BARRIE CAMP for summer camps offering “specialized programs ... [f]rom academic classes to sports clinics”;⁶

⁴ July 14, 2021 Office Action (TSDR 8-12).

⁵ *Id.* at TSDR 35-38.

⁶ *Id.* at TSDR 13-16.

- Landon website (landon.net) using the mark LANDON for boys' college preparatory education grades 3 through 12⁷ and LANDON SUMMER for traditional day camps for campers ages 3½ through 17;⁸
- Sidwell (sidwell.edu) using the mark SIDWELL for lower, middle and upper school education services⁹ and SIDWELL SUMMER for summer camps offering programs “[f]rom sports & LEGO to academics & day camps”;¹⁰
- Merritt Academy (merrittacademy.org) using the mark MERRITT ACADEMY for child care services and educational services for infants through eighth grade¹¹ and summer camp, including a “Classroom Camp” “combining academic enrichment with classic summer fun”;¹²
- Star Child Academy (starchildacademy.com) using the mark STAR CHILD ACADEMY for summer camp, infant daycare, preschool, after-school and elementary school services;¹³ and
- Ivy League Academy (ivyleague.com) using the mark IVY LEAGUE ACADEMY for infant care, preschool, educational services kindergarten through eighth grade and summer camps.¹⁴

⁷ July 14, 2021 Office Action (TSDR 17-23).

⁸ *Id.* at TSDR 24-26.

⁹ July 14, 2021 Office Action (TSDR 27-31).

¹⁰ *Id.* at TSDR 32-34.

¹¹ December 16, 2021 Office Action (TSDR 7-10).

¹² *Id.* at TSDR 11-15.

¹³ December 16, 2021 Office Action (TSDR 24-27).

¹⁴ December 16, 2021 Office Action (TSDR 28-38).

Third-party webpage evidence showing the same mark used for educational services, child care services, and summer camps, including summer camps that offer academic programs is probative to demonstrate that Applicant's services and Registrant's services are related for likelihood of confusion purposes. *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"); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002) (evidence that consumers encounter one mark designating a single source for the services of both parties supports a finding that the services are related); *In re Embiid*, 2021 USPQ2d 577, at *22-23 (TTAB 2021) (citing *Ox Paperboard*, 2020 USPQ2d 10878, at *5; and *Hewlett-Packard*, 62 USPQ2d at 1004); *In re Integrated Embedded*, 120 USPQ2d 1504, 1514-15 (TTAB 2016) (websites made of record by examining attorney "demonstrate[d] that services of the type offered by both Applicant . . . and Registrant are marketed and sold together online under the same marks" and "[s]uch evidence is sufficient to find that the services at issue are related"); *In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012) (Internet excerpts from "several third-party car dealerships offering 'tires' for sale on their websites" was "evidence that consumers expect to find both 'tires,' . . . and 'automobiles' . . . emanating from a common source.").

Applicant contends that the above-noted evidence does not show that the services are related.

That is too thin a reed to support a conclusion that the services are “very highly related” or that a likelihood of confusion exists between THE WALDO SCHOOL and CAMP WALDO.¹⁵

Lumping summer camp services in with educational and child care services commits the same impermissible error as finding a likelihood of confusion for similar or identical marks for food products and restaurant services. *Jacobs v. International Multifoods Corp.*, 212 U.S.P.Q.641, 642 (C.C.P.A. 1982). Stated otherwise, just because kids are involved does not make services “highly related[.]” “something more” is required. *In re St. Helena Hosp.*, 774 F.3d 747, 754–54, 113 U.S.P.Q.2d 1082 (Fed. Cir. 2014).¹⁶

Here, because a summer camp must safely and comfortably house and feed its participants 24 hours and day, for a week or more at a time, the services that it offers are highly specialized and wholly different from the services offered by a school or day-care.¹⁷

We disagree with Applicant’s contention that the Examining Attorney’s evidence does not prove the services are related for two reasons. First, in determining whether the services are related, it is not necessary that Applicant’s summer camps and Registrant’s educational or child care services be competitive in character to support finding they are related; it is sufficient for such purposes that the services are related in some manner or that conditions and activities surrounding marketing of these services are such that they would or could be encountered by same persons under

¹⁵ Applicant’s Brief, p. 20 (6 TTABVUE 21).

¹⁶ *Id.*

¹⁷ *Id.* at p. 21 (6 TTABVUE 22).

circumstances that could, because of similarities of marks used with them, give rise to the mistaken belief that they originate from or are in some way associated with the same producer. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012).

Second, the Examining Attorney's evidence shows that third parties render educational services, child care services, and summer camp services under the same or similar marks. While the services at issue are not identical, the evidence shows that consumers will find those activities are related when they are offered by a single entity under the same or similar marks.

This *DuPont* factor weighs in favor of finding a likelihood of confusion.

II. Established, likely-to-continue channels of trade and classes of consumers

The third-party website evidence noted above advertises educational services, child care services, and summer camp services through the same websites to the same consumers at the same time. Accordingly, we find that the services are offered in the same channels of trade to the same consumers and, therefore, this *DuPont* factor weighs in favor of finding a likelihood of confusion.

III. The strength of Registrant's THE WALDO SCHOOL mark

The strength of Registrant's mark affects the scope of protection to which it is entitled. Thus, we consider the inherent or conceptual strength of Registrant's mark based on the nature of the mark itself and its commercial strength based on marketplace recognition of the marks. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) ("A mark's strength is measured both

by its conceptual strength (distinctiveness) and its marketplace strength.”); *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1345 (TTAB 2017); *Top Tobacco, L.P. v. N. Atlantic Operating Co., Inc.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006) (market strength is the extent to which the relevant public recognizes a mark as denoting a single source); 2 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:80 (5th ed. March 2023 update) (“The first enquiry is for conceptual strength and focuses on the inherent potential of the term at the time of its first use. The second evaluates the actual customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another’s use.”).

At a minimum, THE WALDO SCHOOL has been registered on the Principal Register without a claim of acquired distinctiveness and, therefore, it is inherently distinctive and entitled to the benefits accorded registered mark under Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b) (registration is prima facie evidence of the validity of the registration and registrant’s exclusive right to use the mark in commerce).

Applicant contends that because there are numerous third-party registrations for and third-party uses of WALDO-formative marks and third-party uses of and third-party uses of WALDO-formative marks educational services, Registrant’s THE WALDO SCHOOL mark is entitled to only a narrow scope of protection. While third-

party registrations are not evidence of what happens in the marketplace, they may be probative to show the sense in which a mark is used in ordinary parlance (i.e., that some segment of the mark has a normally understood and well-recognized descriptive or suggestive meaning. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015). In other words, third-party registrations may be used to show the meaning of a mark in the same way that dictionaries are used. *Id.* (quoting *Textronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976)).

To show that Registrant's THE WALDO SCHOOL is an inherently or conceptually weak mark, Applicant submitted copies of 77 third-party registrations that include the name WALDO or some variation of WALDO for various goods and services.¹⁸ However, only one registration is for educational services: Registration No. 5140675 for the mark WALDO and design for "education services, namely, kindergarten through 8th grade (K-8) classroom instruction."¹⁹ That registration is owned by the Registrant of the cited registration. Thus, the only registration for related goods or services is owned by Registrant.²⁰

The remaining third-party registrations are of limited, if any, probative value because they do not cover educational services or child care services. *See Omaha*

¹⁸ June 10, 2022 Request for Reconsideration (TSDR 129-240).

¹⁹ *Id.* at TSDR 153.

²⁰ Registration No. 5913954 for the mark WALDO'S FOREVER FEST is registered for "entertainment and educational services, namely, organizing and producing community festivals for cultural, entertainment purposes." June 10, 2022 Request for Reconsideration (TSDR 133). Those services are significantly different than Registrant's "educational services in the nature of primary schools" or "child care services."

Steaks Int'l, 128 USPQ2d at 1694 (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus “on goods shown to be similar”); *i.am.symbolic*, 123 USPQ2d at 1751 (disregarding third-party registrations for other types of goods where the proffering party had neither proven nor explained that they were related to the goods in the cited registration); *TAO Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1058 (TTAB 2017) (third-party registrations in unrelated fields “have no bearing on the strength of the term in the context relevant to this case.”); *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009) (the third-party registrations are of limited probative value because the goods identified in the registrations appear to be in fields which are far removed from the goods at issue).

Applicant’s third-party registration evidence fails to show that the name WALDO has been so commonly registered in connection with educational services or child care services that it is descriptive or suggestive and, therefore, an inherently or conceptually weak term when used as a trademark. Applicant’s third-party registration evidence does not detract from the inherent or conceptual strength of Registrant’s mark THE WALDO SCHOOL.

Applicant also submitted printouts from third-party websites showing entities using WALDO or WALDO-formative marks in connection with education services. Evidence of extensive third-party use of a term, in connection with the same or similar services in the relevant marketplace, is probative of the term’s weakness as a trademark. *See Omaha Steaks Int'l*, 128 USPQ2d at 1693 (“The purpose of introducing evidence of third-party use is to show that customers have become so

conditioned by a plethora of such similar marks that customers have been educated to distinguish between different [such] marks on the bases of minute distinctions.”) (internal quotations and quotation marks omitted omitted)); *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (holding that “evidence of third-party use of similar marks on similar goods can show that customers have been educated to distinguishing between different marks on the basis of minute distinctions”) (internal quotation and quotation marks omitted)); *In re FCA US LLC*, 126 USPQ2d 1214, 1224 (TTAB 2018) (“Evidence of third-party use may reflect commercial weakness.”); *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2016). As listed below there are three WALDO school names where Waldo refers to the name of the city where the school is located, seven Waldo-formative school names located in cities other than Waldo of which Waldo is a given name in five of the schools (e.g., Waldo Pafford Elementary School) , and 11 RALPH WALDO EMERSON school names.²¹

²¹ Applicant submitted the third-party website evidence a second time in its June 10, 2022 Request for Reconsideration (TSDR 33-128). Suffice it to say, the probative value of the evidence does not increase with repetition.

We do not include the Emerson School (houstonisd.org) because it does not include the name Waldo. December 7, 2021 Response to Office Action (TSDR 84).

We do not include the following websites because the schools are no longer active: Waldo High School located in Waldo, Arkansas (publicschoolreview.com/waldo-high-school-profile) (*Id.* at TSDR 88-94); Waldo Elementary in Waldo, Arkansas (publicschoolreview.com/waldo-elementary-school-profile) (*Id.* at TSDR 95-101); Ralph Waldo Emerson High School (digitalresearch.bsu.edu) located in Gary, Indiana (*Id.* at TSDR 103-109).

The exhibit at TSDR 114 is unidentifiable.

A. Waldo-formative school names located in cities named Waldo

- Waldo County Technical Center (waldotech.org) “providing quality technical education programs ... for employment and post-secondary education for people in Waldo County,” located in Waldo, Maine;²²
- Waldo Community School (facebook.com/pages/Waldo-Community-School/) an elementary school in Waldo, Florida;²³ and
- Waldo Baptist Vacation Bible School (facebook.com/WaldoVBS/) a Bible school in Waldo, Florida.²⁴

B. Waldo-formative school names in cities with names other than Waldo

- Waldo Middle School (waldo.d131.org) a middle school in Aurora, Illinois;²⁵
- Waldo Middle School (waldo.salkeiz.k12.or.us) a middle school in Salem, Oregon;²⁶
- Waldo Pafford Elementary School (waldopaffordes.org) an elementary school in Hinesville, Georgia;²⁷
- Waldo J. Wood Memorial Junior and Senior High School (facebook.com/pages/Waldo-J-Memorial-JrSr-High-S...) in Oakland City, Indiana;²⁸

²² December 7, 2021 Response to Office Action (TSDR 19-21).

²³ *Id.* at TSDR 22-23.

²⁴ *Id.* at TSDR 24-25.

²⁵ *Id.* at TSDR 26-28.

²⁶ *Id.* at TSDR 29-30.

²⁷ *Id.* at TSDR 31-34.

²⁸ *Id.* at TSDR 35-36.

- Waldo C Falkener Sr Elementary (facebook.com/pages/Waldo-C-Falkener-Sr-Elementary/) located Greensboro, North Carolina;²⁹
- Waldo T Skillin Elementary School (usnews.com/education/k12/maine/waldo-t-skillin-elementary) located in Portland, Maine;³⁰ and
- Waldo Rohenert Intermediate School (cde.ca.gov) located in Rohenert Park, California.³¹

C. Ralph Waldo Emerson school names

- Ralph Waldo Emerson Elementary School (phxschools.org/emerson) located in Phoenix, Arizona;³²
- Ralph Waldo Emerson School 58 (myips.org/ralphwaldoemerson/) located in Indianapolis, Indiana;³³
- Ralph Waldo Emerson Elementary (emerson.garvey.k12.ca.us/) located somewhere in California (by virtue of the URL);³⁴
- Ralph Waldo Emerson Elementary (emersonbandini.sandiegounified.org) located in San Diego, California;³⁵

²⁹ *Id.* at TSDR 37-50.

³⁰ *Id.* at TSDR 51-56.

³¹ *Id.* at TSDR 102.

³² December 7, 2021 Response to Office Action (TSDR 57).

³³ *Id.* at TSDR 58.

³⁴ *Id.* at TSDR 59-61.

³⁵ *Id.* at TSDR 68-70.

- Ralph Waldo Emerson Elementary School (rwees-compton-ca.schoolloop.com) located in Compton, California;³⁶
- Ralph Waldo Emerson Middle School (facebook.com/pages/Ralph-Waldo-Emerson-Middle) located in Los Angeles, California;³⁷
- Ralph Waldo Emerson Junior High (emerson.djustd.net) part of the Davis Joint Unified School District at an unidentified location;³⁸
- Ralph Waldo Emerson School for Preschoolers (emersonschoolnh.org) located in Concord, New Hampshire;³⁹
- Emerson School: Ralph Waldo Emerson School (mps.milwaukee.k12.wi.us) located in Milwaukee, Wisconsin;⁴⁰
- Ralph Waldo Emerson Elementary School (fraser.k12.mi.us) located in Michigan;⁴¹ and
- Ralph Waldo Emerson Elementary School (levittownnow.com) located in Bristol Township, Pennsylvania.⁴²

Applicant contends that the above-noted third-party websites establish that there are least 20 active facilities providing educational services under the term WALDO located across the United States in Illinois, Oregon, Georgia, Arizona, Indiana,

³⁶ *Id.* at TSDR 67.

³⁷ *Id.* at TSDR 74-83.

³⁸ *Id.* at TSDR 62-64.

³⁹ *Id.* at TSDR 65-66.

⁴⁰ *Id.* at TSDR 71-73.

⁴¹ *Id.* at TSDR 85.

⁴² *Id.* at TSDR 110-112.

California, New Hampshire, Wisconsin, Texas, Michigan, Maine, Florida, and North Carolina.⁴³ According to Applicant,

Given the ubiquitous and long-standing use by schools of the term WALDO in their name, the registered mark THE WALDO SCHOOL is an inherently weak mark. That is also so because the term is commonly used in these instances as a geographic indicator, or a name (given or surname). As a result, the likelihood of confusion analysis for whether CAMP WALDO is registerable must take into account the narrow range of protection available to the registered mark THE WALDO SCHOOL, and acknowledge that, because of the widespread use of similar names in education, CAMP WALDO is not likely to be confused with THE WALDO SCHOOL.⁴⁴

Applicant overstates the weight of its third-party website evidence. First, Ralph Waldo Emerson is the name of the renowned American essayist and poet.⁴⁵ Ralph Waldo Emerson is a unitary term or name and engenders a different commercial impression than the singular name Emerson because it points uniquely to a singular, well-known individual. Likewise, the marks where WALDO is a given name (e.g., WALDO PAFFORD ELEMENTARY SCHOOL) creates a different commercial impression than WALDO alone. Second, the WALDO schools located in cities named Waldo has a geographic significance that does not necessarily apply with Registrant's mark THE WALDO SCHOOL. Finally, the entities using WALDO and WALDO-

⁴³ Applicant's Brief, pp. 7-8 (6 TTABVUE 8-9).

⁴⁴ *Id.* at p. 9 (6 TTABVUE 10).

⁴⁵ MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) (accessed March 15, 2023). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *2 n.17 (TTAB 2019).

formative names are generally in disparate geographic locations indicating that consumers are unlikely to encounter multiple WALDO educational facilities and, thereby distinguish among them by looking at features other than the name “Waldo.” *See Anthony’s Pizza & Pasta Int’l, Inc. v. Anthony’s Pizza Holding Co., Inc.*, 95 USPQ2d 1271, 1278 (TTAB 2009), *aff’d*, 415 Fed. Appx. 222 (Fed. Cir. 2010).

Nevertheless, we cannot summarily dismiss the number of entities that use WALDO or a WALDO-formative mark to identify educational services. Applicant’s evidence shows that WALDO or WALDO-formative marks have been adopted and used as service marks for educational services by a number of third parties. The evidence shows that the marketplace strength of Opposer’s mark THE WALDO SCHOOL has been negatively affected by the numerous third parties using WALDO or WALDO-formative marks such that Registrant is not entitled to such a broad scope of protection that THE WALDO SCHOOL will be a bar to every application consisting in whole, or in part, of the name WALDO. Accordingly, Registrant’s mark THE WALDO SCHOOL will bar only the registration of marks “as to which the resemblance to [THE WALDO SCHOOL] is striking enough to cause one seeing it to assume that there is some connection, association, or sponsorship between the two.” *Anthony’s Pizza & Pasta Int’l*, 95 USPQ2d at 1278 (quoting *Pizza Inn, Inc. v. Russo*, 221 USPQ 281, 288 (TTAB 1983)).

IV. The similarity or dissimilarity of the marks

We now turn to the *DuPont* factor focusing on the similarity or dissimilarity of the marks in their entireties as to 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) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

In comparing the marks, we are mindful that “[t]he proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs.*, 101 USPQ2d at 1721); *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012).

We keep in mind that “[s]imilarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 113 USPQ2d at 1085 (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003)).

As noted above, Applicant is seeking to register CAMP WALDO and the mark in the cited registration is THE WALDO SCHOOL. The name WALDO is the dominant portion of both marks. With respect to Applicant’s mark CAMP WALDO, Applicant disclaimed the exclusive right to use the descriptive word “Camp.” It is well-settled that disclaimed, descriptive matter may have less significance in likelihood of

confusion determinations because consumers will tend to focus on the more distinctive parts of marks. *See Detroit Athletic Co.*, 128 USPQ2d at 1050 (citing *Dixie Rests.*, 41 USPQ2d at 1533-34); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression.”).

Likewise, Registrant disclaimed the exclusive right to use the descriptive word “School” in its mark THE WALDO SCHOOL. In addition, the indefinite article “The” has little trademark significance. *See Motorola, Inc. v. Griffiths Elecs., Inc.*, 317 F.2d 397, 137 USPQ 551, 552 (CCPA 1963) (THE is “of trifling importance”); *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009) (“The marks [WAVE and THE WAVE] are virtually identical. The addition of the word ‘The’ at the beginning of the registered mark does not have any trademark significance”); *In re Narwood Prods., Inc.*, 223 USPQ 1034 n.2 (TTAB 1984) (noting “the insignificance of the word ‘the’” in comparison of THE MUSIC MAKERS and MUSICMAKERS).

There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012);

Nat'l Data Corp., 224 USPQ at 751. Thus, we keep in mind that both marks consist of the dominant name “Waldo” in connection with a descriptive, if not generic term (i.e., CAMP and SCHOOL).

“[I]f the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences.” *In re Denisi*, 225 USPQ 624, 624 (TTAB 1985). The peripheral differences between the marks in this appeal – CAMP WALDO versus THE WALDO SCHOOL – fail to distinguish the marks. In reaching this finding of fact, we consider the marks in their entirety noting that “Waldo” is the only distinctive element of the marks. We also note that the Examining Attorney’s evidence shows two schools offer both schools and summer camps using SCHOOL and CAMP to identify the specific activity (e.g., BARRIE SCHOOL and BARRIE CAMP,⁴⁶ MERRITT ACADEMY and MERRITT ACADEMY SUMMER CAMP).⁴⁷

We find that Applicant’s mark CAMP WALDO is similar to Registrant’s mark THE WALDO SCHOOL in their entirety in terms of appearance, sound, and commercial impression. These similarities outweigh any perceived differences.

V. Conditions under which and consumers to whom sales are made.

Applicant contends that consumers sending their children to summer camp exercise a high degree of care because “they are selecting a place to which they will send their child unaccompanied for a substantial period of time” and, therefore, “they

⁴⁶ July 14, 2021 Office Action (TSDR 8 and 13).

⁴⁷ December 16, 2021 Office Action (TSDR 7 and 14).

understand the identity of the provider of the service.”⁴⁸ Applicant submitted “How to Pick the Right Summer Camp for Kids, posted on the Parenting.com website (2020) advising that parents learn the following about the potential summer camps:

- Understand the program value and mission;
- Determine that the value and missions match your goals and your child’s interests;

- Determine how the camps create an inclusive experience for the campers;
- Assess the staff;
- Make sure your child can choose among activities;
- How does the camp communicate with parents; and
- Check whether the camp has accreditation.⁴⁹

Applicant bases this contention on the false premise that all “summer camps” are overnight camps. THE RANDOM HOUSE UNABRIDGED DICTIONARY posted on Dictionary.com defines “summer camp” as “a camp, especially one for children during the summer, providing facilities for sleeping and eating, and usually for handicrafts, sports, etc.”⁵⁰ However, summer camps are not limited to overnight camps. The OXFORD ADVANCED LEARNER’S DICTIONARY (oxfordlearnersdictionaries.com)

⁴⁸ Applicant’s Brief, p. 24 (6 TTABVUE 25).

⁴⁹ December 7, 2021 Response to Office Action (TSDR 121-123). *See also* “How to Pick a Summer Camp,” posted on webmd.com advising parents to make sure they know what they want their child to achieve when picking a summer camp to help the child achieve that goal. *Id.* at 118. The article has a link to the National Camp Association website (summercamp.org) that has a question and answer feature allowing parents to profile their needs and goals, and other specifics such as location and cost.

⁵⁰ December 7, 2021 Response to Office Action (TSDR 115).

defines “summer camp” as “a place where children go in the summer and take part in sports and other activities.”⁵¹

In this regard, the Examining Attorney’s evidence of third parties offering educational services and summer camps are not limited to overnight camps. For example, the Landon Summer (landonsummer.com), Sidwell Summer (sidwellsummer.org), and Merritt Academy (merrittacademy.org) offer summer day camps.⁵² While many parents will exercise a high degree of care in selecting a day camp provider, there is a significant segment of parents that need a replacement for school during the summer; a role a summer day camp can fulfill. These parents may not have the luxury of analyzing in depth the characteristics of the summer camp provider and have to rely on other factors such as location, cost, schedule, etc. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014) (recognizing Board precedent requiring consideration of the “least sophisticated consumer in the class”).

We find this *DuPont* factor to be neutral.

⁵¹ Examining Attorney’s Brief (8 TTABVue 16). *See also* MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) (accessed March 16, 2023) (defining “camp,” inter alia, as “a place usually in the country for recreation or instruction often during the summer” and “a program offering access to recreational or educational facilities for a limited period of time.”).

The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *2 n.17.

⁵² July 14, 2021 Office Action (TSDR 24, 33); December 16, 2021 Office Action (TSDR 16).

Presumably, the Barrie Camp (barrie.org) renders summer day camp services because it offers “extended hours.” July 14, 2021 Office Action (TSDR 13). An overnight camp is a 24 hour service and would not need to offer “extended hours.”

VI. Conclusion

As discussed above, we have considered all of the evidence and arguments of record relevant to the pertinent *DuPont* likelihood of confusion factors. As precedent dictates, we resolve doubt in favor of the prior registrant. *See In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988) (citing *In re Pneumatiques, Caoutchouc Mfr.*, 487 F.2d 918, 179 USPQ 729, 730 (CCPA 1973)). While we acknowledge Applicant's third-party use evidence regarding the weakness of Registrant's mark, we still find the marks are more similar than dissimilar. Therefore, we find that because the marks are similar, the services are related and are offered in the same channels of trade to some of the same classes of consumers, Applicant's mark CAMP WALDO for "summer camps" is likely to cause confusion with the registered mark THE WALDO SCHOOL for "educational services in the nature of primary schools" and "child care services."

Decision: We affirm the refusal to register Applicant's mark CAMP WALDO.