

This Opinion is Not a  
Precedent of the TTAB

Mailed: March 3, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*Shadi.com division of Ampak Billing Corp.*  
*v.*  
*People Interactive (India) Private Limited*

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Opposition No. 91225201

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*People Interactive (India) Private Limited*  
*v.*  
*Shadi.com division of Ampak Billing Corp.*

—  
Cancellation No. 92062719

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for Shadi.com division of Ampak Billing Corp

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Before Cataldo, Mermelstein and Lynch,  
Administrative Trademark Judges.


Opinion by Lynch, Administrative Trademark Judge:

This consolidated proceeding<sup>1</sup> consists of:

(1) an opposition based on priority and likelihood of confusion, filed by Shadi.com division of Ampak Billing Corp. (“Ampak”) to the application of People Interactive (India) Private Limited (“People Interactive”) to register the mark SHAADI.COM in standard characters,<sup>2</sup> for “matchmaking services that are done through websites, personal interaction, print media, television and other media; providing an online computer database for matchmaking purposes; and dating services” in International Class 45.

(2) a cancellation based on fraud, filed by People Interactive against Ampak’s pleaded registrations for the mark SHADI in standard characters,<sup>3</sup> with a



claim of acquired distinctiveness, and the mark  with a disclaimer of SHADI.COM,<sup>4</sup> both for “marriage partner introduction

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<sup>1</sup> The Board consolidated these proceedings on May 5, 2016, and designated Opposition No. 91225201 as the parent case. TTAB citations in this decision are to the record in the parent case unless otherwise indicated.

<sup>2</sup> Application Serial No. 86634009 was filed on May 19, 2015 based on alleged bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

<sup>3</sup> Registration No. 3374700 issued January 29, 2008 from an underlying use-based application filed February 14, 2007, claiming first use and first use in commerce on August 11, 1997. The registration states that “The English translation of the word ‘SHADI’ in the mark is marriage and wedding.”

<sup>4</sup> Registration No. 3396843 issued March 18, 2008 from an underlying use-based application filed July 19, 2005, claiming first use and use in commerce on August 11, 1997. The registration states, “The foreign wording in the mark translates into English as marriage and wedding.” The mark description states, “The mark consists of the wording ‘SHADI.COM’ and ‘DREAMS INTO REALITY’ with the design elements of a tassel intertwined in the letter ‘S’ in the wording ‘SHADI.COM’ and a line between the wording ‘SHADI.COM’ and ‘DREAMS INTO REALITY.’”

services, marriage bureaus, marriage counseling, dating services, matrimonial services for match making through website, personal interaction, print media, television and other media, providing an on-line computer database in the fields of matrimonial services, namely, marriage partner introduction services, dating services, and marriage counseling for global computer network website users” in International Class 45.

Both parties’ Answers deny the salient allegations in the Notice of Opposition and Petition to Cancel, respectively. The consolidated proceeding is fully briefed.

To their credit, the parties agree on the contents of the record, including discovery deposition transcripts and exhibits that the parties stipulated into evidence as trial testimony of People Interactive.<sup>5</sup> The parties raised no evidentiary objections. The record includes some materials designated as confidential by the parties, so we discuss such materials in general terms.

## **I. Standing**

A party must prove standing by showing a real interest in the outcome of the proceeding and a reasonable basis for believing that it would suffer damage if the mark is registered. *See* 15 U.S.C. § 1063; *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *citing Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). Ampak’s pleaded registrations establish its standing for the opposition. *See Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1727-28 (Fed. Cir. 2012);

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<sup>5</sup> 41 TTABVUE.

*Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). People Interactive’s standing to petition to cancel the pleaded registrations is inherent in its position as defendant in the opposition. *See Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1428 (TTAB 2014) (“Applicant has standing based on opposers’ assertion of their marks and registrations against applicant in their notice of opposition”).

## II. Priority

Although Ampak’s registrations are of record, People Interactive has petitioned to cancel them, so priority is an issue in the Opposition. *See Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 275 n.6 (CCPA 1974) (“prior use need not be shown by a plaintiff relying on a registered mark unless the defendant counterclaims for cancellation”). However, if the Petition to Cancel the pleaded registrations is ultimately denied and the registrations survive, they would establish Ampak’s priority as to the marks and services covered by the registrations.<sup>6</sup> *See Contour Chair-Lounge Co. v. Englander Co.*, 324 F.2d 186, 139 USPQ 285, 286 (CCPA 1963) (as long as a registration relied on by an opposer remains uncanceled, it will be treated as valid and entitled to all statutory presumptions; having dismissed petition to cancel pleaded registrations, and since no appeal was taken, Board was obligated to treat opposer’s registrations as valid and as though no such petition had

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<sup>6</sup> And as the Board noted in its June 29, 2018 Order, “because the effective filing dates of Ampak’s underlying applications pre-date People Interactive’s filing date of May 19, 2015, Ampak is entitled to rely upon the filing dates of its applications for establishing priority.” 35 TTABVUE 9-10.

been filed); *see also King Candy, Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 82 USPQ 108 (CCPA 1974); *Top Tobacco LP v. N. Atl. Op. Co.*, 101 USPQ2d 1163, 1169 (TTAB 2011). For this reason, we turn first to People Interactive's Petition to Cancel the registrations based on fraud.

### III. Cancellation Fraud Claim<sup>7</sup>

Fraud in procuring a trademark registration occurs when an applicant, with intent to deceive the USPTO, knowingly makes false, material representations of fact in connection with the application. *See In re Bose Corp.*, 580 F.3d 1240, 1245, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009); *see also Swiss Watch Int'l Inc. v. Fed'n of the Swiss Watch Indus.*, 101 USPQ2d 1731, 1745 (TTAB 2012). People Interactive, as the party alleging fraud, bears the heavy burden of proving it with clear and convincing evidence. *Bose*, 550 F.3d at 1243 (quoting *Smith Int'l, Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (TTAB 1981)). A fraud claim will not succeed if the evidence shows that the applicant made a false statement with a reasonable and honest belief that it was true, rather than with the intent to mislead the USPTO into issuing a registration to

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<sup>7</sup> Although the Petition for Cancellation included a fraud allegation that the mark was not in use in connection with any of the services in Ampak's registrations *as of the claimed dates of first use*, People Interactive did not pursue this claim at trial. People Interactive explicitly stated in its Brief that the services subject to its fraud claim are limited to "marriage counseling," and "matrimonial services for match making through ... personal interaction, print media, [and] television." 54 TTABVUE 10. Thus, this fraud claim is waived. *See Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1753 (TTAB 2013) (petitioner found to have waived claims not argued before the Board). In any event, a claim of fraud based on the alleged falsity of the dates of first use in the registrations would be denied as a matter of law. *See Hiraga v. Arena*, 90 USPQ2d 1102, 1107 (TTAB 2009) ("[T]he claimed date of first use, even if false, does not constitute fraud because the first use date is not material to the Office's decision to approve a mark for publication."); *Western Worldwide Enterprises Group Inc. v. Qinqdao Brewery*, 17 USPQ2d 1137, 1141 (TTAB 1990).

which the applicant was not otherwise entitled. *See id.*; *see also Woodstock's Enters. (Cal.) v. Woodstock's Enters. (Or.)*, 43 USPQ2d 1440, 1443 (TTAB 1997), *aff'd* (unpub'd), Appeal No. 97-1580, 1998 U.S. App. LEXIS 3777 (Fed. Cir. Mar. 5, 1998). The standard for finding intent to deceive is stricter than the standard for negligence or gross negligence, and evidence of deceptive intent must be clear and convincing. *Id.*

Both parties' businesses focus on matchmaking to facilitate marriage. People Interactive's fraud claim rests on allegations that Ampak intentionally misrepresented to the USPTO, for purposes of securing overly broad registrations, that it used its marks in connection with marriage counseling services, matrimonial services for matchmaking through print media, matrimonial services for matchmaking through television and matrimonial services for matchmaking through personal interaction.

Averments and evidence of use of a mark for the goods or services identified in a use-based application are critical to the approval of a use-based application, and if it had been disclosed to the examining attorney that the mark was not in use for the identified services (or that the specimen of use was fabricated), registration would have been refused.

*Nationstar Mtge. LLC v. Ahmad*, 112 USPQ2d 1361, 1365 (TTAB 2014). Thus, any misrepresentations in this regard are considered material. *Id.*

#### **A. Matrimonial Services for Matchmaking through Personal Interaction Not Pleaded and Not Tried by Implied Consent**

First, the parties dispute whether People Interactive pleaded fraud based on a misrepresentation regarding matrimonial services for matchmaking through

personal interaction, and whether, in the alternative, that issue was tried by implied consent. People Interactive argues that it pleaded fraud based on a misrepresentation about this service because all the services in the registration were listed in the Petition for Cancellation. However, fraud claims must be pleaded with particularity. *Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1293 (TTAB 1999) (fraud allegations must include an explicit expression of the factual circumstances constituting fraud). In the Petition, after listing the services in the challenged registrations, People Interactive set out the specific services with which it claims Ampak never used the marks, and matrimonial services for matchmaking through personal interaction was not among them.<sup>8</sup> We reject People Interactive's contention that references to "matrimonial services through print media [and] television" should be construed as a shorthand reference encompassing the service at issue. It is not borne out by a review of the pleading.

As to whether this fraud allegation was tried by implied consent, we first note that Ampak objects in its Brief to the inclusion of this allegation, noting that "such issue cannot be added to the case retroactively at this trial stage."<sup>9</sup> We also note that in the Board's June 29, 2018 Order denying summary judgment, the Board makes no mention of matrimonial services for matchmaking through personal interaction in its recitation of People Interactive's fraud claim arising out of allegations that Ampak

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<sup>8</sup> Cancellation No. 92062719, 1 TTABVUE 7-9, 12-14.

<sup>9</sup> 56 TTABVUE 7.

misrepresented ever using the mark in connection with certain services.<sup>10</sup> Thus, the parties and the Board did not treat this service as one at issue under this fraud claim. Finally, we have considered the passage of testimony People Interactive points to as an indication that “during trial Ampak did not object to People Interactive’s questions regarding Ampak’s use of its marks in connection with ‘matrimonial services through personal interaction,’ on grounds that such matter was outside the pleadings.”<sup>11</sup> However, contrary to People Interactive’s characterization, we find that this passage relates to “marriage counseling” services. Thus, we conclude that the parties did not try by implied consent the issue of fraud based on a misrepresentation of use in connection with matrimonial services for matchmaking through personal interaction.

### **B. Use in Connection with Marriage Counseling Services**

Next the parties dispute whether Ampak ever used its marks in connection with marriage counseling services. The dispute largely centers on differing characterizations of what the term “marriage counseling” includes. Definitions in the record define the term “marriage counseling” both as “help for married couples who have problems in their relationship” and “counseling for married and unmarried couples designed to address problems in their relationship: couples therapy.”<sup>12</sup> Citing Mr. Raof’s testimony as Ampak’s 30(b)(6) witness that he did not recall ever advising

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<sup>10</sup> 35 TTABVUE 3, 7.

<sup>11</sup> 57 TTABVUE 9.

<sup>12</sup> 50 TTABVUE 70-71.



couples on how to resolve conflicts and improve their relationships,<sup>13</sup> People Interactive insists that Ampak never provided this type of service. People Interactive points out that there is no advertising of marriage counseling services under the marks and that the relevant employees of Ampak are not qualified “to offer any type of psychotherapy for married couples.”<sup>14</sup> Ampak concedes that it has not counseled married couples about marital problems.

However, Ampak takes the position that “marriage counseling” includes advice to people interested in marriage who therefore are seeking matchmaking services to facilitate marriage.<sup>15</sup> Mr. Raof testified that Ampak and its predecessor, owned by Mr. Raof’s parents, provided marriage counseling services in person and by telephone at first, and then online.<sup>16</sup> In deposition testimony, he described how his late mother offered “marriage counseling” to facilitate matchmaking. Although she did not keep written records of it, he stated that she “spoke about it,” and “[s]he said that she offered this – that she helped so-and-so couple and that she helped the other couple, and that’s how I know. She would be happy when she was successful, and she would be sad when she was unsuccessful.”<sup>17</sup> After his mother’s death, Mr. Raof testified that his wife and business partner, Nilo Naqvi began “provid[ing] marriage advice to people who want to get married,” including providing “tips and advice to

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<sup>13</sup> 41 TTABVUE 63.

<sup>14</sup> 54 TTABVUE 15-16 (citing testimony and evidence from 41 TTABVUE).

<sup>15</sup> 36 TTABVUE 9; 41 TTABVUE 66-67.

<sup>16</sup> 36 TTABVUE 4-7, 9-10.

<sup>17</sup> 41 TTABVUE 66-67.

people who want to get married.”<sup>18</sup> He described these services as “offered to individuals who wished to be married, and not to married couples.”<sup>19</sup>

Turning to the website, Mr. Raof stated that “Shadi.com routinely offers advice to people on how to improve their relationships and how to resolve conflicts.”<sup>20</sup> Excerpts attached to his declaration from the shadi.com website show blog posts titled, “Yes, Women Can Approach Men,” “Be a Good Friend First,” “Tips on First 2 Weeks of Dating,” and “How to Have a Good Marriage Life.”<sup>21</sup> While Ampak does not have records showing distinct sales of this type of service, Mr. Raof testified that this is part of “a basket of services,” and members “can request [Ms. Naqvi] to provide counseling...”<sup>22</sup> As a general matter, Mr. Raof testified that “We provide matchmaking and Shadi.com services as a basket of services. We do not break down by the type of service provided.”<sup>23</sup> We take judicial notice of the definition of “counseling” found in the Merriam-Webster online dictionary, “professional guidance of the individual by utilizing psychological methods especially in collecting case

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<sup>18</sup> 41 TTABVUE 68.

<sup>19</sup> 36 TTABVUE 4.

<sup>20</sup> 41 TTABVUE 67.

<sup>21</sup> 36 TTABVUE 79-80.

<sup>22</sup> 41 TTABVUE 69.

<sup>23</sup> 41 TTABVUE 85. People Interactive’s discussion of whether marriage counseling was offered as a separate and distinct service is misguided in its reliance on cases holding that applicants in ex parte appeals did not use a mark as a service mark where the alleged service was merely ancillary activity to the sale of goods, the applicants’ primary business. 57 TTABVUE 7. These cases do not address the bundling of services by a service provider and therefore are inapposite.

history data, using various techniques of the personal interview, and testing interests and aptitudes.”<sup>24</sup>

### **C. Use In Connection with Matrimonial Services for Match Making through Print Media**

As to the “matrimonial services for match making through ... print media,” Mr. Raof testified that such services involve users of the website printing materials from the website, such as user profiles of members in whom they are interested.<sup>25</sup> While Mr. Raof acknowledged that he does not have specific knowledge of any such printing by users,<sup>26</sup> Ms. Naqvi testified that she does.<sup>27</sup> She described customers telling her that they printed certain profiles from the matchmaking site, especially to show them to others. People Interactive contends that Ampak was unable to provide any information about use of the marks through “print media,” which People Interactive defines as newspapers or magazines. Ampak counters that “People Interactive cites no rule, regulation or case that defines ‘print media’ to require a ‘publication,’ let alone a case that finds fraud for such difference in definition.”<sup>28</sup>

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<sup>24</sup> Merriam-webster.com entry for “counseling” accessed February 26, 2020. The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format. *See, e.g., In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014).

<sup>25</sup> 36 TTABVUE 10-11; 41 TTABVUE 86-91.

<sup>26</sup> 41 TTABVUE 90.

<sup>27</sup> 41 TTABVUE 264-65.

<sup>28</sup> 56 TTABVUE 15.

#### **D. Use In Connection with Matrimonial Services for Match Making through Television**

As to the “matrimonial services for match making through ... television,” Mr. Raof testified that such services involve users of the website using their televisions as computer monitors.<sup>29</sup> “We provide matchmaking through television for users who connect their computer through television and view our site on it. That is what we meant by ‘matchmaking through television.’”<sup>30</sup> Mr. Raof supported this testimony with online articles about “computers ... being connected to televisions for viewing content.”<sup>31</sup> According to Ampak, “[a] ‘television’ is a viewing device, and is not limited to a broadcast service or viewing on a channel as People Interactive appears to argue, without any evidence.”<sup>32</sup>

#### **E. Analysis**

“[A]bsent the requisite intent to mislead the PTO, even a material misrepresentation would not qualify as fraud under the Lanham Act warranting cancellation.” *Bose*, 91 USPQ2d at 1940. Conceding that the record includes no direct proof of fraudulent intent, People Interactive instead argues that intent can be inferred:

Ampak falsely swore under oath *on four separate occasions* that it was using the mark on all of the services in its applications/registrations. Also, Ampak’s explanations regarding its claimed “use” of the marks for [the services at

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<sup>29</sup> 36 TTABVUE 11; 42 TTABVUE 92.

<sup>30</sup> 42 TTABVUE 98.

<sup>31</sup> 36 TTABVUE 11, 86-88, 94-97.

<sup>32</sup> 56 TTABVUE 16.

issue] lack credibility, especially when viewed in conjunction with the numerous inconsistencies and contradictions in Ampak's trial testimony.<sup>33</sup>

According to the U.S. Court of Appeals for the Federal Circuit:

Subjective intent to deceive, however difficult it may be to prove, is an indispensable element in the analysis. Of course, "because direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence. But such evidence must still be clear and convincing, and inferences drawn from lesser evidence cannot satisfy the deceptive intent requirement." [Internal citation omitted]. When drawing an inference of intent, "the involved conduct, viewed in light of all the evidence ... must indicate sufficient culpability to require a finding of intent to deceive."

*Bose*, 91 USPQ2d at 1941 (citation omitted).

Considering all the evidence, even if we assume that use allegations as to these three services were false, we find no direct evidence of an intent to deceive the USPTO, and no clear and convincing evidence to warrant the inference of an intent to deceive. Mr. Raoof testified that at the time he signed the use allegations, he believed, and still believes, the truth of the statements about ongoing use of the mark for all the listed services.<sup>34</sup> He explained the basis of his belief, as described above. *See id.* at 1942 ("Sullivan testified under oath that he believed the statement was true at the time he signed the renewal application. Unless the challenger can point to evidence to support an inference of deceptive intent, it has failed to satisfy the clear and convincing evidence standard required to establish a fraud claim."). Testimony

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<sup>33</sup> 57 TTABVUE 12 (People Interactive's Cancellation Rebuttal Brief).

<sup>34</sup> 36 TTABVUE 8.

reflects that Ampak construes the language used to recite the services at issue in a way that differs from the meanings advocated by People Interactive.

With the three services at issue, Ampak has articulated a belief that it used the mark in connection with such services, based on interpretations of the language in the recitation that fall outside the usual meanings of the terms. While we find Ampak's interpretation of "marriage counseling" in this context more reasonable than its interpretation of the other services at issue, "[w]e do not need to resolve the issue of the reasonableness as it is not part of the analysis." *Id.* at 1942. None of Ampak's interpretations are so insupportable as to give rise to an inference of deceptive intent. Even assuming that that these interpretations were incorrect, based on the record, we cannot infer that any misrepresentations were made knowingly and with an intent to deceive. The evidence does not "indicate sufficient culpability." *Id.* at 1941.

People Interactive argues that inconsistent trial testimony supports an inference of deceptive intent, specifically because Mr. Raooof's declaration addressed third-party advertising on the shadi.com website and the number of users, but he did not provide documents or further information about the topics when he was deposed. While the Rule 30(b)(6) deposition testimony of Mr. Raooof reflects a surprising lack of knowledge and memory about some aspects of the business, his testimony overall suggests that Ampak's Shadi business operates rather informally. For example, the business runs out of Mr. Raooof's house, and "operate[s] in something called a gig economy, and the number of employees varies," because Ampak "hire[s] people on the

net for particular tasks that need to be done.”<sup>35</sup> Record-keeping apparently is quite limited, and Mr. Raof explained why he has certain statistics but not others.<sup>36</sup> Considering the testimony in its entirety, we do not find that it supports an inference of deceptive intent regarding the use allegations at issue.

Because People Interactive has failed to establish fraud with clear and convincing evidence, we deny the Petition to Cancel Ampak’s pleaded registrations, Registration Nos. 3374700 and 3396843.

#### **IV. Opposition Likelihood of Confusion Claim**

Turning next to Ampak’s opposition, as discussed above, Ampak has priority in the Opposition as to the marks and services covered by its pleaded registrations. Our determination under Section 2(d) involves an analysis of all of the probative evidence of record bearing on a 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, hereinafter referred to as “*DuPont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). A likelihood of confusion analysis often focuses on the similarities between the marks and the similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“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.”).


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<sup>35</sup> 42 TTABVUE 24-25, 36.

<sup>36</sup> 41 TTABVUE 35-38, 56-63.

Ampak bears the burden of proving its claim of likelihood of confusion by a preponderance of the evidence. *Cunningham*, 55 USPQ2d at 1848. Ampak may establish likelihood of confusion as all the services in People Interactive’s single-class application by making the requisite showing as to any one of the services within the opposed application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Apple Comput. v. TVNET.Net, Inc.*, 90 USPQ2d 1393, 1398 (TTAB 2007).

In our likelihood of confusion analysis, we focus on Ampak’s Registration No. 3374700 for SHADI in standard characters. Both registrations have identical recitations of services, and we consider the SHADI mark most relevant to the likelihood of confusion analysis with People Interactive’s SHADI.COM mark. If we do not find likely confusion based on the SHADI registration, we would not find it as

to the  registration, and therefore need not address it. *See In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

#### A. The Services

In analyzing the second *DuPont* factor, we look to the identifications in the application and the pleaded registration. *See Stone Lion Capital Partners v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). People Interactive’s application recites “matchmaking services that are done through websites,” and Ampak’s registration recites “matrimonial services for match



making through website.” Thus, these services are legally identical in that both consist of online matchmaking. *See, 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 Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). People Interactive makes no arguments on this *DuPont* factor, which weighs heavily in favor of a likelihood of confusion.

### **B. Trade Channels and Classes of Consumers**

Under the third *DuPont* factor, People Interactive has not disputed the overlap in channels of trade and classes of consumers, and in fact, in its Answer to the Notice of Opposition, People Interactive “admit[ted] that the channels of trade in which Applicant and Opposer [Ampak] offer services under their respective marks are identical and/or overlapping to the extent both parties use their marks [on] the Internet.” *See Am. Lebanese Syrian Assoc. Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011) (where the services were legally identical, “the marketing channels of trade and targeted classes of consumers and donors are the same”); *see also In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012).

Thus, the third *DuPont* factors weighs heavily in favor of likely confusion.

### **C. Strength of the Mark**

Ampak offers a single sentence on the fifth *DuPont* factor in its Brief, asserting that “[t]he www.shadi.com website had over 1 million users more than 10 years ago,

and is sufficiently famous such that this factor favors Ampak.”<sup>37</sup> The number of website users from ten years ago does not suffice to show fame, or – without any further context – any degree of commercial strength of the mark.

People Interactive suggests that Ampak’s mark is conceptually weak because SHADI is a common variant of “shaadi,” the Hindi word for marriage or wedding, and the services relate to marriage.<sup>38</sup> We agree that SHADI has some degree of conceptual weakness, reflected in its registration with a claim of acquired distinctiveness. Nonetheless, Ampak’s registration is accorded all of the presumptions to which a registered mark is entitled under Section 7(b) of the Trademark Act, 15, U.S.C. § 1057(b), including appropriate protection against the registration of confusingly similar marks. *King Candy*, 182 USPQ at 109. On this record, we find Ampak’s SHADI mark to be a distinctive mark that must be accorded the normal scope of protection for a distinctive mark.

#### **D. Similarity of the Marks**

With respect to the marks, we must compare SHAADI.COM and SHADI “in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). The test assesses not whether the marks can be distinguished in a side-by-side comparison, but rather whether their overall commercial impressions are so similar that confusion

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<sup>37</sup> 51 TTABVUE 22.

<sup>38</sup> 54 TTABVUE 27.

as to the source of the goods offered under the respective marks is likely to result. *Coach Servs.*, 101 USPQ2d at 1721; *see also Edom Labs.*, 102 USPQ2d at 1551. Similarity in any one of the elements of sound, appearance, meaning, or commercial impression suffices to support a determination of likelihood of confusion. *See Krim-Ko Corp. v. The Coca-Cola 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”); *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (“Similarity in any one of these elements may be sufficient to find the marks confusingly similar.”). We also bear in mind that, given the legally identical services “the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992); *see also Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018).

SHAADI.COM takes the form of a domain name that includes the top-level domain (TLD) “.com,” and the second-level domain SHAADI, which is nearly identical to Ampak’s SHADI mark. First, as to sound, according to Mr. Raoof, “[t]he words ‘SHADI’ and ‘SHAADI’ have identical pronunciation.”<sup>39</sup> Mr. Mittal, People Interactive’s Chairman and Managing Director, testified that “‘Shaadi’ is the Hindi word for marriage or wedding. A common variant of ‘shaadi’ in English transliteration is ‘shadi.’”<sup>40</sup> We agree with the parties that SHADI and SHAADI

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<sup>39</sup> 36 TTABVUE 6.

<sup>40</sup> 40 TTABVUE 3.

sound the same. Phonetic equivalence alone can support a finding that marks are confusingly similar. *See In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988).

The marks also look alike because SHAADI.COM differs from SHADI only by the extra “A” in the middle of SHAADI and the addition of the .COM TLD. As noted above by People Interactive’s witness, consumers would view SHADI as a common spelling variant of SHAADI. And because .COM is a very common TLD, consumers are less likely to focus on it in the appearance of the mark.

Finally, the connotations and commercial impressions of the marks are very similar. While the inclusion of .COM gives SHAADI.COM the impression of a domain name, given that both marks are used in connection with online matchmaking, and websites have domain names, the .COM portion of People Interactive’s mark would not be a point of source indication for consumers. The TLD merely gives users a generic locator for the website address and does not have source-indicating significance in this mark. *See Apple Computer v. TVNET.net, Inc.*, 90 USPQ2d 1393, 1397 (TTAB 2007); *cf. In re Hotels.com L.P.*, 573 F.3d 1300, 91 USPQ2d 1532, 1533-35 (Fed. Cir. 2009). SHADI and SHAADI are variant transliterations of the same Hindi word for marriage or wedding. Thus, the words create the same meaning and impression in each mark. Overall, the marks convey similar meanings and impressions.

Given the nearly identical sound, and the strong similarity in appearance, connotation and commercial impression of all the marks at issue, this *DuPont* factor weighs in favor of a finding of likely confusion.

### **E. Actual Confusion**

“A showing of actual confusion would of course be highly probative, if not conclusive, of a high likelihood of confusion.” *Majestic Distilling*, 65 USPQ2d at 1205. In our proceedings, “[a]ctual confusion is entitled to great weight but only if properly proven.” *Georgia-Pacific Corp. v. Great Plains Bag Co.*, 614 F.2d 757, 204 USPQ 697, 701 (CCPA 1980). Properly introducing instances of actual confusion into the record and persuading the trier of fact as to the probative value of such evidence is Ampak’s burden. *See Couch/Braunsdorf Affinity*, 110 USPQ2d at 1479. The only support for Ampak’s allegation of actual confusion is People Interactive’s bare assertion of actual confusion in a cease-and-desist letter<sup>41</sup> and Mr. Raoof’s very general testimony of awareness of “numerous instances in which customers/clients have mistaken Ampak’s website [www.shadi.com](http://www.shadi.com) and People Interactive’s website [www.shaadi.com](http://www.shaadi.com), and the services they offered,” without any specifics whatsoever and without any supporting documentation.<sup>42</sup> People Interactive, on the other hand, argues that “Ampak has not produced any evidence of actual confusion and ... the parties’ marks have co-existed in the marketplace for over two decades.”<sup>43</sup> People Interactive points to no testimony to support the absence of actual confusion, and as just noted, its own cease-and-desist letter to Ampak alleged actual confusion. We find the record

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<sup>41</sup> 36 TTABVUE 91-92.

<sup>42</sup> 36 TTABVUE 6-7.

<sup>43</sup> 54 TTABVUE 28.

inconclusive on this issue, and therefore consider the *DuPont* factor regarding actual confusion neutral.

## V. Conclusion

Although Ampak offered passing statements in its Brief regarding other *DuPont* factors, it pointed to no supporting evidence, and we treat the other factors as neutral. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019) (must consider factors on which there is argument and evidence).

Regardless of any conceptual weakness, based on the close similarity between SHADI and SHAADI.COM for in-part legally identical services that travel in the same channels of trade to at least some of the same classes of purchasers, we conclude that a likelihood of confusion exists.

**Decision:** The opposition is sustained.