

This Opinion is not a
Precedent of the TTAB

Mailed: February 22, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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World Institute of Scientology Enterprises

v.

Cristina Ann DiGiacomo

—
Opposition No. 91268046
—

P. Jay Hines and Roman Campos of Muncy, Geissler, Olds & Lowe, P.C. for
World Institute of Scientology Enterprises.

Lalit K Jain, Law Offices of Lalit K Jain Esq., for Cristina Ann DiGiacomo.

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Before Shaw, Goodman and English,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Cristina Ann DiGiacomo (Applicant/Defendant) filed an application on the Principal Register to register the mark WISE UP! (in standard characters) for “Consulting services in the field of business management; Business consulting services” in International Class 35 and “Entertainment services, namely, providing

podcasts in the fields of business, professional growth, and personal development; Business training in the field of management” in International Class 41.¹

World Institute of Scientology Enterprises (Opposer/Plaintiff) opposes registration of Applicant’s mark on the ground of likelihood of confusion under Section 2(d), 15 U.S.C. § 1052(d). Opposer has alleged prior use of the mark WISE and pleaded ownership of the Principal Register mark WISE (typed drawing) for “business management consultation services,” in International Class 35 and “educational services, namely, conducting courses and seminars in the fields of administrative training, business management, and business administration” in International Class 41.² Paragraphs 2 and 3, Notice of Opposition, 1 TTABVUE.

Applicant filed an answer to which Opposer sought to strike as improper. 5 TTABVUE. The Board denied the motion to strike and treated the filing as a general denial of Opposer’s likelihood of confusion claim. 8 TTABVUE.

Opposer submitted testimony and other evidence during its testimony period. Only Opposer filed a brief in this case. Plaintiff’s brief 12 TTABVUE.

¹ Application Serial No. 90025629 was filed on Jun. 29, 2020 under Section 1(a), Trademark Act, 15 U.S.C. § 1051(a), alleging a date of first use and a date of first use in commerce of Jan. 26, 2020.

References to the briefs and the record refer to the Board’s TTABVUE docket system.

² Registration No. 1708557 issued August 18, 1992, second renewal. Effective November 2, 2003, Trademark Rule 2.52, 37 C.F.R. §2.52, was amended to replace the term “typed” drawing with “standard character” drawing. In the context of this case, we shall base our decision solely on Opposer’s ownership of Registration No. 1708557. As discussed *infra*, we find priority based on this pleaded registration. Therefore, we do not separately consider whether Opposer has established prior common law use of WISE. *See In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

Applicant did not take testimony nor introduce any evidence during her testimony period nor file a brief, but she is not required to do so. *Shenzhen IVPS Tech. Co. Ltd. v. Fancy Pants Prods., LLC*, 2022 USPQ2d 1035, at *4 (TTAB 2022). As plaintiff, Opposer bears the burden of proving, by a preponderance of the evidence, its entitlement to a statutory cause of action and its Section 2(d) claim. *See B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015) (“The party opposing registration bears the burden of proof, *see* § 2.116(b) [37 C.F.R. § 2.116(b)], and if that burden cannot be met, the opposed mark must be registered, *see* 15 U.S.C. § 1063(b)”).

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the involved application. In addition, Opposer introduced a notice of reliance upon internet evidence and Applicant’s discovery responses.³ 9 and 11 TTABVUE. Opposer also submitted the declaration testimony of Larissa Cartwright, corporate Secretary for Opposer (Cartwright declaration) 10 TTABVUE (also submitted as exhibit 5 of Plaintiff’s notice of reliance, 11 TTABVUE 120).⁴

³ The internet webpage exhibits submitted by Opposer do not include a URL or access date. Opposer’s notice of reliance lists the website URL for these webpages, but not the access date. Because Applicant did not object, this procedural shortcoming has been waived for purposes of admissibility. *Shenzhen IVPS Tech. Co.*, 2022 USPQ2d 1035, at *20 n.26.

⁴ In this decision, we refer to the testimony declaration filed at 10 TTABVUE.

II. Entitlement to a Statutory Cause of Action

In every inter partes case, the plaintiff must establish its statutory entitlement to bring an opposition or cancellation proceeding. To establish entitlement to a statutory cause of action, a plaintiff must demonstrate: (i) an interest falling within the zone of interests protected by the statute and (ii) proximate causation. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at *4 (Fed. Cir. 2020), *cert. denied* 141 S. Ct. 2671 (2021). Demonstrating a real interest in opposing registration of a mark satisfies the zone-of-interests requirement, and demonstrating a reasonable belief in damage by the registration of a mark demonstrates damage proximately caused by registration of the mark. *Id.* at 7-8.

Opposer's witness testified that it is the current owner of the pleaded WISE Registration No. 1708557 and that the registration is valid and subsisting. Cartwright Declaration, paragraph 4. Trademark Rule 2.122(d)(2), 37 C.F.R. § 2.122(d)(2); *Citigroup Inc. v. Capital City Bank Grp.*, 94 USPQ2d 1645, 1654 (TTAB 2010) (opposer may introduce pleaded registration through witness testifying that the registration is still subsisting and owned by opposer), *aff'd*, 637 F.3d 1344, 94 USPQ2d 1253 (Fed. Cir. 2011). Opposer's witness references exhibit 1, submitted with its notice of reliance, which is a Trademark Status and Document Retrieval (TSDR) printout that was generated on December 15, 2020, and which is reasonably contemporaneous to the filing date of the notice of opposition (March 9, 2021). *Royal Hawaiian Perfumes, Ltd. v. Diamond Head Prods. of Haw., Inc.*, 204 USPQ 144, 146 (TTAB 1979) (status and title copy of pleaded registration mailed by USPTO on

January 12, 1977 was reasonably contemporaneous with the notice of opposition filed on March 14, 1977). *See also* Trademark Rule 2.122(d)(2).

The testimony and pleaded registration made of record establish Opposer's direct commercial interest in the proceeding and reasonable belief in damage. *See Herbko Int'l v. Kappa Books*, 308 F.3d 1156, 64 USPQ2d 1375, 1377 (Fed. Cir. 2002) ("In most settings, a direct commercial interest satisfies the 'real interest' test"); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (pleaded registrations "suffice to establish ...direct commercial interest"; a belief in likely damage can be shown by establishing a direct commercial interest); *Shenzhen IVPS Tech. Co.*, 2022 USPQ2d 1035, at *13-14 (valid and subsisting pleaded registration establishes opposer's direct commercial interest in the proceeding and its belief in damage) (citing *Cunningham*, 55 USPQ2d at 1844).

Therefore, Opposer has shown its statutory entitlement to a cause of action and hence, to oppose registration. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at *3 (Fed. Cir. 2020), *cert. denied*, 142 S. Ct. 82 (2021); *Cunningham*, 55 USPQ2d at 1844; *New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *6 (TTAB 2020) (pleaded registrations establish statutory entitlement to bring opposition); *Barbara's Bakery v. Landesman*, 82 USPQ2d 1283, 1285 (TTAB 2007) (opposer's entitlement to opposition established by pleaded registration being of record and non-frivolous likelihood of confusion claim).

III. Priority

Applicant has not filed a counterclaim to cancel Opposer's pleaded registration. Because Opposer has made its pleaded registration of record and shown it is valid and subsisting, priority is not an issue in this case as to the mark and services recited in that registration. *King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

IV. Likelihood of Confusion

We now turn our attention to the likelihood of confusion analysis and consider Opposer's pleaded registered mark vis-à-vis the mark in the involved application. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014).

Our determination under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), is based on an analysis of all of the 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"). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or 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."). We discuss the *DuPont* factors for which there is relevant argument and evidence. *See In re Guild Mortg. Co.*, 912 F.3d 1376,

129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019) (the Board considers each *DuPont* factor for which there is evidence and argument).

A. Relatedness of the Services

The second *DuPont* factor considers “the similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *DuPont*, 177 USPQ at 567. It is sufficient for a finding of likelihood of confusion if relatedness is established for any service encompassed by the identification of services within a particular class in the application. *Tuxedo Monopoly, Inc. v. General Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Applicant’s Class 35 services are “Consulting services in the field of business management; Business consulting services.” Opposer’s Class 35 services are “business management consultation services.”

Applicant’s consulting services in the field of business management are identical to Registrant’s business management consultation services. In addition, Applicant’s broadly worded business consulting services encompass all types of business consulting services including Registrant’s business management consultation services. *See, e.g., Southwestern Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015) (where the identification of services is broad, the Board “presume[s] that the services encompass all services of the type identified.”); *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.’”). Therefore, Applicant’s and Opposer’s Class 35 services are legally identical.

Applicant’s Class 41 services are “Entertainment services, namely, providing podcasts in the fields of business, professional growth, and personal development; Business training in the field of management.” Opposer’s Class 41 services are “educational services, namely, conducting courses and seminars in the fields of administrative training, business management, and business administration.”

Applicant’s services of business training in the field of management are broad enough to encompass Opposer’s services of conducting courses and seminars in the fields of business management. Therefore, the Class 41 services are legally identical in part.

The second *DuPont* factor favors a finding of likelihood of confusion.

B. Channels of Trade, Classes of Purchasers, and Conditions of Sale

1. Trade Channels and Classes of Purchasers

The third *DuPont* factor considers the “established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. We focus on the identifications in the application and pleaded registration. *See Stone Lion Cap. Partners*, 110 USPQ2d at 1162 (“It was proper, however, for the Board to focus on the application and registrations rather than on real-world conditions, because ‘the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application.’”) (quoting *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)). We

“also discuss the portion of the fourth *DuPont* factor that addresses the ‘buyers to whom sales are made.’” *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at *19 (TTAB 2021) (quoting *DuPont*, 177 USPQ at 567).

“When an application or registration fails to specify or limit the channels of trade or classes of customers, we must assume that the goods or services in question travel in all the normal channels of trade and to all prospective purchasers *for the relevant goods or services*.” See *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1743 (TTAB 2014) (emphasis in original). See also *Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 56 USPQ2d 1351, 1357 (Fed. Cir. 2000) (“When the registration does not contain limitations describing a particular channel of trade or class of customer, the goods or services are assumed to travel in all normal channels of trade.”).

Opposer argues that Applicant’s and Opposer’s trade channels and consumers are identical. Plaintiff’s brief, 12 TTABVUE 17. Opposer’s witness testified that “Opposer’s services under the WISE mark are targeted towards and purchased by entrepreneurs, professionals and business owners. These consumers are the typical consumers of business management consultation, administrative training and business administration services.” Cartwright declaration, paragraph 8, 10 TTABVUE. Applicant’s services would be directed to individuals or businesses interested in business management, business management consultation, business training, personal development and professional growth.

Where, as here, Applicant's and Opposer's services are identical or identical in part, we must presume that the channels of trade and classes of purchasers for those services are also the same. *See In re Inn at St. John's*, 126 USPQ2d 1742 1745 (TTAB 2018); *United Glob. Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

We find the trade channels and classes of purchasers of the parties' services overlap.

2. Conditions of Sale

The fourth *DuPont* factor considers the "conditions under which and buyers to whom sales are made, i. e. 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 177 USPQ at 567. Purchaser sophistication or degree of care "may tend to minimize likelihood of confusion." *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Fondée En* 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1695 (Fed. Cir. 2005). "Conversely, impulse purchases of inexpensive items may tend to have the opposite effect." *Id.* (citation omitted). "[T]he applicable standard of care is that of the least sophisticated consumer." *Stone Lion Cap. Partners*, 110 USPQ2d at 1163 (precedent requires consumer care for likelihood-of-confusion decision to be based "on the least sophisticated potential purchasers"). We have already discussed *supra* the "buyers to whom sales are made."

Opposer's witness testified that "Opposer's memberships are provided for \$195/year to \$6000/year. Because Opposer's goods [sic] are provided at a different cost

range, consumers generally purchase them with some degree of deliberation of care rather than on impulse.” Cartwright declaration, paragraph 9, 10 TTABVUE 3.

Opposer argues that its “services could be accessible to general consumers and sophisticated consumers alike” and that Applicant’s services are unrestricted as to price and could be offered at a variety of price points. Plaintiff’s brief, 12 TTABVUE 19, 20.

Because the channels of trade and classes of consumers are identical in part, we must assume the same degree of care on the part of the overlapping purchasers of the services. Opposer’s witness indicates that the purchase of its services requires some care and deliberation on the part of the purchaser. Nonetheless, “even consumers who exercise a higher degree of care are not necessarily knowledgeable regarding the trademarks at issue, and therefore immune from source confusion.” *Edom Labs. Inc. v. Lichter*, 102 USPQ2d 1546, 1552 (TTAB 2012).

The fourth *DuPont* factor is neutral or slightly favors a finding of likelihood of confusion.

C. Strength of Opposer’s Mark

Under the fifth and sixth *DuPont* factors, “fame of the prior mark (sales, advertising, length of use)” and “the number and nature of similar marks in use on similar goods [or services],” we consider the extent of commercial strength or weakness in the marketplace. *DuPont*, 177 USPQ at 567.

In connection with the fifth and sixth *DuPont* factors, Opposer argues “there can be no dispute as to the strength and fame of the WISE Mark” and that “no use of

similar third part[y] [marks] is a significant factor in determining that the marks are likely to cause confusion.” Plaintiff’s brief, 12 TTABVUE 16, 17.

1. Fifth *DuPont* Factor

The fifth *DuPont* factor examines the extent to which the public perceives the mark as indicating a single source of origin. *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 22 USPQ2d 1733, 1734 (Fed. Cir. 2017) (Commercial strength is the extent to which the relevant public recognizes a mark as denoting a single source). Because of the extreme deference that is accorded a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting that its mark is famous to prove it clearly. *N. Face Apparel Corp. v. Sanyang Indus. Co. Ltd.*, 116 USPQ2d 1217, 1226 (TTAB 2015).

Additionally, in determining the strength of a mark, we consider inherent strength, based on the nature of the mark itself. *New Era Cap. Co.*, 2020 USPQ2d 10596, at *10; *Top Tobacco, L.P. v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011). Word marks registered without a claim of acquired distinctiveness are “held to be inherently distinctive.” *See generally, Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 54 USPQ2d 1065, 1068 (2000) (word marks that are arbitrary, fanciful, or suggestive are “held to be inherently distinctive.”).

As to inherent or conceptual strength, Opposer’s WISE mark issued on the Principal Register without a showing of acquired distinctiveness under Section 2(f) of

the Trademark Act.⁵ Therefore, Opposer's WISE mark is presumed to be inherently distinctive. Trademark Act Section 7(b), 15 U.S.C. 1057(b); *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006) (a "mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods").

As to fame, or commercial strength, it may be measured indirectly by, for example, "the volume of sales and advertising expenditures of the goods sold under the mark" "and other factors such as length of time of use of the mark; wide-spread critical assessments; notice by independent sources of the products identified by the marks; and the general reputation of the products and services." *Weider Publ'ns, LLC v. D & D Beauty Care Co.*, 109 USPQ2d 1347, 1354 (TTAB 2014), *appeal dismissed per stipulation*, No. 2014-1461 (Fed. Cir. Oct. 10, 2014).

Opposer's witness testified as to its use of the WISE mark in connection with business management consultation, administrative training and business administration since as early as 1979 and its use since 1981 for those services identified in its pleaded registration. Cartwright declaration, paragraphs 4-5, 11 TTABVUE. The witness also testified that "WISE members operate in over 131 countries as of today." Cartwright declaration, paragraph 6, 11 TTABVUE. Opposer

⁵ Applicant's initial disclosure references pending WISE applications in the Office but Applicant does not identify any third-party WISE registrations. Plaintiff's notice of reliance, exhibit 4, 11 TTABVUE 59.

did not provide any testimony or evidence as to its sales, advertising, or media exposure.

Opposer's length of use alone of its WISE Mark is not sufficient to establish fame or commercial strength. Therefore, we accord Opposer's mark the normal scope of protection for an inherently distinctive mark.

2. Sixth *DuPont* Factor

Under the sixth *DuPont* factor, evidence of consumer exposure to third-party uses of similar marks in connection with similar services may show commercial weakness of a mark. *See Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015). In this regard, Opposer emphasizes that Applicant introduced no third-party use and points to Applicant's qualified admission that "Applicant admits that Applicant is unable to identify similar third-party marks for similar goods or services until Opposer reveals to Applicant Opposer's goods or services since they are still not revealed." Plaintiff's notice of reliance, exhibit 4, 11 TTABVUE 41, 114.

In the absence of third-party use evidence, we find the record does not suggest any commercial weakness of Opposer's WISE mark.

We find the fifth and sixth *DuPont* factors neutral.

D. Similarity of the Marks

Under the first *DuPont* factor, we examine the similarities and dissimilarities of the parties' marks in their entirety as to appearance, sound, meaning, and

commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *DuPont*, 177 USPQ at 567).

“The 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.” *Coach Servs. Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). “When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Applicant’s mark is WISE UP! and Opposer’s mark is WISE. Opposer’s mark WISE is wholly incorporated by Applicant’s mark WISE UP! The marks are similar in sound and appearance in that they both include the term WISE. Applicant admits the marks share the term WISE. Plaintiff’s notice of reliance, exhibit 4, Applicant’s response to request for admissions no. 1, 11 TTABVUE 41, 114.

While there is no rule that likelihood of confusion automatically applies where one mark encompasses another, the fact that Opposer’s entire mark is incorporated in its entirety in Applicant’s mark increases the similarity between the two. *See Stone Lion*

Cap. Partners, 110 USPQ2d at 1161 (affirming TTAB’s finding that STONE LION CAPITAL incorporated the entirety of the registered marks LION CAPITAL and LION, and confusion was likely); *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (applicant’s mark ML is similar to registrant’s mark ML MARK LEES); *Johnson Publ’g Co. v. Int’l Dev. Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (applicant’s mark EBONY DRUM for hairdressing and conditioner is likely to cause confusion with EBONY for cosmetics).

In addition, WISE is the first term in Applicant’s mark and the first term consumers will take notice of and remember. *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[i]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered[.]”). Although Opposer argues that UP! in Applicant’s mark is subordinate to WISE, we find that WISE UP! is a unitary phrase.

As to connotation, WISE is defined as “evidencing or hinting at the possession of inside information : KNOWING” and WISE UP is defined as “to make or become aware of a secret or generally unknown fact, situation, attitude, etc.”⁶ See also “wised up” defined as “: KNOWING.”⁷ The addition of the exclamation mark in Applicant’s

⁶ MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary> (accessed February 14, 2023). COLLINS DICTIONARY <https://www.collinsdictionary.com/us/dictionary/english/> (accessed February 14, 2023). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

⁷ MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary> (accessed February 14, 2023).

mark does not alter the commercial impression. *See In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (exclamation point does not affect the commercial impression of the mark) (citing TRADEMARK MANUAL OF EXAMINING PROCEDURE § 807.14(c)). We find that Applicant's and Opposer's marks have similar connotations and commercial impressions.

Considering the marks in their entirety, we find the parties' marks are similar in sound, appearance, connotation and commercial impression.

The first *DuPont* factor favors a finding of likelihood of confusion.

V. Conclusion

We have considered all of the evidence and arguments pertaining to the relevant *DuPont* factors. We find the first, second and third *DuPont* factors weigh in favor of finding likelihood of confusion while the fourth, fifth and sixth *DuPont* factors are neutral. Therefore, we find confusion likely.

Decision: Opposition No. 91268046 is sustained against Applicant's application Serial No. 90025629 for the mark WISE UP! on the basis of likelihood of confusion.