

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing: Aug. 6, 2025

Mailed: September 10, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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RLP Ventures, LLC

v.

Mosaic
—

Opposition No. 91273876
—

Charlane Brown of The Law Office of Charlane Brown,
for RLP Ventures, LLC.

Krista M. Eckhoff and Grayson J. Derrick of Baird Holm LLP,
for Mosaic.

—
Before Heasley, Lebow, and Cohen,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant Mosaic seeks registration on the Principal Register of the mark MOSAIC (in standard characters) for “charitable services, namely, providing vocational training in the field of job responsibilities and finding employment for disabled individuals,” in International Class 41.¹

¹ Application Serial No. 90544626 was filed on February 24, 2021, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere as of February 17, 2003, and use in commerce since at least as early as July 1, 2003. The Application also recites services in International Classes 43 and 45, which were not opposed.

RLP Ventures, LLC (“Opposer” or “RLP”) opposes registration of Applicant’s mark in Class 41 based on priority and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). It alleges ownership of a registration of the standard character mark MOSAEC for:

Entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; Entertainment services, namely, providing on-line reviews of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, and dance; Providing a website featuring entertainment information in the field(s) of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, and news; Providing information, news and commentary in the field of entertainment; Providing information, news and commentary in the field of recreation and leisure activities; Provision of information relating to children’s entertainment, in Class 41.²

Additionally, Opposer claims prior common law use of MOSAEC in connection with “providing vocational training.”³

Applicant, in its Answer, denied the salient allegations of the Notice of Opposition.⁴

² Notice of Opposition ¶ 6, 1 TTABVue 4. Reg. No. 5409856 issued on February 27, 2018 under Section 1(a) of the Trademark Act, 15, U.S.C. § 1051(a), based on an allegation of first use anywhere and in commerce as of September 3, 1998, and has been maintained.

Citations to the briefs and other materials in the record refer to the Board’s TTABVue online docket system.

³ Notice of Opposition ¶ 7, 1 TTABVue 2, 4, alleging first use anywhere and in commerce as of January 1, 1999.

⁴ Applicant also asserted five purported “affirmative defenses” in its Answer. 4 TTABVue 9-10. The first, claiming that the Notice of Opposition fails to state a claim on which relief can be granted, is not a true affirmative defense. *Shenzhen IVPS Tech. Co. Ltd. v. Fancy Pants Prods., LLC*, 2022 WL 16646840, *1 n.5 (TTAB 2022). The second and fourth, claiming “MOSAIC” is commonly used by many third parties, and that Opposer’s pleaded mark is entitled to only a narrow scope of protection, amplifies the denials in the Answer and do not serve as affirmative defenses. *NPG Records, LLC v. JHO IP Holdings LLC*, 2022 WL 3701446, *12 (TTAB 2022). The third raises equitable defenses of laches and estoppel, which were not pursued in Applicant’s final brief, so they are impliedly waived. *Hangzhou Mengku Tech. Co. v. Shanghai Zhenglang Tech. Co.*, 2024 WL 5265081, *1 (TTAB 2025). And the fifth

Both parties have briefed the case. Applicant appeared by counsel at the oral hearing; Opposer and its counsel declined to attend.⁵ We dismiss the opposition.

I. The Record

The record consists of the pleadings, and, by operation of Trademark Rule 2.122(b), the file of Applicant's involved Application. In addition, the parties have submitted testimony, notices of reliance, and exhibits, as listed in their briefs.⁶ The Board has carefully reviewed all the evidence of record, and presumes the parties' familiarity therewith. Relevant evidence is discussed throughout this opinion. *See Quiktrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1036 (Fed. Cir. 2021) (Board not obliged to expressly discuss every piece of evidence); *In re Miracle Tuesday LLC*, 695 F.3d 1339, 1348 (Fed. Cir. 2012) ("[T]he mere fact that the Board did not recite all of the evidence it considered does not mean the evidence was not, in fact, reviewed."). *See Plant Genetic Sys., N.V. v. DeKalb Genetics Corp.*, 315 F.3d 1335, 1343 (Fed. Cir. 2003) ("We presume that a fact finder reviews all the evidence presented unless he explicitly expresses otherwise.").⁷

(mis)labeled the fourth) merely denies a likelihood of confusion; this repeats Applicant's denial of Opposer's Section 2(d) claim, and does not amount to an amplification, much less an affirmative defense.

⁵ 52 TTABVUE.

⁶ *See* Opposer's main brief, 43 TTABVUE 5-6, and Applicant's brief, 44 TTABVUE 7-9.

⁷ This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites to the Westlaw (WL) legal database and cites only precedential decisions, unless otherwise noted.

II. Entitlement

A plaintiff's entitlement to invoke a statutory cause of action for opposition or cancellation is a necessary element in every inter partes case. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1304 (Fed. Cir. 2020). To establish entitlement to bring and maintain an opposition proceeding under Section 13 of the Trademark Act, 15 U.S.C. § 1063:

a plaintiff must demonstrate “an interest falling within the zone of interests protected by the statute and ... proximate causation.” *Corcamore*, 978 F.3d at 1303 (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129-134 (2014)); *see also Meenaxi Enter., Inc. v. Coca-Cola Co.*, 38 F.4th 1067, 1070 (Fed. Cir. 2022). Stated another way, a plaintiff is entitled to bring a statutory cause of action by demonstrating a real interest in the proceeding and a reasonable belief of damage. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1374-75 (Fed. Cir. 2020); *see also Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 1275 (Fed. Cir. 2014).

DowntownDC Bus. Improvement Dist. v. Clarke, 2024 WL 4449409, *10 (TTAB 2024).

Opposer attached to its Notice of Opposition a printout of a USPTO record showing the active status of its pleaded registration for MOSAEC and its title thereto.⁸ 37 C.F.R. § 2.122(d)(1). *See Heil Co. v. Tripleye GmbH*, 2024 WL 4925901, *15 (TTAB 2024) (status and title copy of pleaded registration). Applicant admits Opposer's ownership of the registration, to the extent it is corroborated by USPTO records.⁹

Opposer's ownership of the pleaded MOSAEC registration suffices to show a direct commercial interest in this matter, and a plausible claim of likely damage to that

⁸ Notice of Opposition, 1 TTABVUE 9-12. *See also* Trademark Status and Document Retrieval (TSDR) records for MOSAEC, Reg. No. 5409856, Ex. A to declaration of Ramona Prioleau, 35 TTABVUE 10-53.

⁹ Answer, ¶ 6, 4 TTABVUE 8.

interest stemming from registration of Applicant's mark. *Shenzhen v. Fancy Pants*, 2022 WL 16646840, at *6 (valid and subsisting pleaded registration establishes opposer's direct commercial interest in the proceeding and its belief in damage) (citing *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000)).

III. Trademark Act Section 2(d)

Section 2(d) of the Trademark Act provides that an opposed mark may be refused registration if it:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive....

15 U.S.C. § 1052(d).

To prevail under Section 2(d), Opposer must prove priority and likelihood of confusion by a preponderance of the evidence. *Araujo v. Framboise Holdings Inc.*, 99 F.4th 1377, 1380 (Fed. Cir. 2024). "The party opposing registration bears the burden of proof ... and if that burden cannot be met, the opposed mark must be registered" *B & B Hardware, Inc. v. Hargis Indus.*, 575 U.S. 138, 144 (2015).

A. Priority

1. Opposer's Registration

By making its registration of record, Opposer has established priority with respect to the services recited in that registration:

Entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; Entertainment services, namely, providing on-line reviews of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, and dance; Providing a website featuring

entertainment information in the field(s) of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, and news; Providing information, news and commentary in the field of entertainment; Providing information, news and commentary in the field of recreation and leisure activities; Provision of information relating to children's entertainment.

The Trademark Act provides at 15 U.S.C. § 1057(b) that “[a] certificate of registration of a mark upon the principal register . . . shall be prima facie evidence of . . . the owner’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.” The Board has accordingly found:

Because Opposer properly made of record its valid and subsisting pleaded registrations, and Applicant did not counterclaim to cancel Opposer’s pleaded registrations, priority is not at issue for the mark[]and ... services identified therein. *See King Candy, Inc. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, [] (CCPA 1974); *Nkanginieme v. Appleton*, [2023 WL 2424119], *2 (TTAB 2023) (“Opposer’s registration removed priority as an issue.”).

Heil v. Tripleye, 2024 WL 4925901, at *16.

2. Applicant’s use of MOSAIC for charitable vocational training and finding employment for the disabled

Applicant claims use of its MOSAIC mark in commerce in connection with “charitable services, namely, providing vocational training in the field of job responsibilities and finding employment for disabled individuals” since July 1, 2003. In support, it provides the declarations of Scott Hoffman, its Chief Financial Officer, who has been with Mosaic since its formation on July 1, 2003,¹⁰ and Renee Coughlin, its Senior Vice President.¹¹ Both testify that Applicant Mosaic has been providing the

¹⁰ Hoffman decl. ¶¶ 2-3, 38 TTABVUE 2.

¹¹ Coughlin decl. ¶ 2, 38 TTABVUE 19.

recited vocational services throughout the United States from its formation on July 1, 2003 to the present.¹² “For clarity,” Ms. Coughlin testifies, “vocational training’ at Mosaic is essentially assisting someone to hopefully obtain a job or gain skills to apply in the workforce.”¹³ This is consistent with the dictionary definition of “vocational”: “Relating to, providing, or undergoing training in a special skill to be pursued in a trade: vocational students learning to operate a lathe.”¹⁴ These vocational services had been underway even prior to Applicant’s formation, when it began to operate under the MOSAIC mark.¹⁵

The declarants corroborate their testimony with exhibits. In 2005, for example, Applicant Mosaic published a brochure describing its vocational programs for the disabled:

¹² Hoffman decl. ¶ 8, 38 TTABVUE 3; Coughlin decl. ¶ 10, 38 TTABVUE 21.

¹³ Coughlin decl. ¶ 8, 38 TTABVUE 20.

¹⁴ AHDictionary.com, accessed 8/25/2025. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Leathernecks Motorcycle Club Int’l, Inc.*, 2024 WL 2863442, *6n.6 (TTAB 2024).

¹⁵ Coughlin decl. ¶¶ 16, 18, 38 TTABVUE 24-25.



Vocational Programs

Mosaic prides itself in its commitment to vocational growth and independence for people with disabilities. We take our responsibility to our vendors seriously and strive to help all individuals meet their vocational goals through a variety of programs.

■ Workshops

Mosaic currently operates three separate workshops in Omaha. Individuals learn vocational and other living skills while they work on multiple contracts for respected Omaha area businesses.

■ Enclaves

These programs allow people to gain solid and realistic employment experience in Omaha area businesses. Individuals work for companies with the help of Mosaic staff.

■ Supported Employment

This rapidly expanding program helps people take that final step toward vocational independence. Job coaches work with individuals and businesses to locate and secure competitive employment. The job coaches then continue to provide any needed communication, habilitation or transportation support.

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A 2007 publication of the Mosaic “Voice” shows, in Ms. Coughlin’s words, how “Mosaic must work with the disabled individual, understand what jobs that individual could perform, understand what jobs are available from employers or others in the specific community, help the individual gain necessary skills and even

¹⁶ Coughlin decl. ¶¶ 14, 17, and ex. H, 38 TTABVUE 22, 24, 78.

apply for the job, and then even visit the job site to further assist, among other work.”¹⁷ The publication explains:

Mosaic in Omaha operates three vocational centers, each unique, which provide job training and opportunities on levels appropriate to each consumer’s desires, needs and abilities. Employment opportunities include environmental paper shredding, cardboard compaction



Ed Paulsen working on respirator mask clips

and bottle recycling, janitorial services, piece work and self-directed craft businesses.

Preparation and training for jobs at non-Mosaic sites is another services offered through Mosaic’s vocational centers. Individuals learn how to write a resume and how to interview for jobs. For those who qualify, Mosaic staff



Tony Gray working at shredding paper

members will also visit the work sites of those we support to provide job coaching.

Whether it is at a Mosaic operated workshop or at a job in the community, the people Mosaic supports take pride in the work they do and enjoy the community interaction as

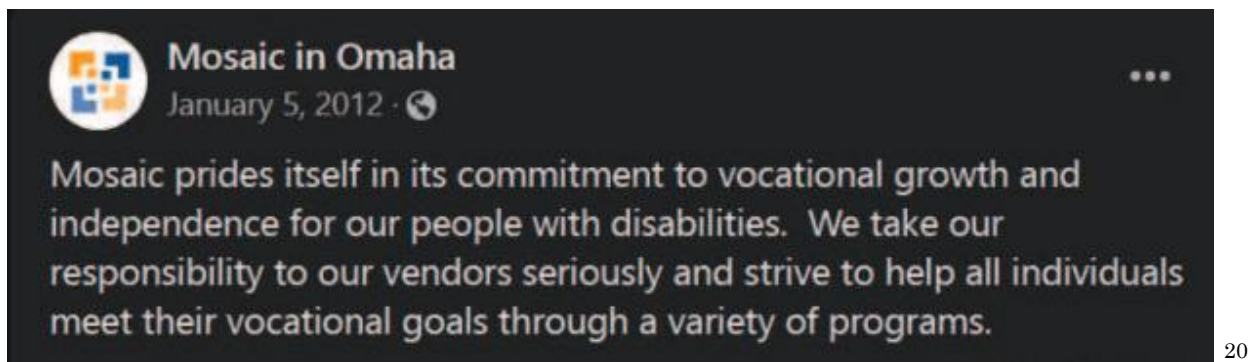
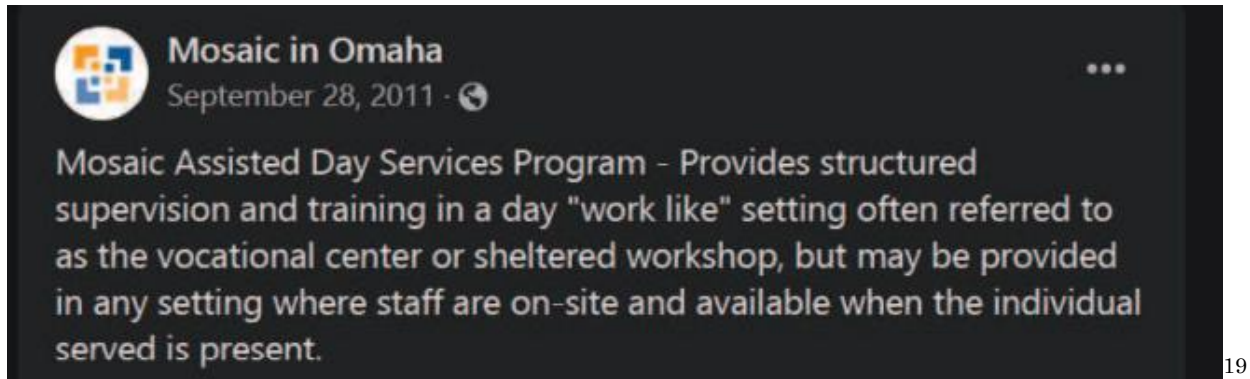
they work. Every individual is unique and Mosaic’s goal is to equip individuals who have disabilities with life skills that will assist them in “*Opening Doors to Extraordinary Lives.*”

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In 2011-12, Mosaic posted online statements about its vocational training for the disabled:

¹⁷ Coughlin decl. ¶ 15, 38 TTABVUE 23.

¹⁸ Ex. J, 38 TTABVUE 81. To the same effect, *see also* a similar brochure from 2008, Exhibit I, Renee Coughlin declaration ¶ 14, 38 TTABVUE 23.



In 2013, Mosaic published a book describing “Mosaic’s history of providing vocational training services to the disabled.” Ms. Coughlin testifies: “The book explains, ‘Employment and job training are important for people with disabilities. Across Mosaic, several locations offer training through workshops or retail stores as an opportunity for people to both earn money and gain skills to move into competitive employment.’ This is true of Mosaic in the past, and now.”²¹

¹⁹ Hoffman decl. ¶ 11, 38 TTABVUE 4, Ex. A, 38 TTABVUE 8.

²⁰ Coughlin decl. ¶ 22, 38 TTABVUE 27, Ex. F, 38 TTABVUE 52.

²¹ Coughlin decl. ¶ 21, 38 TTABVUE 26.

A couple of years later, in 2015, Applicant issued a marketing publication explaining, as Mr. Hoffman states, “that, at that time, Mosaic was operating in ten (10) states and serving more than 3,600 people”:²²



Another example from 2019, a few years later, shows a successful vocational placement:²⁴

²² Hoffman decl. ¶ 13, 38 TTABVUE 4.

²³ Ex. B, 38 TTABVUE 9.

²⁴ Coughlin decl. ¶ 13, 38 TTABVUE 22.



4%

**of people with
intellectual disabilities
are competitively
employed.**


2017 FINDS Community Report

Company Receives Benefits “Tenfold” from Employee

Partnering with Mosaic to employ Tim Karkiewicz has brought a tenfold return, according to the leader who helped hire him.

Kevin Schmidt said Karkiewicz does a great job and has become a “rallying point” for the employee team at Days Corporation in Elkhart, Indiana.

“When I approached staff with the idea of bringing Tim in,” Schmidt said. “I saw the care and concern and the willingness to help.”

“Mosaic may think we’re doing wonders for him,” Schmidt said, “I’d say we’re getting tenfold back from what he’s given us. I want a good employee and a good person, and Tim certainly fits that mold.”  Watch: tiny.cc/mosaic-tim

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Applicant Mosaic has maintained its website, MosaicInfo.org, since March 2003. Ms. Coughlin testifies, “Mosaic has used mosaicinfo.org to tell stories of its services (including the vocational Services at issue here), advertise to donors and those who need to receive the Services or their caretakers and others. Of course, the Mosaic website has always had the ‘MOSAIC’ name throughout.”²⁶ The website advertises, for example:

²⁵ Ex. G, 38 TTABVUE 65.

²⁶ Coughlin decl. ¶ 36, 38 TTABVUE 32.

Employment Services

Finding meaningful work is often the number one long-term goal for the people we serve.

To support people on their path to employment, Mosaic works one-on-one with people to ensure they have the skills they need to succeed in the workforce. We help people find the best-fit position and educate employers on working with people served.

We also operate several small businesses across the country, including thrift stores, a smoothie shop and a shredding company, which all provide transitional employment opportunities to the people we serve.

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Applicant's witnesses attest that it continues to provide these vocational services to the present day.²⁸ Thus, Applicant's testimony and documentary evidence show that it has advertised and rendered its vocational services since at least as early as July 1, 2003. "[A] mark shall be deemed to be in use in commerce ... on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce...." 15 U.S.C. § 1127.

3. Opposer's claimed common law rights in MOSAEC for "providing vocational training"

To establish priority in its pleaded MOSAEC mark for "providing vocational training," Opposer RLP must prove by a preponderance of the evidence that such claimed common law rights "were acquired before any date upon which applicant may rely." *DowntownDC v. Clarke*, 2024 WL 4449409, at *11 (citing *Araujo v. Framboise*, 99 F.4th at 1380). As noted, a mark is used in commerce on services when [1] it is

²⁷ From Applicant's website, MosaicInfo.org, accessed on 2/24/2021, Ex. C to decl. of Ramona Prioleau, 35 TTABVUE 134.

²⁸ Hoffman decl. ¶ 8; 38 TTABVUE 3; Coughlin declaration ¶ 10, 38 TTABVUE 21.

used or displayed in the sale or advertising of services and [2] the services are rendered in commerce. *Couture v. Playdom, Inc.*, 778 F.3d 1379, 1381 (Fed. Cir. 2015). “[W]hether a particular piece of evidence by itself establishes prior use is not necessarily dispositive as to whether a party has established prior use by a preponderance. Rather, one should look at the evidence as a whole, as if each piece of evidence were part of a puzzle which, when fitted together, establishes prior use” if there are “clear interrelationships existing between the several pieces of evidence submitted.” *W. Fla. Seafood, Inc. v. Jet Rests., Inc.*, 31 F.3d 1122, 1125-26 (Fed. Cir. 1994).

The issue is whether, consistent with these principles, Opposer RLP carries its burden of proving priority in its MOSAEC mark in connection with “providing vocational training.”






Opposer’s founder, Ramona Prioleau, testifies by declaration that “since 1999, Opposer has used Opposer’s Mark for the following services— ‘providing vocational training’....”²⁹ But when Applicant’s interrogatory pressed RLP to “[i]dentify each product or service Opposer offers in the realm of ‘vocational training’ services,” Opposer merely “refers Applicant to mosaec.com/jobs and documents related to the MOSAEC Mark that can be publicly accessed via the Trademark Office’s files via www.USPTO.gov as well as responds the Opposer’s vocational services include all those that Opposer currently perform and those that are in its natural zone of expansion.”³⁰ As Applicant observes, Opposer has not identified even one specific

²⁹ Ramona Prioleau decl. ¶ 8, 35 TTABVUE 3.

³⁰ Opposer’s Ans to Int. no. 15, Applicant’s Notice of Reliance (NOR) 39 TTABVUE 18-19.

example of providing “vocational training,” let alone provision of those services as charitable services to disabled individuals prior to July 2003.³¹

Opposer’s mosaec.com/jobs website is nothing more than a job board, listing available jobs. There is no mention of training. For example:

	Marketing Instructor University of Idaho	Moscow, Idaho	Full Time Posted 21 hours ago
	INSTRUCTIONAL-TRACK FACULTY IN MARKETING University of Iowa	Iowa City, Iowa	Contract Posted 21 hours ago
	Marketing & Creative Project Specialist Johns Hopkins University	Baltimore, Maryland	Contract Posted 21 hours ago
	Marketing Strategist-Missouri Baptist Sullivan Hospital BJC HealthCare	Saint Louis, Missouri	Full Time Posted 21 hours ago
	Leasing & Marketing Professional Willow Bridge Property Company	Dallas, Texas	Full Time Posted 21 hours

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Opposer’s website, mosaic.com, is primarily about entertainment. As its website states:

MOSAEC is style, art, entertainment, culture and more. For over 15 years, MOSAEC has been a media destination for those seeking fresh, irreverent and witty perspectives. In addition to reviews, feature articles and a social media, MOSAEC includes streaming media tidbits from personalities discussing their work. A hip, eclectic, cultural melange, MOSAEC covers film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants and much more.

MOSAEC educates, informs and entertains via our digital application. Users are encouraged to comment, post and share for site credit and peer-to-peer bragging rights. Users can also show their love of all things MOSAEC with the branded merchandise available in our shop.

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³¹ Applicant’s brief, 44 TTABVUE 29.

³² Jobs.mosaec.com 12/29/2024, Applicant’s NOR, 39 TTABVUE 56.

³³ Mosaec.com 12/29/2024, Applicant’s NOR, 39 TTABVUE 73.

One of Opposer's witnesses, Dr. Pamela Perry, confirms this focus on entertainment:

I have been familiar with Opposer's MOSAEC-platform since 1998 as a social media and e-commerce entity, notably, in connection with literature, world culture, music, sports, education, youth, adults, extracurricular activities, a job board as well as to advance personal, educational, and career goals and in schools for philanthropic purposes.³⁴

I visited the Opposer's platform before and after April 3, 2015 and I was able to post, search, access, share, and track reviews, ratings, referrals, recommendations, and other information as well as upload photos, add videos, find, locate, and interact with other users, related to entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation, travel, and leisure activities.³⁵

As Applicant correctly observes, Opposer's website, including its job board, does not provide vocational training: "Opposer's Services are limited to entertainment or provision of information, largely (if not entirely) centered on Opposer's MOSAEC website. This is reflected in Opposer's evidence, no matter how much Opposer tries to stretch to fit Applicant's Services. ... Reviews of television shows provided on a website are not in the realm of services offered by Applicant."³⁶

As for Opposer's reliance on "documents related to the MOSAEC Mark that can be publicly accessed via the Trademark Office's files via www.USPTO.gov,"³⁷ the records it has introduced refer to its entertainment and informational services, not vocational training.³⁸ To the extent Opposer intended to rely on other files residing

³⁴ Perry decl. ¶ 4, 35 TTABVUE 216.

³⁵ Perry decl. ¶ 10, 35 TTABVUE 217.

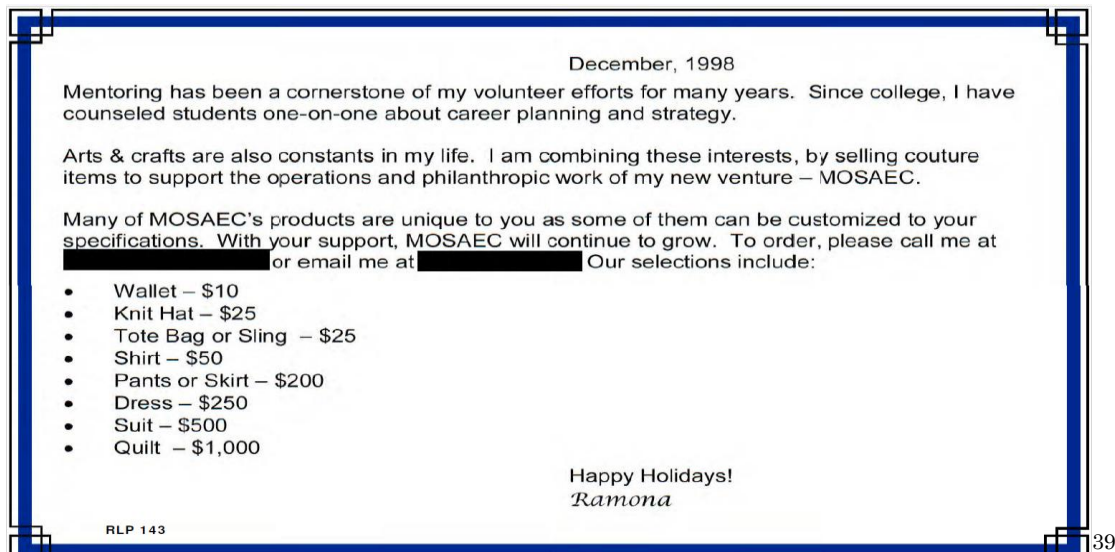
³⁶ Applicant's brief, 44 TTABVUE 21.

³⁷ Opposer's Ans to Int. no. 15, Applicant's Notice of Reliance (NOR) 39 TTABVUE 18-19.

³⁸ Ramona Prioleau decl. exs. A and B, 35 TTABVUE 10-112.

at the USPTO, we remind it that the Board does not take judicial notice of USPTO records. *Flame & Wax, Inc. v. Laguna Candles, LLC*, 2022 WL 3083070, *15 n.57 (TTAB 2022). Only Applicant's application file is automatically of record in this proceeding. Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b).

Ramona Prioleau's other testimony fares no better. She refers to a postcard she created dated December 1998:



As Applicant notes, though, the postcard “makes no mention of vocational training or selling services. ... It is not evidence of Opposer having provided such services or that ‘MOSAEC’ even offers any services.”⁴⁰

Ramona Prioleau also attaches an undated, unsigned “mentoring agreement”:

³⁹ Ramona Prioleau decl. ¶ 16 and ex. E, 35 TTABVUE 4, 153.

⁴⁰ Applicant's brief, 44 TTABVUE 27.

MENTORING AGREEMENT

Mentor, [MOSAEC MENTOR], and the Mentee, [NAME], are voluntarily entering into a mentoring relationship from which we both expect to benefit. We want this to be a rich, rewarding experience with most of our time together spent in professional development activities. To this end, we have mutually agreed upon the terms and conditions of our relationship as outlined in this agreement.

The Mentee's objectives for the Mentoring Program:

1. To develop a career pathway to prepare for future positions.
2. To gain a greater awareness of opportunities and activities that can broaden my educational experience.
3. To learn how to conduct research on career opportunities within my field of study.
4. To learn how to communicate effectively in networking situations.
5. To learn self-motivation, self-discipline, and goal setting techniques.
6. To learn time management skills.
7. To learn how to write an effective college personal statement.
8. To learn how to write an effective cover letter and resume.
9. To gain a greater appreciation for college life and what college has to offer students.

Specific assistance Mentor will provide to assist Mentee in achieving objectives:

1. Assess Mentee's current level of expertise and make a recommendation on career path development.
2. Advise Mentee on resume content.
3. Advise Mentee on personal statement content.
4. Assign Mentee reading materials specific to objectives.
5. Provide guidance and support by creating an atmosphere of openness where meaningful communication and trust can exist.
6. Assist mentee in identifying academic goals and objectives.
7. Identify and encourage mentee to take advantage of support services available at college.
8. Follow up with progress.
9. Assign Mentee specific tasks/assignments aimed to develop Mentee's leadership skills.
10. Mentor will invite mentee to attend college recruitment fairs.
11. Mentor will invite mentee to attend a community activity together.

Steps Mentee will take in order to achieve these objectives:

1. Provide Mentor with current resume, personal statement and educational goals.
2. Read material assigned by Mentor within established time frames.
3. Complete tasks/assignments within established time frames.

Mentee's learning outcomes will be measured by:

1. Demonstrated knowledge in all of the above-listed objectives.

Confidentiality

Mentoring discussions among Mentee and Mentor will be confidential unless otherwise specified at the time of the discussion. Mentee acknowledges that parent(s) may be informed

of mentoring discussions.

Frequency of Meetings

Meetings will begin _____. If we cannot attend a scheduled meeting, we agree to notify one another in advance.

Form of Meetings

Meetings will occur face-to-face or remotely. Other ways Mentor and Mentee will communicate will be via telephone, text and email.

Duration

We have determined that our mentoring relationship will continue as long as we both feel comfortable.

No-Fault Termination

We are committed to open and honest communication in our relationship. We will discuss and attempt to resolve any conflicts as they arise. If, however, one of us needs to terminate the relationship for any reason, we agree to abide by one another's decision.

This mentoring agreement sets forth the objectives that the Mentor and Mentee commit to working on together. Both agree to follow the guidelines of this agreement for the period specified and to make a good faith effort to resolve any issues that may arise between them.

Dated: [DATE]

Mentor's Signature

By: _____
[NAME]

Mentee's Signature

By: _____
[NAME]

Mentee's Parent Signature

By: _____
[NAME]

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This exhibit, however, is more noteworthy for what it does **not** show. It has no date—which is important to a priority claim. It has no signatures—indicating that Ms. Prioleau ever offered her services, or that anyone ever elected to accept them. And it does not indicate that the mentoring services were ever rendered.

⁴¹ Ramona Prioleau decl. ¶ 19 and ex. G, 35 TTABVUE 4, 58.

Ms. Prioleau avers that Opposer mailed the following document dated May 1999, with an attached blank “mentoring agreement”:



May 10, 1999

As Memorial Day approaches, we are gearing up for a busy summer. This summer, MOSAEC will continue to expand its platform alongside offering **FREE** one-to-one instruction and guidance for new journalists and we will extend our services to other students that seek career guidance and mentoring services.

For more on our services, please see the enclosed materials. Please share them within your organization and to family and friends.

With all that we have planned, we are relying on contributions from supporters like you to continue to do our important work.

Please consider contributing once again by purchasing our merchandise or by contributing by check or by credit card online to MOSAEC.

Warmest regards,

Ramona

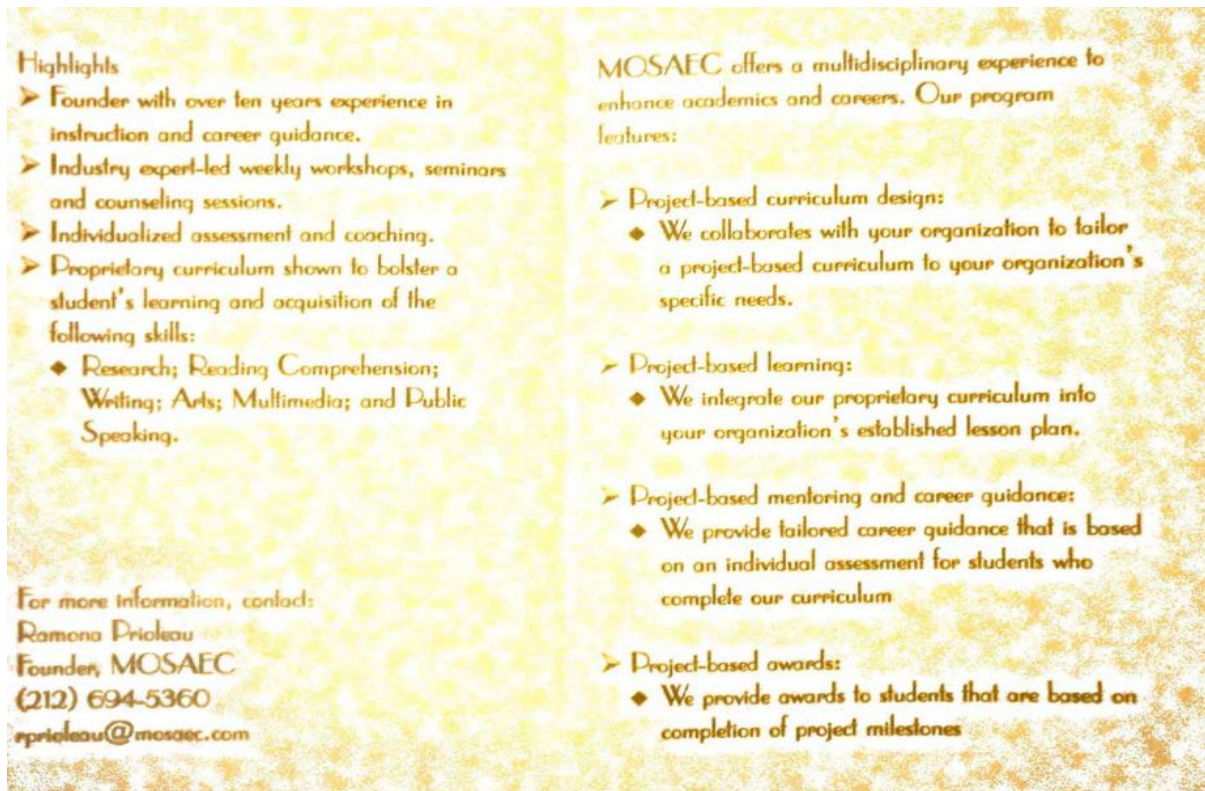
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As Applicant perceptively discerns, however, this mailing is in the future tense, stating that Opposer “**will** continue to expand its platform” and “**will** extend our services....” There is, once again, no signed mentoring agreement and no evidence “that the services described (which are not ‘vocational training’) were or ‘are’ being provided.”⁴³ Rather, it describes instruction and guidance for journalists, which is quite different from helping disabled persons find gainful employment.

⁴² Ramona Prioleau decl. ¶ 20 and ex. H, 35 TTABVUE 4-5, 161; Part of Ex. A to Kescia Prioleau decl., 35 TTABVUE 209.

⁴³ Applicant’s brief, 44 TTABVUE 27.

Ms. Prioleau declares that in 1999, she, as Opposer's founder, "developed the brochure that describes academic, and career program offered under the MOSAEC Mark...":



Yet as Applicant points out, Opposer never testified that it taught the academic and career program. And "even if Opposer taught those classes or programs, it would not constitute provision of 'vocational training' services...."⁴⁵ As is further apparent from the brochure, the proposed curriculum is directed to organizations (e.g., "We collaborate with your organization" and "We integrate your organization's established lesson plan"), not disabled individuals.

⁴⁴ Ramona Prioleau decl. ¶ 25 and ex. J, 35 TTABVUE 5, 180.

⁴⁵ Applicant's brief, 44 TTABVUE 27-28.

Similarly, Ms. Prioleau declares that in the summer of 1999, she “corresponded” by email, agreeing to teach students about citizen journalism.⁴⁶ But there is no testimony that she provided the instruction, or that it would constitute “vocational training,” much less vocational training for the disabled.

Another witness for Opposer, Kescia Prioleau, a New Jersey special education teacher/applied behavioral analysis provider (presumably related to Ramona Prioleau), declares:

I have been familiar with Opposer’s MOSAEC-platform since 1998 as a social media website that features literature, culture, music, sports, education and extracurricular activities for youth, general extracurricular activities, a job board as well as to advance personal, educational, and career goals and in schools for philanthropic purposes.⁴⁷

During the period from 1998 to date, I have referred students, educators, administrators, and non-profits to the Opposer in relation to its educational, mentoring, and other philanthropic services, including for writing guidance and instruction.⁴⁸

The declaration leaves us to guess specifically when these events occurred or what particular services were provided. The only dated event of note took place in 2015: “In 2015, the Opposer visited my school and provided vocational services to my adolescent and teenage students.”⁴⁹ But as Applicant correctly responds, “at no time are the purported ‘vocational services’ described. What was provided? What, specifically, was done? Not to mention, these undescribed services provided to a

⁴⁶ Ramona Prioleau decl. ¶ 21 and ex I, 35 TTABVUE 5, 176.

⁴⁷ Kescia Prioleau decl. ¶8, 35 TTABVUE 205-06.

⁴⁸ Kescia Prioleau decl. ¶17, 35 TTABVUE 207.

⁴⁹ Kescia Prioleau decl. ¶7, 35 TTABVUE 205.

generalized group were performed in 2015. ... This is long after Applicant's consistent provision of its Services."⁵⁰

Last, Opposer introduces the declaration of Samantha Miller, a Connecticut-based director of partnership programs for a non-profit.⁵¹ In language virtually identical to Kescia Prioleau's declaration, she avers inter alia that:

I have been familiar with Opposer's MOSAEC-platform since 1998 as a social media and e-commerce entity, notably, in connection with literature, world culture, music, sports, education, youth, adults, extracurricular activities, a job board as well as to advance personal, educational, and career goals and in schools for philanthropic purposes.⁵²

During the period from 1998 to date, I have referred students, educators, and administrators to the Opposer in relation to its educational, mentoring, and other philanthropic services.⁵³

Ms. Miller's averments suffer from the same deficiencies as Kescia Prioleau's. Vague and conclusory, they fail to specify **what** was done and **when** it was done—important considerations if Opposer is to prove prior provision of common law services under its mark. Moreover, the two declarations' nearly identical language tends to suggest they were more the product of the attorney drafting the declarations than the product of the declarants themselves. This undermines the scant probative value they had to begin with. *In re Pohl-Boskamp GmbH*, 2013 WL 1234849, *12 (TTAB 2013) (where declarations were “essentially identical in form and were clearly not composed individually” they were “less persuasive than statements expressed in

⁵⁰ Applicant's brief, 44 TTABVUE 32.

⁵¹ Miller decl. ¶ 3, 35 TTABVUE 221.

⁵² Miller decl. ¶ 4, 35 TTABVUE 221.

⁵³ Miller decl. ¶ 11, 35 TTABVUE 223.

the declarants' own words").

As in Kescia Prioleau's declaration, Ms. Miller takes care to make mention of "vocational services," averring that "during the period from 1998 to date, I have engaged Opposer to provide individualized vocational services to my relatives."⁵⁴ But she fails to specify when Opposer supposedly provided these services. And as Applicant rightly points out, "this information does not constitute competent evidence of prior use. It also contains no relevant details—to whom the services were provided or what, specifically, the services entailed or how many relatives received any services."⁵⁵

There is, moreover, a considerable difference between Applicant's vocational training of the disabled and Opposer's claimed mentoring. As Applicant's Chief Financial Officer testifies, "[i]t is difficult and specialized work to provide specific training to individuals with intellectual and/or developmental disabilities to learn job-specific skills and/or be able to have a job of their own. It is not the same as mentoring individuals without disabilities or training such individuals for a particular position."⁵⁶ "Where, as here, Opposer is relying on common law use of its mark, consideration of the question of likelihood of confusion must be confined to the specific services on which the mark has been used." *DowntownDC v. Clarke*, 2024 WL 4449409, at *21.

⁵⁴ Miller decl. ¶ 12, 35 TTABVUE 223.

⁵⁵ Applicant's brief, 44 TTABVUE 29.

⁵⁶ Hoffman decl. ¶ 9, 38 TTABVUE 3. *See also* Coughlin decl. ¶ 9 : "Vocational training' is more than mentoring. And, vocational training for disabled individuals requires specialization, skills, and insight that providing vocational training, on-the-job training, or resume-writing workshops (for example) for non-disabled individuals does not require."

After carefully considering all relevant evidence, we find that Opposer RLP has failed to carry its burden of proving prior common law use of its mark in connection with “providing vocational training.” Testimony about prior use in commerce “should not be characterized by contradictions, inconsistencies, and indefiniteness but should carry with it conviction of its accuracy and applicability.” *Kemi Organics, LLC v. Gupta*, 2018 WL 2230555, *8 (TTAB 2018) (quoting *Exec. Coach Builders, Inc. v. SPV Coach Co.*, 2017 WL 3034059 (TTAB 2017) and *B.R. Baker Co. v. Lebow Bros.*, 150 F.2d 580, 583 (CCPA 1945)). The presence of business records strengthens this testimony, and the absence of such records does the opposite. *Tao Licensing, LLC v. Bender Consulting Ltd.*, 2017 WL 6336243, *9 (TTAB 2017).

Unlike Applicant, which adduced clear, specific testimony, backed by documentary evidence showing its use of its mark in connection with its charitable vocational services for the disabled, Opposer’s testimony regarding its purported “vocational training” services is vague, indefinite and conclusory. And its few, scattered, disparate documents do not fit together to form a cohesive whole. “Broad general statements by a witness that lack sufficient detail are usually not adequate, especially in the absence of corroborating documentary evidence.” *Shenzhen v. Fancy Pants*, 2022 WL 16646840, at *10.

Additionally, “[t]he Board has required that the services be ‘performed as a regular or recurring activity associated with the mark.’” *DeVivo v. Ortiz*, 2020 WL 1227592, *4 (TTAB 2020) (quoting *Giersch v. Scripps Networks, Inc.*, 2009 WL 706673, *4 (TTAB 2009) (declining to find prior common law use for “decorating or home improvement services” when the services were only occasionally performed)).

Opposer's postcard, blank mentoring agreement form, and brochure evince some inchoate, desultory, and sporadic efforts on Ramona Prileau's part to offer ill-defined general advice or instruction; but she never identifies or quantifies the recipients of this outreach, never shows a response to or acceptance of her offerings, and, most importantly, never proves that Opposer actually rendered vocational training services to any recipient, much less a disabled one. "[T]o meet the use requirement for a service mark, an applicant must use the mark in **advertising or sale** of a service, and show that the service was **actually rendered** in interstate commerce or in more than one state, or in this and a foreign country, by a person engaged in commerce." *Lyons v. Am College of Vet. Sports Med. and Rehab.*, 859 F.3d 1023, 1028 (Fed. Cir. 2017) (boldface italicized in original). "[P]reparations to use a mark in commerce are insufficient to constitute use in commerce. Rather, the mark must be actually used in conjunction with the services described" *Couture v. Playdom, Inc.*, 778 F.3d at 1381 (citing *Aycock Eng'g. Inc. v. Airflite, Inc.*, 560 F.3d 1350, 1358, 1360 (Fed. Cir. 2009)) (internal quotation marks and citations omitted).

"In view of the vagueness and non-specific witness testimony, and the lack of any corroborating documentary evidence, we find there is insufficient evidence to support common law prior use...." *Shenzhen v. Fancy Pants*, 2022 WL 16646840, at *11. Opposer has not proven that it advertised and rendered vocational services at all under the MOSAEC mark, much less prior to July 1, 2003. Accordingly, we confine our analysis of likelihood of confusion claim to RLP's pleaded registration.

B. Likelihood of Confusion

“Whether a likelihood of confusion exists’ is ‘aided by application of the thirteen *DuPont* factors.’ *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1319 (Fed. Cir. 2018) (citing *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973)).” *Bullshine Distillery LLC v. Sazerac Brands, LLC*, 130 F.4th 1025, 1031 (Fed. Cir. 2025). “The Board need not consider every *DuPont* factor, only those that are relevant and of record.” *Dollar Fin. Grp., Inc. v. Brittex Fin., Inc.*, 132 F.4th 1363, 1371 (Fed. Cir. 2025) (internal citation and punctuation omitted).

In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the analysis. *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, 1370 (Fed. Cir. 2002). The Board is required to consider each factor for which it has evidence, but it can focus its analysis on dispositive factors. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 1406–07 (Fed. Cir. 1997). A single *DuPont* factor may, for example, be dispositive of the likelihood of confusion analysis. *Kellogg Co. v. Pack’em Enters., Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991). The weight given to each factor depends on the circumstances of each case. *Dixie Restaurants, Inc.*, 105 F.3d at 1407.

In re Charger Ventures LLC, 64 F.4th 1375, 1381 (Fed. Cir. 2023).

Again, Opposer must prove a likelihood of confusion by a preponderance of the evidence. *Heil v. Tripleye*, 2024 WL 4925901, at *37.

1. Comparing the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant’s and Opposer’s marks in their entirety, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 476 F.2d at 1361.

a. Sight and Sound

Applicant's mark is MOSAIC and Opposer's mark is MOSAEC, both in standard characters. The only difference is Opposer's misspelling, substituting an "E" for "I".

Opposer focuses on the marks' similar sound, arguing that "the marks are phonetic equivalents. Slight differences in the sound of similar marks will not avoid a likelihood of confusion."⁵⁷ Applicant responds that even though there is only one letter different, "[t]he spelling difference in this case [is] important, in that it turns a common word into one that is misspelled and unexpected."⁵⁸ Further, Applicant suggests, "[w]hile there is no 'correct' pronunciation of a mark, similar pronunciation is not sufficient in this case."⁵⁹

We find that the slight variant spelling in this case does not avoid a finding of similarity. *See, Contour Chair-Lounge Co. v. Englander Co.*, 324 F.2d 186, 189 (CCPA 1963) (finding CONTUR but a slight misspelling of CONTURE). "[A]ny minor differences in the sound of these marks may go undetected by consumers and, therefore, would not be sufficient to distinguish the marks." *In re Viterro Inc.*, 671 F.3d 1358, 1367 (Fed. Cir. 2012). *See, e.g., In re Total Quality Grp. Inc.*, 1999 WL 588248, *3 (TTAB 1999) ("Applicant's mark STRATEGYN and registrant's mark STRATEGEN are phonetic equivalents and differ by only one letter."). The marks are therefore similar in sight and sound.

⁵⁷ Opposer's reply brief, 45 TTABVUE 9. *See also* Opposer's main brief, 43 TTABVUE 20.

⁵⁸ Applicant's brief, 44 TTABVUE 42.

⁵⁹ *Id.*

b. Connotation and Commercial Impression

Applicant contends that “Opposer’s use of ‘MOSAEC,’ which is not a word and requires deeper thought to understand what it means, versus Applicant’s ‘MOSAIC,’ which is already a word, would create separate connotations or commercial impressions.”⁶⁰ But given the marks’ similar spelling, differing by only one letter, consumers are more likely to view them as variant spellings of “mosaic,” similar not only in appearance and pronunciation, but in meaning, too. *See In re Infinity Broad. Corp.*, 2001 TTAB WL 951738, *4 (TTAB 2001) (“As to meaning, our view is that applicant’s mark ‘KYNG,’ when viewed as the phonetic equivalent of the term ‘KING,’ would convey the meaning of the commonly understood term ‘king,’ that is, the same meaning conveyed by registrant’s marks.”). And to the extent “deeper thought” is made by a consumer to understand what MOSAEC means, Applicant offers no meaning that could be attributed to that word beyond the meaning of MOSAIC.

“Mosaic” is defined as “a surface decoration made by inlaying small pieces of variously colored material to form pictures or patterns” or, more pertinent here, “something resembling a mosaic,” such as “a mosaic of visions and daydreams and memories.”⁶¹ Both parties here use the term in the second, more figurative sense.

Applicant contends that the respective marks, viewed in the context of the parties’ disparate services, convey different commercial impressions:

“MOSAIC” when associated with a charity providing services for the disabled has the connotation of the bringing together pieces and

⁶⁰ Applicant’s brief, 44 TTABVUE 42.

⁶¹ Merriam-webster.com, 8/29/2025.

stakeholders to create a colorful life and experience for a disabled person. “MOSAEC,” on the other hand, when affiliated with Opposer’s platform (the most significant place Opposer uses “MOSAEC” and is described in Opposer’s Services), has the connotation of assembling news from the areas of entertainment, culture, music, and others and perhaps a place for people to bring their different perspectives.⁶²

It is true that word marks, even identical word marks, can convey “different meanings and create distinct commercial impressions” in different contexts. *Coach Serv., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (“COACH” carries different meanings in the contexts of handbags and academic preparation services); *Presto Prods. Inc. v. Nice-Pak Prods. Inc.*, 1988 WL 252340, *3 (TTAB 1988) (“It is obvious [from the language of Section 2(d)] that the significance of a mark must be determined not in the abstract, but rather in relation to the goods or services to which it is applied, and the context in which it is used, because that is how the mark is encountered by purchasers”).

But here, both parties use their marks in the same suggestive sense of bringing disparate elements together to form a unified whole. Applicant brings numerous individuals together to provide charitable vocational training of the disabled. Applicant’s Senior Vice President quotes Applicant’s 2005 brochure:

Why is the organization named Mosaic? A mosaic creates a single picture by combining many tiles of unique shapes and varying colors. Mosaic is formed by numerous individuals, each with unique gifts and contributions, coming together to create a single ministry. Mosaic works in the lives of people with disabilities so they may access the supports and advocacy they need to experience open doors leading to extraordinary lives.⁶³

⁶² Applicant’s brief, 44 TTABVUE 44.

⁶³ Renee Coughlin declaration ¶ 17, 38 TTABVUE 24.

In like manner, Opposer brings together numerous entries and articles about style, art, entertainment, and culture on one website platform.⁶⁴ In that sense, the parties' marks, unlike those in *Coach Services*, engender a similar commercial impression of resembling a mosaic. The parties' services may be markedly different (a matter we discuss under the next *DuPont* factor), but their marks are not.

The first *DuPont* factor thus weighs heavily in favor of finding a likelihood of confusion.

2. Comparing the Services

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...,” *DuPont*, 476 F.2d at 1361. This factor “considers whether the consuming public may perceive the respective ... services of the parties as related enough to cause confusion about the source or origin of the goods and services.” *Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024) (citing *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014)).

Opposer RLP contends that “Opposer’s Services and Applicant’s Services are identical in part, inasmuch as both include ‘providing vocational training’ in Class 41.”⁶⁵ As we have noted, however, Opposer has not proven use, let alone prior use, of its MOSAEC mark in connection with vocational training services. Consequently, as Applicant correctly states, “the review of this factor should be limited to Opposer’s Services (that is, the services listed in Opposer’s registration) because Opposer has

⁶⁴ Mosaec.com 12/29/2024, Applicant’s NOR, 39 TTABVUE 73.

⁶⁵ Opposer’s main brief, 43 TTABVUE 21.

failed to prove common law priority outside of its registration.”⁶⁶ We thus make our determination based on the services as they are recited in the respective Registration and Application. *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014); *Advance Magazine Publishers, Inc. v. Fashion Elecs., Inc.*, 2023 WL 4261426, *15 (TTAB 2023).

Again, Opposer’s pleaded registration recites the following services:

Entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; Entertainment services, namely, providing on-line reviews of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, and dance; Providing a website featuring entertainment information in the field(s) of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, and news; Providing information, news and commentary in the field of entertainment; Providing information, news and commentary in the field of recreation and leisure activities; Provision of information relating to children’s entertainment.⁶⁷

Applicant’s Application recites “charitable services, namely, providing vocational training in the field of job responsibilities and finding employment for disabled individuals.”

As Applicant correctly observes:

Opposer’s Services (in its pleaded registration) are clearly distinct from Applicant’s Services. Opposer’s Services each relate to “entertainment”—largely the provision of a website featuring entertainment news, with some indication of “recreation and leisure activities.” ...

⁶⁶ Applicant’s brief, 44 TTABVUE 44-45.

⁶⁷ Reg. No. 5409856, pleaded in Notice of Opposition ¶ 6, 1 TTABVUE 4. In its main brief, Opposer cites other registrations, 43 TTABVUE 10-11, but these are unpleaded, and have not been tried by implied consent, *see* Applicant’s brief, 44 TTABVUE 20 n.3, so they are given no consideration. *See generally Herbaceuticals, Inc. v. Xel Herbaceuticals, Inc.*, 2008 WL 618623, *3 n. 4 (TTAB 2008) (plaintiff may not use an unpleaded registration as the basis for an opposition); *Heil v. Tripleye*, 2024 WL 4925901, at *6 (no implied consent).

Applicant's Services, on the other hand, involve providing charitable vocational training services to disabled individuals. A website or entertainment news is very different from vocational training for the disabled.⁶⁸

Applicant concludes: "Opposer's Services are neither charitable, targeted toward 'disabled individuals,' nor involve 'vocational training in the field of job responsibilities and finding employment.'" ⁶⁹

We agree. Nothing in the respective recitations of services suggests they are related. Moreover, Opposer RLP has produced no persuasive evidence sufficient to show similarity of the parties' disparate services—no evidence that any other company provides both parties' services under the same mark; no use-based third-party registrations of the same mark for both parties' services; no news articles showing the respective services used together—in short, nothing sufficient to prove its bald assertion that the services are in any way similar. *See In re Ox Paperboard, LLC*, 2020 WL 4530517, *6 (TTAB 2020) (listing types of evidence relevant to show similarity of services).

In its Notice of Opposition, Opposer pleaded that, "to the extent that Applicant's and Opposer's services do not already overlap, Applicant's Services are within Opposer's zone of natural expansion."⁷⁰ Its main brief, however, omits any mention of this doctrine. Applicant points out that "Opposer makes no reference to the zone of natural expansion in its trial brief and, thus, any arguments it could make on that

⁶⁸ Applicant's brief, 44 TTABVUE 45.

⁶⁹ Applicant's brief, 44 TTABVUE 22.

⁷⁰ Notice of Opposition ¶ 11, 1 TTABVUE 5.

point—especially to give it priority of use—are waived.”⁷¹ *Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger & Co.*, 2013 WL 5655834, *1 n. 3 (TTAB 2013) (“We deem waived the additional grounds for opposition that opposer pled but did not argue in its brief.”). Applicant, nevertheless, goes on to address the merits of the doctrine at length,⁷² and Opposer responds in its reply brief, arguing that vocational training is within its zone of natural expansion.⁷³ But a reply brief “must be confined to rebutting the defendant’s main brief. In other words, the reply brief shall be limited to the key points in defendant’s brief which plaintiff believes require clarification or response, and should not be used as an opportunity to argue plaintiff’s case in chief.” TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 801.03, *quoted in Major League Baseball Players Ass’n. and Judge v. Chisena*, 2023 WL 2986321, *27 (TTAB 2023), *appeal docketed*, No. 23-2073 (Fed. Cir. June 26, 2023).

Opposer’s attempt to resurrect its zone of natural expansion argument in its reply brief is too little, too late—too late because it should have raised the argument in its main brief, and too little because it fails to show that vocational training is in its zone of natural expansion.

In view of Applicant’s treatment of the subject, and for the sake of completeness, we address the doctrine briefly. We agree with Applicant that Opposer cannot rely on this doctrine because: (1) vocational training is a distinct departure from Opposer’s area of business—maintaining a website oriented toward entertainment

⁷¹ Applicant’s brief, 44 TTABVUE 35.

⁷² *Id.*, 44 TTABVUE 35-40.

⁷³ Opposer’s reply brief, 45 TTABVUE 7, 8, 11, 13.

and leisure; (2) the purposes of the parties' services are manifestly different—Applicant's to provide charitable vocational services to the disabled, Opposer's to provide entertainment to website visitors; (3) as will be seen, the channels of trade and classes of customers diverge significantly; and (4) Opposer has not demonstrated other companies' expansion from its area of online entertainment into charitable vocational training for the disabled. *Mason Eng'g. and Design Corp. v. Mateson Chemical Corp.*, 1985 WL 72027, *6 (TTAB 1985).⁷⁴ See generally *Dollar Fin. v. Brittex*, 132 F.4th at 1369-70; *Orange Bang, Inc. v. Ole Mexican Foods, Inc.*, 2015 WL 5675641, *19 (TTAB 2015).

Opposer claims to have begun providing its services in 1999; Applicant in 2003. Yet as we have found, Opposer has never proven that it has ever provided “vocational training” services, much less by 2003. “[A] trademark owner cannot by the normal expansion of its business extend the use or registration of its mark to distinctly different goods or services not comprehended by its previous use or registration where the result could be a conflict with valuable intervening rights established by another

⁷⁴ Opposer attempts to liken itself to LinkedIn, which owns three registrations: the first essentially for creating an online community for social, business and community networking; the second for seminars, workshops, and conferences and exhibitions featuring instructional presentations in the fields of personal development, career development, relationship building and social networking; the third for on-line training courses, seminars and workshops in fields such as business, leadership, management, marketing, recruiting, career and personal development. Opposer's reply brief, 45 TTABVUE 8; Opposer's NOR, Exs. U, V, W, 42 TTABVUE 208-249.

As Applicant points out however, the comparison is inapt. LinkedIn's registrations center on its core mission of promoting professional development and networking. Opposer has not shown that its services, primarily centering on entertainment, are the same as LinkedIn's, nor has it shown examples of companies expanding from an entertainment website to providing charitable vocational training to disabled individuals. Applicant's brief, 44 TTABVUE 39.

through extensive use and/or registration of the same or similar mark for like or similar goods or services” *Am. Stock Exch., Inc. v. Am. Express Co.*, 1980 WL 30139, *9 (TTAB 1980). For all the more reason, Opposer cannot expand its recited services into Applicant’s distinctly different services. Opposer’s reliance on the doctrine of natural expansion is unavailing.

In sum, we find that Opposer RLP has failed to carry its burden of proving that its services are related to Applicant’s. The second *DuPont* factor weighs heavily against finding a likelihood of confusion. See *In re OSF Healthcare Sys.*, 2023 WL 6140427, *17 (TTAB 2023) (where evidence of record was insufficient to show that applicant’s services were related to the registrant’s services, “we conclude that confusion is unlikely as to the services in those classes notwithstanding the identity of the marks”); *Calypso Tech., Inc. v. Calypso Cap. Mgmt., LP*, 2011 WL 4090446, *10 (TTAB 2011) (“Essentially plaintiff would have us find confusion simply because of the similarity of the marks. But this is not a sufficient basis for doing so.”; dismissing opposition based on dissimilarity of the services and sophistication of consumers).

3. Comparing Channels of Trade and Classes of Consumers

The third *DuPont* factor concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361.

Opposer RLP argues that, “[w]here, as here, Opposer’s Services and Applicant’s Services are legally identical, the Board is entitled to presume that the channels of trade and classes of consumers are also identical.”⁷⁵ That argument would hold true if the parties’ services were in fact legally identical, one encompassing the other.

⁷⁵ Opposer’s main brief, 43 TTABVUE 22.

Nazon v. Ghiorse, 2016 WL 3876810, *9 (TTAB 2016). But Opposer’s claim of legal identity is predicated on its assertion that it provides vocational training services—an assertion that was unproven and ultimately rejected. We therefore may not rely on the concomitant legal presumption that the services would flow through the same trade channels to the same classes of customers. *Id.*

Rather, we must evaluate the third *DuPont* factor with an eye toward the services recited in the Application and Registration. *In re Detroit Ath. Co.*, 903 F.3d 1297, 1308 (Fed. Cir. 2018). Those services would, by their very nature, attract different classes of customers in different ways. The Application recites (1) charitable (2) vocational services (3) for the disabled. The class of customers is the disabled, or, more likely, their relatives or caretakers, who would apply to Applicant for the vocational services.⁷⁶

Opposer’s class of customers would be online visitors seeking entertainment or information on its website. The mere fact that both parties have websites advertising or offering their services is not a sufficient basis to find overlapping trade channels. *Shenzhen v. Fancy Pants*, 2022 WL 16646840, at *24 (citing *Parfums De Coeur, Ltd. v. Lazarus*, 2007 WL 683784, *10 (TTAB 2007)) (“the mere fact that goods and services may both be advertised and offered through the Internet is not a sufficient basis to find that they are sold through the same channels of trade. The Internet is such a pervasive medium that virtually everything is advertised and sold through the Internet.”).

⁷⁶ Coughlin decl. ¶ 23, 38 TTABVUE 28.

In short, there is no evidence in the record sufficient to establish that the parties' classes of customers or trade channels overlap in a way that suggests their services emanate from a common source. We therefore "see no relationship, no connection, no possibility of intersecting purchasing publics, channels of trade, or reputations symbolized by the marks. They are used, and described in the registration and application, in two entirely separate fields of endeavor. ... The gulf between [them] is much too wide to be bridged, even by the marks here involved, on the basis of the record made by opposer." *Pneutek, Inc. v. Scherr*, 1981 WL 40499, *7 (TTAB 1981). The third *DuPont* factor thus weighs heavily against a likelihood of confusion. *See In re HerbalScience Grp.*, 2010 WL 5651672, *4 (TTAB 2010) ("Because of the differences in the channels of trade and customers for applicant's and the registrant's [services], there is virtually no opportunity for confusion to arise.").

4. Consumers' Care and Sophistication

The fourth *DuPont* factor concerns the "conditions under which and buyers to whom sales are made, i. e. 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361. Our findings as to the parties' classes of consumers informs our determination here.

Applicant's Senior Vice President testifies about the classes of consumers who would contemplate engaging its services: "The individuals deciding whether to use Mosaic, or another service provider, for the Services are careful decision-makers. They are often the caretaker or guardian or relative for a person with intellectual

and/or developmental disabilities and are seeking a provider who can help their loved one obtain independence through job skills, vocational training, and the like.”⁷⁷

We understand that these individuals would vary in sophistication from knowledgeable caretakers to unsophisticated relatives. But given the nature of Applicant’s services—providing intensive, long-term training and employment to the disabled—even the least sophisticated of these decisionmakers would likely exercise great care and deliberation in seeking the best environment for the disabled person. In the *Primrose Retirement* case, where family members chose senior living communities for their loved ones, the Board found that “even in the case of the least sophisticated purchaser, a decision as important as choosing a senior living community will be made with some thought and research, even when made hastily. Accordingly, we find that this *du Pont* factor weighs in favor of finding no likelihood of confusion.” *Primrose Retirement Communities, LLC v. Edward Rose Senior Living, LLC*, 2016 WL 7655551, *12 (TTAB 2016). So too here. As Applicant states, “[t]he importance of this decision—who will provide this specialized care and training to often vulnerable individuals—informs the deliberate and vigilant decision-making by our customers/partners.”⁷⁸

The fourth *DuPont* factor thus weighs against a finding of likelihood of confusion.

5. Strength or Weakness of Opposer’s Mark

“Two of the *DuPont* factors (the fifth and sixth) consider strength.” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023). The fifth *DuPont* factor enables

⁷⁷ Coughlin decl. ¶ 24, 38 TTABVUE 28.

⁷⁸ *Id.*

Opposer to prove that its pleaded mark is entitled to an expanded scope of protection by adducing evidence of “[t]he fame of the prior mark (sales, advertising, length of use),” whereas the sixth *DuPont* factor allows Applicant to contract that scope of protection by adducing evidence of “[t]he number and nature of similar marks in use on similar goods [or services].” *DuPont*, 476 F.2d at 1361.

In determining strength of a mark, we consider its inherent strength, based on the nature of the mark itself, and its commercial strength or recognition. *In re Chippendales USA Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength”); 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:80 (5th ed. Sept. 2025) (“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.”). Likelihood of confusion strength is not “an all-or-nothing measure.” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 1325 (Fed. Cir. 2017). It “varies along a spectrum from very strong to very weak.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1375 (Fed. Cir. 2005). The burden of establishing the strength of its mark falls on Opposer. *Spireon v. Flex*, 71 F.4th at 1365.

Commercial strength “may be measured not only directly by consumer surveys or declarations but also indirectly by the volume of sales and advertising expenditures in connection with the goods or services sold under the mark, and supported by other

indicia such as length of time of use of the mark; widespread critical assessments; notice by independent sources of the goods or services identified by the marks; the general reputation of the goods or services; and social media presence.” *Heil v. Tripleye*, 2024 WL 4925901, at *19.

Opposer asserts that:

Since the adoption of Opposer’s Mark, the MOSAEC platform has been used and accessed by a notable number of users. For example, since 2008, there have been over 948,000 YouTube views of videos incorporating the MOSAEC brand in connection with Opposer’s services. Since 2009, there have been as high as 142,000 likes recorded in connection with the Facebook presence associated with the MOSAEC platform. On Twitter (now “X”), since 2009, the MOSAEC platform’s page has garnered as high as 8,900 followers - including film studios, television studios, public relation agencies, talent and crewmembers. Branded tweets have been retweeted by Tribeca Film Festival, which at the time had over 204,000 followers, tweeted by Michael Skolnik (@MichaelSkolnik), who, at the time, had over 269,000 followers and retweeted by Brad Gilbert (@bgtennisnation), who, at the time, had over 139,000 followers. The LinkedIn presence for the MOSAEC platform has been in existence since 2009 and an Instagram presence has been in existence since 2015.⁷⁹


The documentation supporting these figures is somewhat sketchy, consisting mainly of a demographic breakdown of viewers and followers.⁸⁰ Even if we take Opposer’s figures at face value, though, we lack any context from which we could reasonably infer the mark’s public recognition. “Raw numbers alone may be misleading, however. Thus, some context in which to place raw statistics may be helpful....” *Made in Nature, LLC v. Pharmavite LLC*, 2022 WL 2188890, *16 (TTAB 2022); *see also Keystone Consolidated Indus., Inc. v. the Franklin Investment Corp.*, 2024 WL 3771168, *16 (TTAB 2024) (lack of sufficient evidence as to how plaintiff’s

⁷⁹ Opposer’s main brief, 43 TTABVUE 10.

⁸⁰ Opposer’s exs. P-R, 41 TTABVUE 197-240 (confidential).

sales numbers compare to others’). That context is missing. As Applicant notes, “Opposer cites to YouTube numbers, but does not specify what the purported users were viewing. Of course, there is no clear connection to MOSAEC or ‘vocational training’ from these videos or social media posts. Opposer refused to provide any sales figures or data relevant to this factor in response to discovery.”⁸¹

To show the weakness of Opposer’s mark, Applicant cites eight third-party registrations consisting of or containing the word “MOSAIC”:

Mark	Goods/Services	Registration No.
MOSAIC	Recreational services in the nature of providing community parks located within a mixed-use development in Merrifield, Virginia, containing retail, commercial, and residential property space	5186688
MOSAIC	Providing recognition and incentives by way of awards to demonstrate excellence in the field of multiculturalism and diversity	2845489
MOSAIC	Life coaching services in the field of overall wellness, well-being, health, medicine, health improvement and life improvement	5643974
	Organization of community-related cultural events, namely, dance performances and musical performances for cultural purposes	6074160
MOSAIC	entertainment services, namely film, video and television production	2793518
MOSAIC	Planning, managing, and conducting social events	2359354
MOSAIC PRESENCE	Education services, namely, providing training in the field of software development	5060431
THE MOSAIC PROJECT	Education and training services, namely, providing courses of instruction, seminars, classes and programs for communities, businesses, and schools at the primary and secondary levels, that focus on the issues of violence, racism, teasing, stereotypes, and the elimination of all forms of social oppression, and distributing course materials in connection therewith	3805621

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⁸¹ Applicant’s brief, 44 TTABVUE 50.

⁸² Applicant’s brief, 44 TTABVUE 51, with USPTO records of the third-party registrations, 39 TTABVUE 23-50.

Even though these third-party registrations use **Applicant’s** term, MOSAIC, Applicant contends, quoting *Juice Generation, Inc. v. GS Enterprises LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015), that “sufficient evidence of third-party use of similar marks can show that customers have been educated to distinguish between different marks on the basis of minute distinctions.”⁸³ The “minute distinction” in this case would be Opposer’s substitution of an “E” for an “I” in MOSAEC.

These third-party registrations, however, do not demonstrate the commercial weakness of Opposer’s mark, for two reasons. First, Applicant does not show the extent of use of the third-party marks in the marketplace. *Palm Bay*, 396 F.3d at 1373 (where the “record includes no evidence about the extent of [third-party] uses ... [t]he probative value of this evidence is thus minimal.”). And second, the services recited in the registrations are at best tangential to those recited in Opposer’s Registration. *Omaha Steaks v. Greater Omaha Packing*, 908 F.3d at 1324-26 (citing *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992) (the “relevant *du Pont* inquiry is the number and nature of similar marks in use on similar goods [or services].”). Consequently, the third-party registrations do not “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.” *Palm Bay*, 396 F.3d at 1324 (cleaned up).

Nonetheless, third-party registrations can serve the more limited purpose of showing that Opposer’s mark has a commonly understood suggestive connotation,

⁸³ Applicant’s brief, 44 TTABVue 50.

and is therefore conceptually weaker than an arbitrary or fanciful mark. *Spireon*, 71 F.4th at 1363. Conceptually, we must presume the MOSAEC mark is inherently distinctive--at least suggestive--because it is registered on the Principal Register without a claim of acquired distinctiveness. 15 U.S.C. § 1057(b); *In re Fat Boys Water Sports LLC*, 2016 WL 3915986, *8 (TTAB 2016). We also found that Opposer, like Applicant, uses its mark in the suggestive sense of bringing disparate elements together to form a unified whole. Consequently, Applicant's third-party registration evidence simply corroborates the suggestive nature of Opposer's mark. And a suggestive mark, though weaker than an arbitrary or fanciful one, still merits protection. *Maytag Co. v. Luskin's, Inc.*, 1986 WL 83638, *3 (TTAB 1986) ("there is nothing in our trademark law which prescribes any different protection for suggestive, nondescriptive marks than that which is accorded arbitrary and fanciful marks").

Opposer's mark is thus entitled to the normal scope of protection afforded inherently distinctive marks. *Sabhnani v. Mirage Brands, LLC*, 2021 WL 6072822, *13 (TTAB 2021). The fifth and sixth *DuPont* factors are neutral.⁸⁴

6. Contemporaneous use of the Marks without evidence of Actual Confusion

Opposer contends that "[t]he confusingly similar marks are likely to result in

⁸⁴ In its briefs, Opposer contends for the first time that its mark is famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and that registration of Applicant's mark would dilute its fame. Opposer's main brief, 43 TTABVUE 24. This claim is not only unpleaded, it is unproven, as Opposer has not demonstrated any particular measure of conceptual or commercial strength under Section 2(d), let alone Section 43(c). *Coach Servs.*, 668 F.3d at 1373 ("Fame for likelihood of confusion and fame for dilution are distinct concepts, and dilution fame requires a more stringent showing.").

actual confusion for the same class of consumers in the identical or overlapping channels of trade.”⁸⁵ Yet as Applicant points out, “there has been no actual confusion between the two entities/marks for over twenty (20) years.”⁸⁶

This point relates to the eighth *DuPont* factor, which considers “the length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont*, 476 F.2d at 1361. This factor requires us to look at actual market conditions, to the extent there is evidence of such conditions in the record. *In re Embiid*, 2021 WL 2285576, *19 (TTAB 2021). “Accordingly, we must look to the parties’ actual activities in the marketplace to determine whether there has been a reasonable opportunity for confusion to have occurred.” *Sabhnani v. Mirage Brands*, 2021 WL 6072822, *25 (internal citation omitted). This includes consideration of their length of contemporaneous use in the same markets *See Monster Energy Co. v. Lo*, 2023 WL 417620, *18 (TTAB 2023).

In this case, Applicant has used its mark in connection with vocational services for the disabled since 2003.⁸⁷ It offers its services in twelve states, and has recently expanded into the Northeast portion of the United States.⁸⁸ It has maintained its website, MosaicInfo.org, since March 2003.⁸⁹ Opposer claims to have provided vocational training, in addition to its online services, offered via its website,

⁸⁵ Opposer’s main brief, 43 TTABVUE 24.

⁸⁶ Applicant’s brief, 44 TTABVUE 52.

⁸⁷ Hoffman decl. ¶ 8, 38 TTABVUE 3; Coughlin decl. ¶ 10, 38 TTABVUE 21.

⁸⁸ Hoffman decl. ¶ 12, 38 TTABVUE 4.

⁸⁹ Coughlin decl. ¶ 36, 38 TTABVUE 32.

Mosaec.com, since at least as early as 1999.⁹⁰ Opposer even asserts that it has provided its services in Nebraska, where Applicant is headquartered.⁹¹ Yet it admits, in answer to Applicant's interrogatory, that it does not know of a single instance of actual confusion.⁹² Applicant points this out in its brief,⁹³ and Opposer does not respond to this analysis.

We acknowledge that the standard is likelihood of confusion, not actual confusion. *E.g., Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018). But the evidence here, demonstrating contemporaneous use of the parties' services for over twenty years, with some geographic overlap, weighs against a likelihood of confusion. *In re Guild Mortg. Co.*, 912 F.3d 1376, 1381 (Fed. Cir. 2019) (sixteen years' of contemporaneous use without creating confusion). We attribute the lack of actual confusion not to differences in the parties' marks, as they are quite similar, but to the differences in their services. Opposer never proved that it provided vocational training, and never proved that its Class 41 services were similar to Applicant's. The respective services are, at bottom, in two entirely separate fields of endeavor. It is therefore unsurprising that there is no evidence of actual confusion.

For these reasons, the eighth *DuPont* factor weighs against a likelihood of confusion.

⁹⁰ Ramona Prioleau decl. ¶ 13, 35 TTABVUE 3-4.

⁹¹ Opposer's main brief, 43 TTABVUE 7; Coughlin decl. ¶ 6, 38 TTABVUE 20.

⁹² Opposer's ans. To int. No. 11, 39 TTABVUE 17-18.

⁹³ Applicant's brief, 44 TTABVUE 52-53.

7. The Extent of Potential Confusion—Whether de minimis or substantial

Under the twelfth *DuPont* factor, “[t]he extent of potential confusion, i.e., whether de minimis or substantial.” *DuPont*, 476 F.2d at 1361, Applicant argues that “[i]t is highly unlikely that any confusion will occur—as evidenced by the length of time without any actual confusion. And, if any confusion does occur, it is likely to be de minimis. The type of evidence applicable to this factor includes whether the [services] are the type that would be marketed to and purchased by a significant number of purchasers or the technical nature of the [services] and the limited number of potential purchasers.”⁹⁴

We agree. “Section 2(d) of the Trademark Act is concerned about the likelihood of confusion, not some theoretical possibility built on a series of imagined horrors.” *Electronic Data Systems Corp. v. EDSA Micro Corp.*, 1992 WL 184671, *6 (TTAB 1992). Applicant’s consuming public—caretakers and relatives seeking vocational training for the disabled under their care—are highly unlikely to seek vocational training services from Opposer’s website. And visitors to Opposer’s website are highly unlikely to believe they can use it to obtain vocational training for the disabled.

As the Board has declared:

Opposer has the burden of proof and must establish its likelihood of confusion claim by a preponderance of the evidence, and we see Opposer’s likelihood of confusion claim as amounting to only a speculative, theoretical possibility. Language by our primary reviewing court is helpful in resolving the likelihood of confusion issue in this case:

We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis

⁹⁴ Applicant’s brief, 44 TTABVue 53.

situations but with the practicalities of the commercial world, with which the trademark laws deal.

Elec. Design & Sales Inc. v. Elec. Data Sys. Corp., 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), *citing* *Witco Chem. Co. v. Whitfield Chem. Co., Inc.*, 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g* 153 USPQ 412 (TTAB 1967).

Primrose Ret. Comtys., 2016 WL 7655551, at *12-13.

The extent of potential confusion here is de minimis, and the twelfth *DuPont* factor weighs against a likelihood of confusion.

8. Any other established fact probative of the effect of use

The thirteenth *DuPont* factor, “any other established fact probative of the effect of use,” accommodates the need for flexibility in assessing each unique set of facts, *Embiid*, 2021 WL 2285576, at *20, such as cases where the applicant intentionally seeks to trade on the plaintiff’s goodwill or reputation. *Look Cycle Int’l v. Kunshan Qiyue Outdoor Sports Goods Co., Ltd.*, 2024 WL 3739358, *10 (TTAB 2024).

Applicant seeks to turn this factor against Opposer, submitting that “the Board should consider Opposer’s frequently changing stories before this body. Specifically, Opposer has filed similar declarations from the same people to try to oppose trademark applications in varied areas—such as ‘journalism awards.’ See *RLP Ventures, LLC v. Heising-Simons Fnd.*, No. 91246949, 2024 WL 5010874, at *7 (Dec. 5, 2024).”⁹⁵

In that case, as with the one before us, Opposer attempted to stretch its services far beyond their actual bounds. And there, as here, the Board rejected that attempt, finding “Ms. Prioleau’s declaration is utterly lacking in any detail concerning the

⁹⁵ Applicant’s brief, 44 TTABVUE 54.

purported use of RLP's mark in connection with journalism awards." *Id.* at *7. Opposer's shape-shifting portrayal of its services is undeniably eyebrow-raising, and does reflect on its declarants' credibility. But since we have already found that its services differ greatly from Applicant's, we need not rely on the thirteenth *DuPont* factor to determine whether Opposer has proven a likelihood of confusion.⁹⁶

The thirteenth *DuPont* factor is neutral.

IV. Conclusion

Weighing the various factors, we find that:

- The parties' marks are very similar;
- The parties recited services are very different;
- The parties' channels of trade and classes of customers do not overlap;
- Applicant's consumers would exercise great care in engaging Applicant's services;
- The parties' marks have been in concurrent use for over twenty years with no evidence of actual confusion;
- The extent of potential confusion is de minimis; and
- All other factors are neutral.

⁹⁶ In its brief, Applicant also brings to our attention its Principal Register Registration No. 3984257 for MOREHOUSE & Design, issued on July 20, 2010 for, among other services, "vocational training in the field of providing employment training assistance to disabled individuals." 44 TTABVUE 54-55. Given the outcome of this opinion, we find it unnecessary to rely on this registration, which was not pleaded as the basis of an affirmative defense, nor tried by implied consent. *See Morehouse Mfg. Corp. v. J. Strickland & Co.*, 407 F.2d 881 (CCPA 1969).

A single *DuPont* factor may be dispositive. *Kellogg v. Pack'em*, 951 F.2d at 333. In the present case, the factor of the dissimilarity of the services outweighs the similarity of the marks, and the remaining factors either weigh against a likelihood of confusion or are neutral. On balance, we find that Opposer has failed to satisfy its burden to show, by a preponderance of the evidence, that confusion as to source is likely.

Decision: The opposition to registration of Applicant's MOSAIC mark in Class 41 is dismissed. The Application will proceed as to all of its recited services.