

This Opinion is not a
Precedent of the TTAB

Mailed: March 12, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re J&J Property Company, LLC
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Serial No. 97175429
—

Sherrie M. Flynn of Coleman & Horowitz, LLP
for J&J Property Company, LLC.

Kapil Bhanot, Trademark Examining Attorney, Law Office 108
Kathryn Coward, Managing Attorney.

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NOTICE OF CORRECTION

By the Board:

On February 29, 2024 the Board issued a decision (“the Decision”) in an ex parte appeal reversing the Trademark Examining Attorney’s Section 2(d) refusal to register Applicant J&J Property Company, LLC’s application for registration on the Principal Register of the mark HOLLYWOOD CENTRAL MARKET (in standard characters) for

Real estate management; real estate management of a mixed-use center featuring retail shopping, restaurants, hotel, theater, and entertainment; shopping center services, namely, the leasing of real estate space featuring commercial, retail,

entertainment, dining, educational, hotel, residential, commercial offices, and mixed use facilities in International Class 36; and

Mixed-use real estate development; Construction and construction management services, namely, development, planning and construction of real estate featuring commercial, retail, theater, entertainment, dining, educational, hotel, residential, commercial offices, and mixed use facilities in International Class 37.¹

The order contained typographical errors that must be corrected. The Board hereby issues the following corrections to the Decision:

1. On page 2 line 6 “same Registrant, both for International Class 36” is corrected to read: “same Registrant, both for International Class 37.”
2. On page 4 line 14 “We therefore refer to Registration No. 6687325 and as the” is corrected to read: “We therefore refer to Registration No. 6687325 as the.”
3. On page 8 line 22 “purchasers of real estate exercise significant care and 19 perform” is corrected to read: “purchasers of real estate exercise significant care and perform.”
4. On page 16 line 2 the double quotation “anti-dissection rule” is corrected to reflect ‘anti-dissection rule.’”
5. On page 22 line 10 “USPQ2d 1900, 1903 (TTAB 1986)” is corrected to “USPQ2d at 1903.”

These corrections are non-substantive and do not affect the Decision. A copy of the corrected Decision is attached.

¹ Application Serial No. 97175429 was filed on December 16, 2021 based upon Applicant’s assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

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Before Shaw, Goodman and Dunn,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

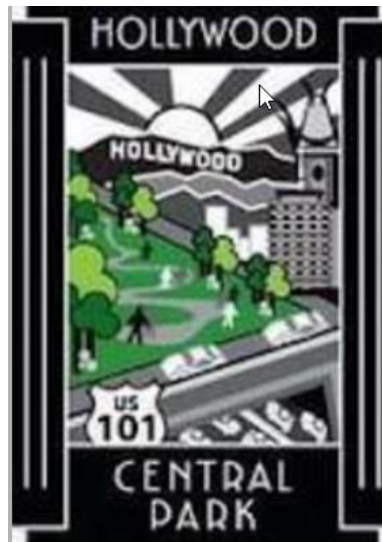
J&J Property Company, LLC (“Applicant”) seeks registration on the Principal Register of the mark HOLLYWOOD CENTRAL MARKET (in standard characters HOLLYWOOD and MARKET disclaimed) for the following services:

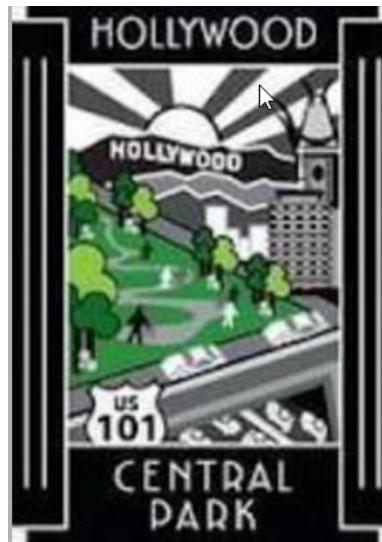
Real estate management; real estate management of a mixed-use center featuring retail shopping, restaurants, hotel, theater, and entertainment; shopping center services, namely, the leasing of real estate space featuring commercial, retail, entertainment, dining, educational, hotel, residential, commercial offices, and mixed use facilities in International Class 36; and

Mixed-use real estate development; Construction and construction management services, namely, development, planning and construction of real estate featuring

commercial, retail, theater, entertainment, dining, educational, hotel, residential, commercial offices, and mixed use facilities in International Class 37.²

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the following Principal Register marks, owned by the same Registrant, both for International Class 37 "Real estate development services":



HOLLYWOOD CENTRAL PARK³ and ⁴ (both marks disclaiming HOLLYWOOD and PARK).

² Application Serial No. 97175429 was filed on December 16, 2021 based upon Applicant's assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The application included services in several other International Classes (35, 36, 37, 41 and 43), but those were transferred to a separate application (Serial No. 97975771) after Applicant filed a Request to Divide.

Page references to the application record refer to the online database pages of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. Applicant's brief is at 8 TTABVUE. The Examining Attorney's brief is at 10 TTABVUE.

³ Registration No. 6687325, issued March 29, 2022.

⁴ Registration No. 6687326, issued March 29, 2022. The mark includes the following description:

The mark consists of a stylized black frame outlined in white with the wording "HOLLYWOOD" in white at the top of the frame, 2 vertical white lines on the left and right sides of the frame, and the wording "CENTRAL PARK" in white at the bottom of

When the refusal was made final, Applicant appealed and requested remand for consideration of additional evidence. The remand was granted, but the Examining Attorney maintained the refusal. The appeal was resumed.

We reverse the refusal to register.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, or to cause mistake, or to deceive. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by

the frame; inside the frame is a stylized portrait of the sun setting in white and gray behind hills in black, gray, and white with the wording “HOLLYWOOD” in white at the top of the hills, which are behind a skyline of white and black and gray buildings to the right of a gray road outlined in black and a park with green grass, green and light green trees with black trunks, white shrubs, a gray path, and black, white, and gray silhouettes of people, all of which are behind a gray freeway outlined in black with white medians and white cars with a white street sign with the wording “US 101” in black in the foreground. All other instances of white represent transparent background. The color(s) white, gray, black, green and light green is/are claimed as a feature of the mark.

§ 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors, and others, are discussed below.

For purposes of our likelihood of confusion analysis, we focus on Registration No. 6687325 for the mark HOLLYWOOD CENTRAL PARK in standard characters as it is closest to Applicant’s mark, given the identity of the cited marks’ services. If confusion is likely with this mark, there is no need for us to consider likelihood of confusion with the other cited HOLLYWOOD CENTRAL PARK word and design mark since a finding of likelihood of confusion between Applicant’s mark and this mark suffices by itself to bar registration of Applicant’s mark under Section 2(d). *See In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010). Conversely, if there is no likelihood of confusion between Applicant’s mark and Registration No. 6687325, then there would be no likelihood of confusion with the other cited word and design mark. We therefore refer to Registration No. 6687325 as the cited registration and cited mark in this decision.

A. Similarity or Dissimilarity of the Services

We first consider the second *DuPont* factor, “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *DuPont*, 177 USPQ at 567. Our comparison is based on the services as identified in Applicant’s application and the cited registration. *See Stone Lion Cap. Partners v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 8 USPQ2d 1944, 1947 (Fed. Cir. 2006)) (In reviewing

the second *DuPont* factor, “we consider the applicant’s goods as set forth in its application, and the opposer’s goods as set forth in its registration.”).

It is sufficient for a finding of likelihood of confusion as to a particular class if relatedness is established for any identified services within that class in the application or cited registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

To recap, Registrant’s services are “Real estate development services.” Applicant’s services are:

Mixed-use real estate development; Construction and construction management services, namely, development, planning and construction of real estate featuring commercial, retail, theater, entertainment, dining, educational, hotel, residential, commercial offices, and mixed-use facilities.

Real estate management; real estate management of a mixed-use center featuring retail shopping, restaurants, hotel, theater, and entertainment; shopping center services, namely, the leasing of real estate space featuring commercial, retail, entertainment, dining, educational, hotel, residential, commercial offices, and mixed-use facilities.

Applicant’s mixed-use real estate development services are encompassed by Registrant’s real estate development services and are legally identical. *See e.g., 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.’”).

The legal identity in part of Applicant’s and Registrant’s Class 37 services supports a finding of relatedness. We also find a relationship between Applicant’s identified Class 36 “real estate management services,” and Registrant’s Class 37 “real estate development services.” In support of this relatedness, the Examining Attorney

submitted fifteen third-party registrations showing that the same entity has registered a single mark identifying “real estate management” and “real estate development” services. June 16, 2023 Denial of reconsideration at TSDR 2-16.

These third-party registrations have some probative value to the extent they may serve to suggest that such services are of a type which emanate from the same source. *See In re Albert Trostel Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, n.6 (TTAB 1988). *See also In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *5 (TTAB 2020) (citing *In re Davia*, 110 USPQ2d 1810, 1817 (TTAB 2014) (copies of prior use-based registrations of the same mark for both Applicant’s services and the services listed in the cited registration may be evidence of relatedness)).

The Examining Attorney provided some internet website evidence showing companies that offer real estate development and property management services under the same mark.⁵ June 16, 2023 Denial of reconsideration at TSDR 17-21. This type of internet evidence may be probative of relatedness. *See Made in Nature, LLC v. Pharmavite, LLC*, 2022 USPQ2d 557, at *46 (TTAB 2022) (third-party websites promoting sale of both parties’ goods showed relatedness); *In re Embiid*, 2021 USPQ2d 577, at *28-29 (TTAB 2021) (evidence of third-parties offering goods of both applicant and registrant pertinent to relatedness of the goods); *In re C.H. Hanson*

⁵ Some of the internet website evidence offered by the Examining Attorney is not probative as it does not appear to show companies offering both real estate development and real estate management services. September 23, 2022 Office action at TSDR 4-7; June 26, 2023 Office action at TSDR 17.

Co., 116 USPQ2d 1351, 1355-56 (TTAB 2015) (relatedness found where internet evidence demonstrated goods commonly emanated from the same source under a single mark).

We find some of the Examining Attorney's internet evidence is relevant to the relatedness of Applicant's "real estate management" and Registrant's "real estate development" services as it shows companies offering services of the same type as those offered by Applicant and Registrant under the same mark or trade name.

In view of the third-party registrations and third-party website evidence, we find that Applicant's "real estate management services" are related to Registrant's "real estate development services."

In view of the foregoing, we find the second *DuPont* factor strongly supports a finding of likelihood of confusion.⁶

B. 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. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1695 (Fed. Cir. 2005). Our determination under this *DuPont* factor must be based on the degree of care exercised

⁶ Applicant did not address this factor in its brief.

by the least sophisticated purchasers of the services. *Stone Lion Cap. Partners*, 110 USPQ2d at 1163.

The consumers of Applicant's real estate management services are those who own property and are looking for someone to manage their real property, and the consumers for Applicant's and Registrant's real estate development services are those property owners looking for someone to develop their real estate.

Applicant argues that purchaser sophistication is in its favor because "Registrant's real estate development services are niche and expensive services that are necessarily selected with care by purchasers." 8 TTABVue 19. In particular, Applicant argues:

By their very nature, Applicant and Registrant's real estate development services are niche and expensive services that are necessarily selected with care by purchasers. Purchasers of real estate are more likely to recognize differences between trademarks and are more likely to be especially aware of who they are purchasing from. No matter how unsophisticated, purchasers of real estate either know their specific products' needs (i.e., residential, commercial, or industrial real estate, etc.) or obtain them only after consulting with the seller or other professionals on their specific needs. In any case, purchasers of real estate exercise significant care and perform considerable due diligence before committing themselves to a huge financial investment. Thus, this factor favors the Applicant.

While there is no evidence of record which supports this contention, we accept, based on Applicant's and Registrant's identification of services that the real estate development and management services are not average consumer services and that the purchaser would use more than average care in selecting the services. *See In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at *3 (Fed. Cir. 2023)

(noting the Board’s finding that the identified real estate services are “not average consumer services” and that the purchaser would exercise elevated care due to the nature and cost of real estate services. (citing *Elec. Design & Sales Inc. v. Elec. Data Sys. Corp.*, 954 F.2d 713, 718 (Fed. Cir. 1992)).

We find this *DuPont* factor slightly favors Applicant.

C. Strength or Weakness of Terms in Registrant’s Mark⁷

Applicant argues that HOLLYWOOD and HOLLYWOOD CENTRAL are weak terms and not source identifying and that consumers “will focus on the added words of the respective marks to identify the source” of the services. 8 TTABVUE 15. Applicant maintains that HOLLYWOOD is geographically descriptive and HOLLYWOOD CENTRAL is weak. 8 TTABVUE 15. Applicant submits that “Hollywood is a neighborhood in the central region of Los Angeles, California. The TTAB has often found that the presence of a common geographically suggestive element does not lead to a likelihood of confusion.” 8 TTABVUE 16. As to the term CENTRAL, Applicant argues that CENTRAL is weak because, as defined, “central” is “containing or constituting a center”; “situated at, in, or near the center”; “the central part of the state.”⁸ 8 TTABVUE 16. Applicant submits because HOLLYWOOD

⁷ There is no evidence regarding the cited mark’s commercial or marketplace strength. In an ex parte appeal, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the cited mark in the marketplace. *See, e.g., In re Thomas*, 79 USPQ2d 1021, 1027 n.11 (TTAB 2006) (fame or commercial strength is not normally a factor in ex parte proceedings).

⁸ MERRIAM-WEBSTER DICTIONARY, merriam-webster.com, Request for remand, 4 TTABVUE 32-80.

CENTRAL is weak, the additional terms in each mark: MARKET and PARK make confusion unlikely. 8 TTABVUE 16.

The Examining Attorney argues that even if “Hollywood” and “central” are weak terms, the evidence does not support that HOLLYWOOD CENTRAL is weak. 10 TTABVUE 6.

In connection with evaluating the cited mark’s conceptual strength, we may consider dictionary definitions. *See Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *22 (considering dictionary definitions in connection with conceptual strength).

In addition, active third-party registrations may be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or so commonly used in a particular industry that the public will look to other elements to distinguish the source of the services. *See Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015). *See also Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (“[E]vidence of third-party registrations is relevant to ‘show the sense in which . . . a mark is used in ordinary parlance.’”); *In re Guild Mtg. Co.*, 2020 USPQ2d 10279, at *3 (TTAB 2020) (same); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976) (third-party registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used”).

“The weaker [a Registrant’s] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Juice Generation*, 115 USPQ2d at 1674. *See also Drackett Co. v. H. Kohnstamm & Co.*, 404 F.2d 1399, 160 USPQ 407, 408 (CCPA 1969) (“The scope of protection afforded such highly suggestive marks is necessarily narrow and confusion is not likely to result from the use of two marks carrying the same suggestion as to the use of closely similar goods.”); *Sure-Fit Prods. Co. v. Saltzson Drapery Co.*, 117 USPQ 295, 297 (CCPA 1958) (“Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights.”); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) (“[T]he question of likelihood of confusion is colored by [conceptual] weakness to the extent that only slight differences in the marks may be sufficient to distinguish one from the other.”).

As evidence of the weakness of the disclaimed term HOLLYWOOD in Registrant’s mark, Applicant provided printouts of five third-party registrations from the Trademark Electronic Search System (TESS), one of which was abandoned⁹; two of which referenced the cited marks; and two of which are owned by the same registrant, all of which include the disclaimed term HOLLYWOOD in the marks and all identifying real estate development and related real estate services.¹⁰

⁹ Applicant also provided an abandoned application of a mark that included the term HOLLYWOOD, which is evidence only of the fact that the application was filed. *Interpayment Services Ltd. v. Docters & Thiede*, 66 USPQ2d 1463, 1468 n.6 (TTAB 2003).

¹⁰ During examination, Applicant provided a list of third-party registrations which purportedly included the term HOLLYWOOD to which the Examining Attorney objected. December 6, 2022 Response to Office action at TSDR 2-18. The Examining Attorney advised

Applicant also included information on remand that “Hollywood has 0.005 acres of open space as compared to 0.012 acres of open space within the City of Los Angeles.” June 2, 2023 Request for remand 4 TTABVUE 28-30. HOLLYWOOD is “[a] district of Los Angeles, California, south of the Hollywood Hills, part of the eastern Santa Monica Mountains. It has long been considered the center of the US movie industry.” AMERICAN HERITAGE DICTIONARY.¹¹ *See also* ENCYCLOPEDIA BRITANNICA (HOLLYWOOD is identified as a “district within the city of Los Angeles, California, U.S., whose name is synonymous with the American film industry.”).¹² Registrant’s address shows it is located in Los Angeles, California. Cited Registration, September 23, 2022 Office Action at TSDR 2. *See also* June 2, 2023 Request for Remand, 4 TTABVUE 28-30.

We find that the disclaimed term HOLLYWOOD has conceptual weakness in that HOLLYWOOD is a geographic term referencing a location in Los Angeles, where Registrant is located and the services are rendered. *See In re Hollywood Lawyers Online*, 110 USPQ2d 1852, 1858 (TTAB 2014) (finding HOLLYWOOD in the mark

that the registrations were not of record and that the list would not be considered. January 3, 2023 Office action at TSDR 1. *See e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1405 n.17 (TTAB 2018) (The Board does not take judicial notice of registrations and a list of registrations does not make those registrations of record). Applicant never sought to introduce the third-party registrations in its June 2, 2023 remand. The Examining Attorney re-raised this objection on brief to the extent Applicant was attempting to “re-proffer” the evidence in its brief. To the extent this is the case, we sustain the objection.

¹¹ Ahdictionary.com (accessed February 22, 2024). The Board may take judicial notice of dictionary definitions in print and online format. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

¹² <https://www.britannica.com/place/Hollywood-California> (accessed February 22, 2024). The Board may also take judicial notice of information in encyclopedias. *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 6 USPQ2d 1719, 1721 (Fed. Cir. 1988).

HOLLYWOOD LAWYERS ONLINE had geographic significance where additional elements in the mark did not detract from the geographic significance). *See also Sock It To Me, Inc. v. Aiping Fan*, 2020 USPQ2d 10611, at *10 (TTAB 2020) (the registration’s disclaimer of a term “tacitly admits that the word is not inherently distinctive”). *Cf. Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *22 (considering dictionary definitions in connection with conceptual strength).

As to the term CENTRAL, as shown by the dictionary definition provided by Applicant, this term is at best highly suggestive. In relation to real estate services, CENTRAL suggests that the real estate development services are offered in a central location. *See e.g., Plus Prods. v. Redken Labs. Inc.*, 199 USPQ 111, 116 (TTAB 1978) (“PLUS’ is a dictionary word which denotes something better or an additional quality or quantity and, as such, possesses a highly suggestive significance as applied to most classes of goods.”). We find the term CENTRAL also has conceptual weakness.

As to the disclaimed term PARK in Registrant’s mark, Applicant has provided a dictionary definition: “a piece of ground in or near a city or town kept for ornament and recreation”; “an area maintained in its natural state as a public property.”¹³ This term describes real estate development services in connection with the development of a public space in the nature of a park for ornament and recreation. *See also* June 2, 2023 Request for Remand, 4 TTABVUE 27-30.

¹³ MERRIAM-WEBSTER DICTIONARY merriam-webster.com, Request for remand, 4 TTABVUE 32-80.

We do not have any third-party registrations in the record as to the combined term HOLLYWOOD CENTRAL. However, in view of the dictionary meanings of the terms in relation to the identified services, it is clear that the combination suggests the centralized geographic location of Registrant's services which is highly suggestive and conceptually weak.¹⁴

We also have no third-party registrations in the record of the combined term HOLLYWOOD CENTRAL PARK. But in view of the dictionary meanings of the terms, we find HOLLYWOOD CENTRAL PARK as a whole is highly suggestive and conceptually weak in connection with the identified real estate development services.¹⁵

D. Similarity or Dissimilarity of the Marks

We turn to the first *DuPont* factor which requires us to determine the similarity or dissimilarity of the marks in terms of appearance, sound, connotation, and overall commercial impression. *Palm Bay Imps.*, 73 USPQ2d at 1691. The test under the first *DuPont* factor is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the

¹⁴ We have no evidence as to third-party uses in the marketplace as to the terms HOLLYWOOD or CENTRAL or the combined term HOLLYWOOD CENTRAL in connection with Registrant's identified services. *See e.g., Juice Generation*, 115 USPQ2d 1671, 1673 n.1 (finding twenty-six third-party uses or registrations incorporating the relevant phrase probative of weakness).

¹⁵ We have no evidence in the record as to third-party uses in the marketplace as to HOLLYWOOD CENTRAL PARK.

services offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012).

Our analysis cannot be predicated on dissecting the marks into their various components; the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). *See also In re Charger Ventures LLC*, 2023 USPQ2d 451 at *5 (citations omitted). (“Disclaimer of a word in an application to register a mark has ‘no legal effect on the issue of likelihood of confusion’ because the public is unaware what words have been disclaimed” so “the Board must consider the mark in its entirety.”).

Applicant argues that the marks are different in sight, sound, meaning and commercial impression. 8 TTABVUE 10-11. Applicant submits that the marks in their entireties have different commercial impressions. 8 TTABVUE 14. Applicant asserts that “[e]ven marks that share common elements have been found not confusingly similar where additional elements, like the additional word ‘Market’ in Applicant’s Mark, are distinct from the Cited Mark.” 8 TTABVUE 10.

Applicant argues that “the Examining Attorney’s focus on the words ‘Hollywood Central,’ to the exclusion of the respective endings ‘Market’ and ‘Park,’ is not consideration of the marks in their entirety. By focusing on the shared ‘Hollywood

Central' term in the Non-Final Action and Final Action, the Examining Attorney has, in fact gone afoul of the 'anti-dissection rule.'" 8 TTABVUE 14.

The Examining Attorney argues that the marks are "significantly similar" because the "respective marks contain the identical term HOLLYWOOD CENTRAL." The Examining Attorney argues that the evidence provided by the Applicant as to "central market" and "Central Park" is not probative as they do not directly relate to the identified services. The Examining Attorney acknowledges that "CENTRAL MARKET" and 'CENTRAL PARK' may be different," but asserts that these are not the marks that are being compared. 10 TTABVUE 5.

Applicant's mark is HOLLYWOOD CENTRAL MARKET. Registrant's mark is HOLLYWOOD CENTRAL PARK. Both marks are in standard characters. Neither mark is limited to any particular font style, size, or color. *See Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing Trademark Rule 2.52, 37 C.F.R. § 2.52). Therefore, both marks could be displayed in the same font style, size or color.

Both marks are similar in appearance and sound in that they contain the combined terms HOLLYWOOD CENTRAL. However, they also differ in sound and appearance by the end term in each mark: MARKET and PARK respectively. Although the combined terms HOLLYWOOD CENTRAL may have a similar meaning, we must consider the marks in their entireties.

As to connotation, both Applicant and the Examining Attorney provided dictionary definitions of the various terms in the marks. The Examining Attorney

provided a dictionary definition of “market.”¹⁶ Applicant provided definitions of “park,” “central” and “market.”¹⁷ *See Hancock v. Am. Steel & Wire Co. of N.J.*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) (dictionary definitions considered “to determine the ordinary significance and meanings of words.”); *see e.g., In re Hartz Hotel Servs., Inc.*, 102 USPQ2d 1150, 1152 (TTAB 2012) (considering the dictionary definition of GRAND and finding that “when ‘grand’ is used in connection with ‘hotel,’ the resulting mark GRAND HOTEL indicates an impressive, stately, magnificent or first-rate hotel”). *Cf. Stouffer Corp. v. Health Valley Natural Foods Inc.*, 1 USPQ2d 1900, 1903 n.6 & 1904 (TTAB 1986) (“We have no quarrel with the contention that both the LEAN LIVING and LEAN CUISINE brands generally evoke imagery associated with foods that are healthful because of their limited caloric, low-fat content.”).

¹⁶ Market:

“A public gathering held for buying and selling goods or services”;

“An open space or building where goods or services are offered for sale by multiple sellers”;

“A store or shop that sells agricultural produce.”

AMERICAN HERITAGE DICTIONARY, credoreference.com, September 23, 2022 Office action at TSDR 7.

¹⁷ Park:

“a piece of ground in or near a city or town kept for ornament and recreation”;

“an area maintained in its natural state as a public property.”

Central:

“situated at, in, or near the center”

Market:

“a public place where a market is held”;

“a retail establishment usually of a specified kind.”

MERRIAM-WEBSTER DICTIONARY, merriam-webster.com, Request for remand, 4 TTABVUE 32-80.

As to the combined term CENTRAL MARKET, Applicant provided a webpage for Grand Central Market to illustrate the connotation of a “central market” in connection with a retail establishment providing a “European-style gourmet shopping experience.” As to the combined term CENTRAL PARK, Applicant provided a webpage for Central Park located in New York City, New York, which describes Central Park as a “visual masterpiece created by landscape designer Frederick Law Olmsted and architect Calvert Vaux. its initial purpose as an open-air oasis for a metropolitan city. this national historic landmark is a setting for enjoying many pursuits.” June 2, 2023 Request for remand 4 TTABVUE 24-26.

The Examining Attorney argues that HOLLYWOOD CENTRAL is the first and dominant terms in each mark resulting in confusing similarity, or that because the other terms are disclaimed in each mark, CENTRAL is at least the dominant term. 10 TTABVUE 6. However, “[t]he disclaimed elements of a mark, are relevant to the assessment of similarity. This is so because confusion is evaluated from the perspective of the purchasing public, which is not aware that certain words or phrases have been disclaimed.” *Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1243, 73 USPQ2d 1350, 1355 (Fed. Cir. 2004).

As our primary reviewing court indicated in considering the similarity of the mark PEACE LOVE AND JUICE (“juice” disclaimed) and PEACE & LOVE family of marks in *Juice Generation*, 115 USPQ2d at 1676:

The Board paid insufficient heed to that important principle in analyzing the three-word combination “PEACE LOVE AND JUICE.” The Board declared that “PEACE LOVE” is the “dominant” portion of that combination,

compared that portion to GS's "PEACE & LOVE" phrase, found that they are "virtually identical," and then simply added that "the additional disclaimed word 'JUICE' . . . do[es] not serve to sufficiently distinguish" Juice Generation's mark from GS's marks. *GS Enters.*, [TTAB 91206450], 2014 TTAB LEXIS 264 , [TTAB 91206450], 2014 WL 2997639, at *5-6. That analysis is inadequate. It does not display any consideration of how the three-word phrase in Juice Generation's mark may convey a distinct meaning—including by having different connotations in consumers' minds—from the two-word phrase used by GS. *Cf. Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 1357 (Fed. Cir. 2000) ("To be sure, the Board stated that it had considered the marks in their entirety. But this statement, absent further explanation of the agency's reasoning, is simply insufficient for proper review of PTO factfinding." (citation omitted)).

Accordingly, Applicant's and Registrant's marks must be considered in their entirety, and when so compared, HOLLYWOOD CENTRAL MARKET and HOLLYWOOD CENTRAL PARK as a whole take on different meanings and engender different overall commercial impressions. HOLLYWOOD CENTRAL MARKET evokes real estate management and development services in connection with a centrally located market for goods and services that is located in central Hollywood, Los Angeles. HOLLYWOOD CENTRAL PARK evokes real estate development services in connection with a centrally located urban park in central Hollywood, Los Angeles.

Differences in connotation and commercial impression can weigh strongly in the likelihood of confusion analysis; additions to marks may change the commercial impression to avoid confusion. *See, e.g., Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459, 1460 (Fed. Cir. 1998) (per curiam) (affirming dismissal based on different commercial impressions of CRYSTAL CREEK

and CRISTAL); *In re Hearst Corp.*, 982 F.2d 493, 25 USPQ2d 1238 (Fed. Cir. 1992) (VARGAS GIRL for calendars held not confusingly similar to VARGAS for calendars); *Sock It To Me, Inc. v. Aiping Fan*, 2020 USPQ2d 10611, at *13 (dissimilarity in connotation and commercial impression between SOCK IT TO ME and SOCK IT UP for socks outweighs their shared wording); *H.D. Lee Co. v. Maidenform, Inc.*, 87 USPQ2d 1715, 1729 (TTAB 2008) (finding ONE FAB FIT makes different commercial impression from ONE TRUE FIT); *Stouffer Corp. v. Health Valley Nat. Foods Inc.*, 1 USPQ2d at 1903 (LEAN LIVING and LEAN CUISINE have different overall commercial impressions).

If the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive, highly suggestive, or diluted in the marketplace, additions to marks may be sufficient to avoid a likelihood of confusion. *See In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986) (BED & BREAKFAST REGISTRY and BED & BREAKFAST INTERNATIONAL not confusingly similar where BED & BREAKFAST was descriptive and the additional terms were sufficient to distinguish the marks); *Knight Textile Corp. v. Jones Inv. Co.*, 75 USPQ2d 1313, 1315 (TTAB 2005) (“house mark” case finding no likelihood of confusion between NORTON MCNAUGHTON ESSENTIALS and ESSENTIALS, both for women's clothing, because evidence established that the shared term ESSENTIALS was “highly suggestive”); *Stouffer Corp. v. Health Valley Natural Foods Inc.*, 1 USPQ2d at 1903 (“the primary significance of ‘lean’ in relation to the goods emphasizes the principle that the

likelihood of confusion issue here ...turns on whether the marks are confusingly similar in their overall commercial impressions rather than the identity of the LEAN ...portion.”).

Taking into account the conceptual and commercial weakness of HOLLYWOOD CENTRAL in both marks and the additional terms MARKET and PARK in each mark, we find the differences in connotation and commercial impression outweigh any similarities in sound and appearance. When the marks are considered in their entireties, the dissimilarity in connotation and overall commercial impression weighs against a finding that confusion is likely.

II. Conclusion

We find the services are in part identical or related but the conditions of sale slightly favor a finding that confusion is unlikely. The terms HOLLYWOOD and CENTRAL have conceptual weakness. The terms HOLLYWOOD, PARK, and MARKET are disclaimed. Given the conceptual weakness of HOLLYWOOD CENTRAL in both marks, we find that the additional terms in each mark create sufficient dissimilarity such that no confusion is likely to result even if the marks are used on identical or related real estate development and real estate management services. The first *DuPont* factor, in this case is the dispositive factor in this case. *See, Kellogg Co. v. Pack-Em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (“[W]e know of no reason why, in a particular case, a single *du Pont* factor may not be dispositive.”).

Decision: The refusal to register Applicant's mark HOLLYWOOD CENTRAL MARKET is reversed.