

This Opinion is Not a
Precedent of the TTAB

Mailed: June 11, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Alex Avila

Serial No. 97253987

Taylor James Howard, Esq. of A.E.I. Law, P.C.
for Alex Avila.

John Schmidt, Trademark Examining Attorney, Law Office 119,
Brett Golden, Managing Attorney.

Before Adlin, Dunn and Thurmon, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Alex Avila seeks registration of LOVE UNIVERSITY, in standard characters (“UNIVERSITY” disclaimed), for “educational services, namely, conducting seminars, lectures, teleseminars, teleclasses, and workshops in personal awareness; entertainment services, namely, providing video podcasts in the field of psychology/spirituality/self-help,” in International Class 41.¹ The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C.

¹ Application Serial No. 97253987, filed February 4, 2022 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on claimed first use dates of February 12, 2012. In its May 23, 2023 Office Action response, Applicant amended its identification by replacing “psychology/spirituality/self-help” with “psychology, spirituality and self-help,” but the non-substantive amendment was never entered. Had it been entered, the amendment would not have impacted this decision.

§ 1052(d), on the ground that Applicant's mark so resembles the registered mark LUV YOUNIVERSITY, in standard characters, for

education services, namely, providing mentoring, tutoring, classes, seminars and workshops in the field of self improvement, relationships, health and wellness, business; entertainment services, namely, providing podcasts in the field of self improvement, relationships, health and wellness, business; entertainment services, namely, providing video podcasts in the field of self improvement, relationships, health and wellness, business; publishing of books, e-books, audio books, music and illustrations, in International Class 41,²

that it is likely to cause confusion. After the refusal became final, Applicant appealed and filed a request for reconsideration that was denied. The appeal is fully briefed.

I. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”) (setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* factor about which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry

² Registration No. 6708193, issued April 19, 2022 (the “Cited Registration”).

mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. The Services and Their Channels of Trade and Classes of Consumers

The services are legally identical in-part because Applicant offers “entertainment services, namely, providing video podcasts in the field of ... self-help” and Registrant offers “entertainment services, namely, providing video podcasts in the field of self improvement ...” There is no substantive difference between “self-help” and “self improvement.”

Dictionary definitions make this clear. We take judicial notice that “self-help” means “the action or process of bettering oneself or overcoming one’s problems without the aid of others,”³ while “self-improvement” means “the act or process of improving oneself by one’s own actions.”⁴ There is no meaningful difference between “bettering” oneself and “improving” oneself. Nor is there any meaningful difference between an act or process “without the aid of others” and an act or process “by one’s own actions.”

Applicant effectively concedes the point in its Reply Brief, stating that “self-help’ and ‘self-improvement’ are terms often used interchangeably.” 9 TTABVUE 4.⁵ While

³ merriam-webster.com/dictionary/self-help, accessed June 5, 2024. The Board may take judicial notice of dictionary definitions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).

⁴ merriam-webster.com/dictionary/self-improvement, accessed June 5, 2024.

⁵ Citations to the appeal record are to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

Applicant goes on to contend that the terms “have different connotations and focuses,” *id.*, that argument is based on nothing more than attorney argument, which is no substitute for evidence. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)); *see also In re U.S. Tsubaki, Inc.*, 109 USPQ2d 2002, 2006 (TTAB 2014) (finding that there was no proof to support counsel’s statements).⁶

In any event, the five-part “breakdown” of “self-help” and “self-improvement” that Applicant provided in its Reply Brief includes definitions of each that reveal them to be overlapping fields. *Compare* 9 TTABVUE 4 (“Self-help typically refers to the act of solving one’s problems by oneself, especially the pursuit of personal improvement without professional guidance ...”), *with id.* at 5 (“Self-improvement is a more general term that refers to the act of improving oneself, but with a broader scope ...”). Thus, even if Applicant’s “breakdown” was supported by evidence, and it is not, it would support a finding that the services are legally identical because “improving oneself” may encompass “solving one’s problems.” Indeed, by Applicant’s own admission, “self-improvement” is a “more general term” with a “broader scope” than

⁶ Applicant’s Appeal Brief includes two hyperlinks to what the provided domain names suggest are websites dealing with self-help, self-improvement and self-care. 9 TTABVUE 6. We have not accessed or considered the hyperlinks, for two reasons. First, under Trademark Rule 2.142(d), the “evidence” is untimely because “[e]vidence should not be filed with the Board after the filing of a notice of appeal.” Second, providing a mere hyperlink is not sufficient to make a website of record. *See In re Olin Corp.*, 124 USPQ2d 1327, 1331 n.15 (TTAB 2017) (“Because the information displayed at a link’s Internet address can be changed or deleted, merely providing a link to a website is insufficient to make information from that site of record.”); *In re HSB Solomon Assoc. LLC*, 102 USPQ2d 1269, 1274 (TTAB 2012) (“reference to a website’s internet address is not sufficient to make the content of that website or any pages from that website of record”).

“self-help,” so it should not be surprising that, as Applicant admits, the terms may be “used interchangeably.” 9 TTABVUE 4. Thus, if Applicant is correct that “self-improvement” is a broader term than “self-help,” this would further support a finding that Registrant’s services encompass Applicant’s in-part, making the services legally identical. *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.’”). We need not go beyond Applicant’s and Registrant’s entertainment services in the fields of self-help and self-improvement, because it is sufficient for a finding of likelihood of confusion if identity is established for any item encompassed by the identification of services in a particular class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

Because the services are legally identical, we presume that the channels of trade and classes of purchasers for the services also overlap. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Rsch. Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

The legal identity of the services and their overlapping channels of trade and classes of purchasers not only weigh heavily in favor of finding a likelihood of confusion, but also reduce the degree of similarity between the marks necessary to

find a likelihood of confusion. *In re Viterra*, 101 USPQ2d at 1908; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed Cir. 2010).⁷

B. The Marks

We consider marks “in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). Here, the marks are highly similar because they both consist of different forms of “LOVE” and “UNIVERSITY,” in that order. As explained below, Registrant’s spelling of “LOVE” as “LUV” and “UNIVERSITY” as “YOUNIVERSITY” is a relatively insignificant difference from LOVE UNIVERSITY, and is not enough to prevent confusion.

Indeed, the marks will likely sound identical, or almost identical. This is clear from dictionary evidence that shows that the word “you” is likely to be pronounced exactly like the first letter in “university.” June 30, 2023 Office Action TSDR 11, 18.⁸ Thus, whether “niversity” is preceded by a “u” as in Applicant’s mark, or “you” as in Registrant’s, the marks will likely sound the same, or at the very least quite similar, and rhyme. *Kimberly-Clark Corp. v. H. Douglas Enters., Ltd.*, 774 F.2d 1144, 227

⁷ Even if the services were not legally identical, the Examining Attorney has established that they are closely related, because Applicant’s educational services concerning “personal awareness” are closely related to Registrant’s educational services concerning self-improvement, health and wellness. September 18, 2023 Denial of Request for Reconsideration TSDR 17-52. The same evidence establishes that the channels of trade and classes of consumers for these services overlap. *Id.*

⁸ Citations to the application file are to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) online database, in the downloadable .pdf format.

USPQ 541, 542 (Fed. Cir. 1985) (HUGGIES and DOUGIES found confusingly similar in part because they “sound much alike and actually rhyme”); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740-41 (TTAB 2014) (IKEA and AKEA are “similar in appearance” and sound, and rhyme, pointing out that “[r]egardless of the pronunciation of the first vowel, the remainder of the marks will be pronounced the same”) As the Examining Attorney points out, this alone is a basis upon which we may find the marks confusingly similar. *In re 1st USA Realty Prof., Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988). As the Examining Attorney also points out, consumers hearing but not seeing the marks would probably be unable to distinguish them.

The marks also look quite similar, as they differ by only a few letters. While consumers viewing the marks side-by-side might very well notice that they are not spelled exactly the same, that is not how consumers typically encounter marks. Accordingly, “[t]he proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (quoting *Leading Jewelers Guild, Inc. v. LJOW Holdings, LLC*, 82 USPQ2d 1901, 1905 (TTAB 2007)).

Here, the marks convey essentially identical meanings and create almost identical commercial impressions. In fact, dictionary evidence establishes that “luv,” the first term in Registrant’s mark, is a known “nonstandard spelling of LOVE,” the first term

in Applicant's mark. June 30, 2023 Office Action TSDR 7.⁹ Dictionary definitions such as this "represent an effort to distill the collective understanding of the community with respect to language and thus clearly constitute more than a reflection of the individual views of either the examining attorney or the dictionary editors." *In re Boulevard Entm't Inc.*, 334 F.3d 1336, 67 USPQ2d 1475, 1478 (Fed. Cir. 2003). Moreover, Registrant's mark includes the entire word "university," albeit in a misspelled version that begins with "YO." Thus, both marks convey the same meaning and create the same commercial impression – a university or educational institution focused on love.

Applicant's focus on the marks' different spellings, 6 TTABVUE 7, 10, 12-15, is misplaced. As stated, "luv" is a known and understood variation of "love," so much so that it has its own dictionary entry. And because "youniversity" is not itself a word, but rather merely a slight misspelling of the word "university," or a combination of "you" and "university," it will convey the same essential meaning and create the same essential commercial impression as "university." *Apple Computer v. TVNET.net Inc.*, 90 USPQ2d 1393, 1396 (TTAB 2007) (VTUNES.NET confusingly similar to ITUNES); *Interlego AG v. Abrams/Gentile Entertainment Inc.*, 63 USPQ2d 1862, 1863 (TTAB 2002) ("Obviously, the marks LEGO and MEGO are extremely similar in that they differ simply by one letter."); *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999) ("Applicant's mark STRATEGYN and registrant's mark STRATEGEN are phonetic equivalents and differ by only one letter."). *Cf. Standard Paint Co. v.*

⁹ <https://www.merriam-webster.com/dictionary/luv>.

Trinidad Asphalt Co., 220 U.S. 446, 455 (1911) (“Bad orthography has not yet become so rare or so easily detected as to make a word the arbitrary sign of something else than its conventional meaning”); *Nupla Corp. v. IXL Mfg. Co.*, 114 F.3d 191, 42 USPQ2d 1711, 1716 (Fed. Cir. 1997) (“Nupla’s mark [CUSH-N-GRIP], which is merely a misspelling of CUSHION-GRIP, is also generic as a matter of law”); *In re Quik-Print*, 616 F.2d 523, 205 USPQ 505, 507 n.9 (CCPA 1980) (finding QUIK-PRINT merely descriptive of printing and copying services, stating “[t]here is no legally significant difference here between ‘quik’ and ‘quick.’”).¹⁰

In short, the marks are highly similar in appearance, sound, meaning and commercial impression. This factor also weighs heavily in favor of finding a likelihood of confusion.

C. Registrant’s Mark is Strong Enough to Prevent Registration of Applicant’s Mark

Applicant relies on third-party applications and registrations for marks including the terms “luv” or “love.” August 15, 2023 Request for Reconsideration TSDR 22-58. He argues based on this evidence that the cited mark “is not strong enough that the

¹⁰ The cases Applicant relies upon that found confusion unlikely between marks with “slightly different spellings,” 6 TTABVUE 13, are inapposite. In *Citigroup, Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011) the marks were less similar than they are here, and, in contrast to this case, there was evidence of “frequent” third-party use, not merely third-party registration, of a key term at issue, and the lack of actual confusion was shown to be significant. In *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459, 1460 (Fed. Cir. 1998), the marks “evoked very different images in the minds of relevant consumers: while the former suggested the clarity of the wine within the bottle or the glass of which the bottle itself was made, the latter suggested a ‘very clear (and hence probably remote from civilization) creek or stream.’” *Id.* at 1460.

public will be confused given the state of the register.” 6 TTABVUE 15-16. We disagree.

The pending applications Applicant relies upon are not relevant to our decision. Pending applications, as opposed to issued registrations, have “no probative value other than as evidence that the application was filed.” *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1403 n.4 (TTAB 2010) (quoting *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1049 n.4 (TTAB 2002)).

Many of the marks that are registered do not identify services in the field of self-help or self-improvement, nor do they identify other goods or services related to those at issue here, and are therefore not probative. See *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017); *Tao Licensing, LLC v. Bender Consulting Ltd. d/b/a Asian Pac. Beverages*, 125 USPQ2d 1043, 1057-58 (TTAB 2017). Furthermore, none of the marks Applicant cites are nearly as close to the cited mark as Applicant’s mark is, and the two marks which include both “love”/”luv” and “university” are for completely different services.¹¹

In short, Applicant has not established that the cited mark is so weak that it is not entitled to protection against Applicant’s highly similar mark.

¹¹ We have not considered the last 14 marks in the chart included with Applicant’s Appeal Brief, 6 TTABVUE 19-23, because Applicant failed to make them of record. *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1550 (TTAB 2012) (explaining that “[t]he Board does not take judicial notice of registrations or applications”). In any event, none of those registrations that Applicant describes as identifying goods or services arguably related to those at issue here include both “luv”/”love” and “university.”

D. Applicant's Claims Concerning Its Own Prior Use, and Registrant's Alleged Nonuse, Are Irrelevant

Applicant's argument that it used its involved mark before Registrant used the cited mark, 6 TTABVUE 11, is misplaced. Priority is not at issue in this *ex parte* case. *In re Wilson*, 57 USPQ2d 1863, 1867 n.9 (TTAB 2001). Similarly, to the extent that Applicant argues that the cited mark has been abandoned, or is not in use for some of the services identified in the Cited Registration, those would be matters to pursue in an *inter partes* case, not an *ex parte* appeal. *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997) ("Dixie's argument that DELTA is not actually used in connection with restaurant services amounts to a thinly-veiled collateral attack on the validity of the registration ... the present *ex parte* proceeding is not the proper forum for such a challenge."); *In re FCA US LLC*, 126 USPQ2d 1214, 1217 (TTAB 2018) ("Evidence of actual marketplace usages that seeks to limit or alter the usages encompassed by the marks, goods and services, or usages listed in the application and registration are not considered in assessing likelihood-of-confusion in the registration context.").

E. The Alleged Lack of Actual Confusion is Not Probative

Applicant's claim that there has been no actual confusion, 6 TTABVUE 11-12, is unpersuasive. There is no evidence regarding the extent of Applicant's use of its mark, or the extent of Registrant's use of the cited mark. Therefore, we cannot gauge whether or the extent to which there has been an opportunity for confusion to occur if it were likely to occur. *See Nina Ricci S.A.R.L. v. E.T.F. Enters. Inc.*, 889 F.2d 1070, 12 USPQ2d 1901, 1903 (Fed. Cir. 1989) ("The absence of any showing of actual

Serial No. 97253987

confusion is of very little, if any, probative value here because (1) no evidence was presented as to the extent of ETF's use of the VITTORIO RICCI mark on the merchandise in question in prior years"); *In re Kangaroos U.S.A.*, 223 USPQ 1025, 1026-27 (TTAB 1984). In any event, a lack of evidence of actual confusion carries little weight in an ex parte case such as this. *Majestic Distilling*, 65 USPQ2d at 1205. "[I]t is unnecessary to show actual confusion in establishing likelihood of confusion." *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 396 (Fed. Cir. 1983). This factor is neutral.

II. Conclusion

The marks are quite similar, the services are legally identical or at the very least closely related, and the channels of trade and classes of consumers overlap. Confusion is likely.

Decision: The refusal to register Applicant's mark under Section 2(d) of the Trademark Act is affirmed.