

This Opinion is Not a
Precedent of the TTAB

Mailed: June 12, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Freeway Music, LLC

Serial No. 97421483
—

Thomas L. Moses of Southeast IP Group, LLC for Freeway Music, LLC.

Dezmona Mizelle-Howard, Trademark Examining Attorney, Law Office 110,
Chris Pedersen, Managing Attorney.

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Before Zervas, Taylor and English,
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

Freeway Music, LLC (“Applicant”) seeks registration on the Principal Register of the standard-character mark FREEWAY MUSIC (“MUSIC” disclaimed) for, as amended, “Instruction in the nature of music lessons” in International Class 41.¹

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard-character mark FREEWAY registered on the Principal Register for “audio and video

¹ Application Serial No. 97421483 was filed on May 20, 2022 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging August 30, 2011 as the date of first use of the mark anywhere and in commerce.

recordings featuring musical entertainment” in International Class 9 and “entertainment services, namely live performances by a musical group” in International Class 41.²

When the refusal was made final, Applicant appealed.³ Both Applicant and the Examining Attorney have filed appeal briefs.⁴ For the reasons explained, we affirm the refusal to register.

I. Analysis

“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] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination

² Registration No. 3045523 was issued on January 17, 2006 and has been renewed.

³ Citations are to the downloadable .pdf versions of documents in the Trademark Status & Document Retrieval (TSDR) database. Citations to the briefs refer to TTABVUE, the Board’s online docket system.

As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, the citation form in this opinion varies from the citation form recommended in the TRADEMARK TRIAL AND BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2023). 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 only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion employs citation to the Westlaw (WL) database. Until further notice, practitioners should continue to adhere to the practice set forth in TBMP § 101.03.

⁴ The Examining Attorney attached third-party registrations to her brief. 6 TTABVUE 9-55. We have not considered any of this evidence “unless it was made of record prior to the filing of the notice of appeal.” *In re Nieves & Nieves LLC*, 2015 WL 496132, at *3 (citing Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) (“The record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed. After an appeal is filed, if the appellant or the examiner desires to introduce additional evidence, the appellant or the examiner may request the Board to suspend the appeal and to remand the application for further examination.”)).

under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 144 (2015); *see also In re Charger Ventures*, 64 F.4th at 1381.

We consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns., Inc.*, 450 F.3d 1378, 1381 (Fed. Cir. 2006). Varying weight, however, may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1355 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). Moreover, “each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973).

Applicant and the Examining Attorney present arguments regarding the similarities and dissimilarities between the marks and the relatedness of the services – two key considerations in any likelihood of confusion analysis.⁵ *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort*

⁵ The Examining Attorney asserts that “Applicant argues that the channels of trade are distinct; however, there is no evidence to support that contention.” Examining Attorney’s Brief, 6 TTABVE 7. Applicant makes no such argument. It argues only that the marks and identified services are dissimilar. The Examining Attorney also asserts that “[i]n this case, the following factors are the most relevant: similarity of the marks, similarity of the commercial impression of the marks, and the similarity and nature of the goods.” *Id.* at 3. Neither Applicant nor the Examining Attorney introduced evidence relevant to any other *DuPont* factors. Accordingly, we limit our analysis to the first and second *DuPont* factors.

Howard Paper Co., 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the “similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *DuPont*, 476 F.2d at 1361; *see also Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1319 (Fed. Cir. 2014). The proper test regarding similarity “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.” *Cai v. Diamond Hong*, 901 F.3d 1367, 1373 (Fed. Cir. 2018) (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (internal quotation marks and citation omitted)). Further, the marks “must be considered ... in light of the fallibility of memory” *In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (internal quotation marks omitted). The focus is on the recollection of an ordinary consumer, who normally retains a general rather than specific impression of trademarks. *In re Bay State Brewing Co., Inc.*, 2016 WL 1045677, at *2 (TTAB 2016) (citing *Spoons Rests. Inc. v. Morrison Inc.*, 1991 WL 355249, at *5 (TTAB 1991), *aff’d per curiam*, 972 F.2d 1353 (Fed. Cir. 1992)).

We do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entirety. *Stone Lion*, 746 F.3d at 1321; *Franklin Mint Corp. v.*

Master Mfg. Co., 667 F.2d 1005, 1007 (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.”).

Applicant argues that the marks look and sound different because its mark includes the additional word MUSIC. Applicant elaborates that its mark has “four syllables (FREEWAY MUSIC), while the Registrant’s mark has two syllables (FREEWAY).”⁶ Consumers are unlikely to focus on syllable counting in forming their impressions of the marks. *See In re John Scarne Games, Inc.*, 1959 WL 5901, at *1 (TTAB 1959) (“Purchasers of game boards do not engage in trademark syllable counting[;] they are governed by general impressions made by appearance or sound, or both.”); *cf. Nike, Inc. v. WNBA Enters, LLC*, 2007 WL 763166, at *7 (TTAB 2007) (“Applicant has made very fine distinctions between the marks and we do not find them either individually or cumulatively significant. ... In the normal marketing environment, purchasers would not usually have the luxury of examining marks in such minute detail.”).

Moreover, “the presence of an additional term in [Applicant’s] mark does not necessarily eliminate the likelihood of confusion if some terms are identical.” *In re Dare Foods Inc.*, 2022 WL 970319, at *6 (TTAB 2022) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 1347-48 (Fed. Cir. 2010)); *see also In re Charger Ventures*, 64 F.4th at 1382 (“an additional word or component may technically differentiate a mark but do little to alleviate confusion”). The word MUSIC in Applicant’s mark does little to

⁶ Appeal Brief, 4 TTABVUE 8-9.

distinguish it from the cited mark given that MUSIC is merely descriptive or generic of Applicant's music lesson services and has been appropriately disclaimed. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018) ("The non-source identifying nature of the words ... and the disclaimers thereof constitute rational reasons for giving those terms less weight in the analysis."); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 947 (Fed. Cir. 2000) ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.'"); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) ("That a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark"); *In re Code Consultants, Inc.*, 2001 WL 1149619, at *4 (TTAB 2011) (disclaimed matter is often "less significant in creating the mark's commercial impression").

The word FREEWAY in Applicant's mark is the only term with source identifying significance. For this reason, and because it is the first word in Applicant's mark, we find that consumers of Applicant's services will focus on and remember the FREEWAY portion of Applicant's mark as the dominant element. *In re Detroit Athletic*, 903 F.3d at 1303 (The marks' "lead words are their dominant portion and are likely to make the greatest impression on consumers."); *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372-73 (Fed. Cir. 2005) ("The presence of this strong distinctive term [VEUVE] as the first word in both parties' marks renders the marks similar, especially in light of the largely laudatory

(and hence non-source identifying) significance of ROYALE.”)); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1266 (Fed. Cir. 2002) (“Given the descriptive nature of the disclaimed word ‘Technologies,’ the Board correctly found that the word ‘Packard’ is the dominant and distinguishing element of PACKARD TECHNOLOGIES.”); *In re Dare Foods Inc.*, 2022 WL 970319, at *5-6 (TTAB 2022) (finding RAINCOAST dominant portion of the marks RAINCOAST DIP and RAINCOAST TRADING as the “most distinctive portion” of and first element in the marks); *Presto Prods. Inc. v. Nice-Pak Prods. Inc.*, 1988 WL 252340, at *3 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered[.]”).

The fact that Applicant’s Mark incorporates the cited mark in its entirety further increases the likelihood of confusion. This is particularly true here where the shared word FREEWAY is the dominant term in Applicant’s Mark and is the only word in Registrant’s mark. *See e.g., Hunter Indus., Inc. v. Toro Co.*, 2014 WL 1649332, at *11 (TTAB 2014) (finding consumer would be “likely to view applicant’s PRECISION mark as a variation or shortened version of opposer’s PRECISION DISTRIBUTION CONTROL”; and stating, “Likelihood of confusion often has been found where the entirety of one mark is incorporated within another.”); *In re Denisi*, 1985 WL 72008, at *2 (TTAB 1985) (finding PERRY’S PIZZA for restaurant services specializing in pizza confusingly similar to PERRY’S for restaurant and bar services; “The fact that appellant’s mark herein incorporates the descriptive term ‘pizza’ as part of the mark

presented for registration does not obviate the likelihood of confusion with the mark of the cited registration.”).

Applicant argues that “each of the marks conveys its own unique commercial impression. Applicant’s mark FREEWAY MUSIC conveys the commercial impression of music that one might listen to while driving down a freeway or interstate. Registrant’s mark FREEWAY, on the other hand, conveys the impression of a freeway, with no musical connotation, whatsoever.”⁷ Applicant’s argument supports that the marks share similar commercial impressions, both connoting a “freeway” or “interstate.” Moreover, a mark’s connotation and commercial impression is determined in relationship to the identified services. Registrant’s services are “live performances by a musical group” so its mark FREEWAY may connote “music that one might listen to while driving down a freeway or interstate,” just like Applicant’s mark. *See Embarcadero Tech. Inc. v. RStudio Inc.*, 2013 WL 2365029, at *11 (TTAB 2013) (“Our analysis concerning the similarity of the marks, however, does not end with their appearance and sound. Rather, we must also look at any commercial impressions or connotations created by the marks and, in doing so, we consider the marks in relation to the identified goods and services.”); *see also In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1176 (Fed. Cir. 2004) (“The Board must, of course, determine the commercial impression of a mark in the proper context of the goods or services associated with that mark.”) (citation omitted)).

⁷ Appeal Brief, 4 TTABVUE 9.

For all of these reasons, when we consider Registrant's standard-character mark FREEWAY and Applicant's standard-character mark FREEWAY MUSIC in their entirety, we find them to be highly similar in overall appearance, sound, connotation and commercial impression. The first *DuPont* factor weighs heavily in favor of a finding of likelihood of confusion.

B. Similarity or Dissimilarity of the Services

Under the second *DuPont* factor, we consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration.” 476 F.2d at 1361; *In re Detroit Athletic*, 903 F.3d at 1306, 1308; *Sabhnani v. Mirage Brands, LLC*, 2021 WL 6072822, at *8 (TTAB 2021). We must base our comparisons under the second *DuPont* factor on the services identified in the involved application and cited registration. *E.g.*, *In re Charger Ventures*, 64 F.4th at 1383 (“The relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration.”) (emphasis omitted).

It is well settled that the services need not be identical or even competitive to support a finding of likelihood of confusion. Rather, it is sufficient that the services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. *See Coach Servs.*, 668 F.3d at 1369 (quoting *7-Eleven Inc. v. Wechsler*, 2007 WL 1431084, at *6 (TTAB 2007)).

In comparing the services, we keep in mind that where, as here, the marks are highly similar, the degree of similarity between the parties' services necessary to support a finding of likely confusion declines. *See, e.g., In re Thor Tech, Inc.*, 2009 WL 1098997, at *2 (TTAB 2009) (“[T]he greater the degree of similarity between the applicant’s mark and the registered mark, the lesser the degree of similarity between the applicant’s goods [or services] and registrant’s goods [and services] that is required to support a finding of likelihood of confusion.”); *Time Warner Entm’t Co. v. Jones*, 2002 WL 1628168, at *8 (TTAB 2002) (same).

We focus our analysis on Registrant’s “entertainment services, namely, live performances by a musical group” in International Class 41.⁸ Applicant’s services, as amended, are “Instruction in the nature of music lessons.” When Applicant filed its use-based application it initially sought registration of its mark also for “entertainment services in the nature of live musical performances.” Applicant deleted these services in response to the first Office action but its specimen of use, identified as screenshots from its website, shows Applicant’s use of the mark FREEWAY MUSIC for both music lessons and live musical performances. Relevant excerpts are below:⁹

⁸ Accordingly, we need not consider Applicant’s argument that “it is difficult to comprehend” how its services “could possibly be marketed in such a way as to cause confusion with Registrant’s audio and video recordings” in International Class 9. Appeal Brief, 4 TTABVUE 12.

⁹ May 20, 2022 Specimens of Use, TSDR 4, 8.

Freeway Music has a variety of music lesson programs designed to cater to musicians of all ages and skill levels. You can explore all of our currently available music lesson programs here including: private music lessons, recitals and showcases, rock band classes, preschool music, and community outreach opportunities.

We'd love for you to contact us if you have any questions about them!



Upcoming Events

Freeway Music offers constant performance opportunities for our students. We hope to see you at one of these upcoming events. And if you can't make one of these, check out all of our future events on our [events calendar page](#).

Sun 15th
FWNE NAME That Tune Student Showcase! May 15 @ 1:00 pm - 6:00 pm Palmetto Citizens Amphitheater
FM Downtown's Full Metal Showcase At Tin Roof May 15 @ 2:00 pm - 4:00 pm Tin Roof
Mon 16th
No Events Today
Tue 17th
Student Series At Doko Station May 17 @ 6:00 pm - 8:00 pm Doko Station Pub & Eatery
Wed 18th
No Events Today
Thu 19th
No Events Today
Fri 20th
No Events Today
Sat 21st
School Of Rock The Musical May 21 @ 2:00 pm - 4:00 pm Columbia College
School Of Rock The Musical May 21 @ 7:00 pm - 9:00 pm Columbia College

The fact that Applicant itself offers music lessons and live musical performances under its mark supports a finding that there is a commercial relationship between Applicant's and Registrant's services. *Nike, Inc. v. WNBA Enters, LLC*, 2007 WL

763166, at *7 (TTAB 2007) (finding persuasive the fact that applicant itself offered or intended to offer both types of products under its mark).

The screenshots from Applicant's website further demonstrate that music lessons and live musical performances are inherently related and complementary services as music students showcase what they have learned in recitals, i.e., live musical performances. It is well settled that complementary services may be found related. *In re Summit Hotel Corp.*, 1983 WL 51899, at *1 (TTAB 1983) (finding restaurant and hotel services related because the services are complementary); *In re Code Consultants Inc.*, 2001 WL 1149619, at *4 ("As the evidence made of record by the Examining Attorney shows, inspection of fire and sprinkler systems is an important part of the construction inspection process. It is clear that there is a complementary relationship between these two activities.").

In addition, the Examining Attorney introduced third-party registrations in an effort to show that Applicant's and Registrant's services are related.¹⁰ We have not considered those registrations that issued under Trademark Act Sections 44(e) or 66(a), 15 U.S.C. §§ 1126(e) or 1141f(a), based on the foreign trademark owners' home country registrations or as extensions of protection to the United States based on an international registration and for which no maintenance documents evincing use

¹⁰ The Examining Attorney attached numerous duplicate copies of the third-party registrations to the Final Office Action hindering our review of the record. The better practice is to avoid introducing multiple copies of evidence.

have been filed.¹¹ *Made in Nature, LLC v. Pharmavite LLC*, 2022 WL 2188890, at *14 (TTAB 2022) (explaining that such registrations “lack probative value” because they are not based on use in commerce); *In re Calypso Tech., Inc. v. Calypso Cap. Mgmt., LP*, 2011 WL 4090446, at *9 and n.15 (TTAB 2011) (disregarding third-party registrations based on international registrations with no evidence that the marks have been used in the United States). Nor have we considered Registration No. 4377361 because it has been cancelled.¹² *Made in Nature*, 2022 WL 2188890, at *14-15 (“A cancelled or expired registration has no probative value other than to show that it once issued and it is not entitled to any of the statutory presumptions of Trademark Act Section 7(b).”).

Applicant challenges the probative value of some of the other third-party registrations on the ground that they “include[e] the words ‘instruction’” but “have nothing whatsoever to do with music lessons....”¹³ We agree and have disregarded those registrations that specify non-music educational services, i.e. “dance instruction” and “cooking instruction.”¹⁴

¹¹ July 18, 2023 Final Office Action, TSDR 9-33, 47-58, and 73-74 (Reg. Nos. 6988521, 6945731, 6791921, 6836402, 7064843, 6966661, 6835942, 6661719, 5986712, 6617272, 6473014).

¹² *Id.* at TSDR 59-60.

¹³ Appeal Brief, 4 TTABVUE 13. Applicant also challenges some of the third-party registrations on the ground that they cover live performances in the field of sports, not music. This is a valid criticism, but we have already excluded these third-party registrations because they issued under Sections 44(e) or 66(a) of the Trademark Act and there is no evidence of use of these marks in the United States.

¹⁴ July 18, 2023 Final Office Action, TSDR 34-37, 40-41 (Reg. Nos. 6804042, 6976855, and 6942136).

Notwithstanding that we have excluded consideration of numerous third-party registrations, the record includes the following relevant registrations that issued based on use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a):


- HEAL CENTER FOR THE ARTS (Reg. No. 7069670) for, inter alia, “educational services, namely, providing instruction in the nature of lessons in the fields of instrumental and vocal music and performance” and “entertainment services in the nature of live musical performances; ... entertainment, namely, live performances by a musical band; live performances by a musical group” (July 18, 2023 Final Office Action, TSDR 38-39);
- YOUNG ARTISTS OF AMERICA (Reg. No. 4729485) for “entertainment, namely, production of plays, operas and musical performances; entertainment in the nature of symphony orchestra performances; entertainment services in the nature of live musical performances; entertainment, namely, live music concerts; live performances by a musical group; teaching in the field of music; instruction in the field of music; educational services, namely, conducting workshops in the field of music” (*Id.* at 61-62);



- (Reg. No. 5543654) for “educational services, namely, providing music instruction, conferences, workshops and classes in the field of music; entertainment in the nature of live performances by a musical group; presentation of live show performances” (*Id.* at 65-66);
- DIASPORA (Reg. No. 5489812) for, inter alia, “education services, namely, providing classes and instruction, online instruction and in the studio instruction in the field of music and musical instruments” and “entertainment, namely, live performances by a musical band, live music concerts and events” (*Id.* at 67-68);
- SOUNDS GOOD! CHOIR (Reg. No. 6042577) for “educational services, namely, providing music instruction in the field of adult chorus; entertainment

services, namely, providing live performances by an adult chorus” (*Id.* at 83-84);



- (Reg. No. 6161666) for, inter alia, “educational services, namely, conducting informal programs in the fields of music, musical instruction, musical technique, music theory ... educational and entertainment services, namely, providing a non-downloadable interactive website providing playback of music, music instruction and instruction in music composition, music theory ... educational and entertainment services, namely, conducting workshops, conventions, seminars, and lectures in the field of music, musical instruction, musical technique, music theory and social and emotional learning” and “entertainment services, namely, providing live entertainment performances in the nature of instrumental, musical, comedy and drama” (*Id.* at 90-91);
- GLOBAL CITIZEN LIVE (Reg. No. 7069380) for, inter alia, “educational and instruction services in the nature of on-line and in person classes relating to arts,¹⁵ crafts, or general knowledge” and “entertainment services in the nature of presenting live musical performances” (*Id.* at 44-46);
- THE KINKAID SCHOOL (Reg. No. 6892150) for, inter alia, “education services, namely, providing live, online, in-person or remotely, courses of instruction for student levels kindergarten through 12th grade (K-12) by any one or more of pictorial, audio and video transmission, pre-recorded or in real time” and “entertainment in the nature of live performances by any one or more of students, faculty, staff and alumni of a school and its affiliated organizations in the nature of musical, dance and theatre performances and visual arts exhibitions” (*Id.* at 7); and
-  (Reg. No. 6876649) for “education services, namely, providing courses of instruction at the university level and distributing course material in connection therewith; and entertainment

¹⁵ We take judicial notice that one meaning of the word “arts” is “fine arts,” meaning “art (such as painting, sculpture, or music) concerned primarily with the creation of beautiful objects — usually used in plural.” MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/arts> and <https://www.merriam-webster.com/dictionary/fine%20arts> (last visited June 11, 2024). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *See, e.g., In re Omniome, Inc.*, 2020 USPQ2d 3222, at *2 n.17 (TTAB 2020).

services, namely, arranging and conducting athletic events, art shows, and live performances of theatre, music, dance and the like” (*Id.* at 42-43).

“As a general proposition, third-party registrations that cover goods [and/or] services [of the types identified in] both the cited registration and an Applicant’s application are relevant to show that the goods [and/or] services are of a type that may emanate from a single source under one mark.” *Country Oven*, 2019 WL 6170483, at *5 (TTAB 2019); *see also, e.g., In re Embiid*, 2021 WL 2285576, at *10 (TTAB 2021) (evidence of relatedness may include prior use-based registrations covering both parties’ goods or services). The latter two listed third-party registrations identify education services generally, but we find them pertinent because the recitations are broad enough to encompass education services in the nature of music lessons. “When we consider third-party registrations ‘[j]ust as we must consider the full scope of the goods and services as set forth in the application and registration under consideration, we must consider the full scope of the goods and services described in a third-party registration.’” *In re OSF Healthcare Sys.*, 2023 WL 6140427, at *12 (TTAB 2023) (quoting *In re Country Oven*, 2019 WL 6170483, at *5 (“Because the benefits of registration are commensurate with the scope of the goods [or services] specified in the certificate of registration, a registration that describes goods [or services] broadly is presumed to encompass all goods or services of the type described.”)).

We find that Applicant’s use of its mark to identify music lesson services and live music performances together with the cited third-party registrations demonstrate that Applicant’s “instruction in the nature of music lessons” services are related to

Registrant's "entertainment services, namely, live performances by a musical group."
The second *DuPont* factor also supports a finding that confusion is likely.

II. Conclusion

The marks are highly similar differing only in the addition of the descriptive or generic word MUSIC in Applicant's mark. The record further demonstrates that the services are complementary and related. The first and second *DuPont* factors therefore favor finding a likelihood of confusion.

Applicant and the Examining Attorney did not argue or introduce evidence regarding any other *DuPont* factors. Accordingly, we find that Applicant's standard character mark FREEWAY MUSIC for "instruction in the nature of music lessons" is likely to cause confusion with the cited mark FREEWAY for "entertainment services, namely, live performances by a musical group."

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