

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: September 10, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Kristian J. Bell
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Serial No. 97497611
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Thomas L. Moses of Southeast IP Group, LLC,
for Kristian J. Bell.

Maureen Milmoie, Trademark Examining Attorney, Law Office 111¹
Chris Doninger, Managing Attorney.

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Before Wellington, Allard, and Myles,
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:²

¹ A different Trademark Examining Attorney examined the involved application and issued the final refusal from which Applicant has appealed. The application was assigned after appeal to Ms. Milmoie, who filed the brief of the United States Patent and Trademark Office (“USPTO”). In this opinion, we will refer to both Ms. Milmoie and her predecessor as the “Examining Attorney.”

² This decision 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 page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board and the Director, this decision cites to the LEXIS legal database. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). The proceeding or application number for cited Board decisions is also provided, if available. Practitioners are encouraged to adhere to the citation form recommended in TBMP § 101.03. Precedential decisions of the Board, and precedential decisions of the Federal Circuit involving Board decisions that issued January 1, 2008, or after may be viewed in TTABVUE by entering the proceeding number, application number, registration number, expungement/reexamination number, mark, party, or correspondent.

Kristian J. Bell (“Applicant”) seeks registration on the Principal Register of the mark:



for, inter alia, “Real estate brokerage” services in International Class 36.³

Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when used in connection with the



identified services, so resembles the mark registered on the Principal Register (REALTY disclaimed) for “Real estate brokerage” services in International Class 36,⁴ that it is likely to cause confusion, to cause mistake, or to deceive.

Many precedential Board decisions that issued from 1996 to 2008 are available online from the TTAB Reading Room by entering the same information. Most TTAB decisions that issued prior to 1996 are not available in USPTO databases.

³ Application Serial No. 97497611 was filed on July 11, 2022, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and use in commerce since July 1, 2021. The application contains the following description of the mark: “The mark consists of The [sic] words ‘NATIONREALTY’ written with the middle letters ‘NR’ being slightly bigger than the other letters. Multiple small lines in the shape of a circle [are] around the ‘NR.’” Color is not claimed as a feature of the mark.

⁴ Registration No. 6649462 was issued on February 22, 2022. The registration contains the following description of the mark: “The mark consists of the image in the shape of the continental United States made up of multiple small individual houses with chimneys with the words ‘REALTY NATION’ directly to the right [of the image of the continental US.] [T]he word ‘REALTY’ [appears] over the word ‘NATION.’” The registration does not indicate if color is claimed as a feature of the mark.

After the refusal was made final, Applicant appealed. Applicant and the Examining Attorney filed briefs.⁵ We affirm the refusal to register.

I. Evidentiary Issues

Before proceeding to the merits of the refusal, we address some evidentiary matters.

A. Examining Attorney's Request that We Take Judicial Notice

The Examining Attorney has submitted with her brief dictionary definitions of the words “nation” and “realty” and requests that we take judicial notice of them.⁶ Because dictionary definitions are subject matter of which the Board takes judicial notice, we grant this request. *See Univ. of Notre Dame du Lac v. J. C. Gourmet Food Imps. Co., Inc.*, Opp. No. 61847, 1982 TTAB LEXIS 146, at *7 (TTAB 1982), *aff'd*, 703 F.2d 1372 (Fed. Cir. 1983).

⁵ Applicant's brief appears at 4 TTABVUE and the Examining Attorney's brief appears at 6 TTABVUE.

Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval (“TSDR”) system. Citations to the record throughout the decision include references to TTABVUE, the Board's online docketing system. The number preceding “TTABVUE” corresponds to the docket entry number; the number(s) following “TTABVUE” refer to the page number(s) of that particular docket entry, if applicable. *See e.g., Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 TTAB LEXIS 251, at *2 n.1 (TTAB 2022).

⁶ 6 TTABVUE 6, 13-16. Applicant recites in his brief the dictionary definitions of both “realty” and “nation” without supporting evidence and without requesting that we take judicial notice of such definitions. 4 TTABVUE 14. The Examining Attorney objects to this, arguing that Applicant's attempt “to introduce this evidence is improper because this evidence is untimely and because the definitions Applicant seeks to introduce are not provided in print form, do not appear to be the equivalent of a print reference work, and do not appear to have regular fixed editions.” 6 TTABVUE 3. Inasmuch as much as we have granted the Examining Attorney's request that we take judicial notice of substantially the same dictionary definitions for these same terms, the fact that Applicant did not properly make this evidence of record is moot.

B. Evidence Attached to Applicant's Brief

Applicant attaches to his brief two exhibits, both charts summarizing search results, one of his search for marks incorporating the term REALTY and the other for marks incorporating the term NATION, both in class 36 for real estate related services.⁷ The Examining Attorney objects to all of this evidence, arguing that (1) it is untimely, and (2) merely listing the registrations, as Applicant has done, does not make the third-party registrations of record.⁸ We sustain the Examining Attorney's objection. Our rules are clear: the record in an application should be complete prior to the filing of an appeal and evidence should not be filed with the Board after the filing of a notice of appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). Therefore, we do not give this evidence, or any arguments based on it, any consideration. *See In re Inn at St. John's, LLC*, Ser. No. 87075988, 2018 TTAB LEXIS 170, at *3-5 (TTAB 2018), *aff'd per curiam*, 777 F. App'x 516 (Fed. Cir. 2019); *In re Fiat Grp. Mktg. & Corp. Commc'ns S.p.A.*, Ser. No. 79099154, 2014 TTAB LEXIS 29, at *11 (TTAB 2014).

II. 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, to cause mistake, or deceive. 15 U.S.C. § 1052(d). Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I.*

⁷ 4 TTABVUE 16, 19-70.

⁸ 6 TTABVUE 2-3.

DuPont de Nemours & Co., 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). In considering the evidence of record bearing on these factors, we keep in mind that “[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [and services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976).

We have considered each *DuPont* factor for which there is evidence and argument. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019). Varying weight 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, “[e]ach 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). In this matter, Applicant and the Examining Attorney address the first *DuPont* factor, and they each address the strength of the cited mark. We also address the second and third *DuPont* factors.

A. Similarity or Dissimilarity and Nature of the Services, Similarity or Dissimilarity of Established and Likely-to-Continue Channels of Trade and Classes of Purchasers

We begin with the second and third *DuPont* factors, which consider “[t]he similarity or dissimilarity and nature of the goods or services,” and “the similarity or dissimilarity of established, likely-to-continue trade channels.” *In re Detroit Ath. Co.*,

903 F.3d 1297, 1306-09 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361). In making our determination regarding the similarity of the services, we must look to the services as identified in the involved application and the cited registration. See *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990) (“[T]he question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application ... regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”)).

“Apparently conceding the issue, Applicant did not address these *du Pont* factors in its brief, so we offer only a brief explanation of our conclusion.” *In re Morinaga Nyugyo K.K.*, Ser. No. 86338392, 2016 TTAB LEXIS 448, at *3 (TTAB 2016).

In their identifications of services, both Applicant and Registrant identify “Real estate brokerage” services. Thus, the services are identical.

Given the identity of the services, and the lack of restrictions or limitations in the application or registration as to their nature, channels of trade, or classes of customers, we must presume that the channels of trade and classes of purchasers for the identical services are the same. See *In re Viterra Inc.*, 671 F.3d 1358, 1362 (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).

Thus, the second and third *DuPont* factors strongly favor a finding of a likelihood of confusion.

B. Strength or Weakness of the Mark of the Cited Registration

We next consider the strength of the cited mark, as the strength of Registrant's mark affects the scope of protection to which it is entitled. *DuPont*, 476 F.2d at 1361. "A mark's strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning)." *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010). *See also New Era Cap Co. v. Pro Era, LLC*, Opp. No. 91216455, 2020 TTAB LEXIS 199, at *28-29 (TTAB 2020) ("In determining the strength of a mark, we consider both its inherent strength, based on the nature of the mark itself, and, if there is evidence in the record of marketplace recognition of the mark, its commercial strength.").

"In order to determine the conceptual strength of the cited mark, we evaluate its intrinsic nature, that is, where it lies along the generic-descriptive-suggestive-arbitrary (or fanciful) continuum of words." *In re Davia*, 2014 TTAB LEXIS 214, at *11 (TTAB 2014). Conceptual strength "focuses on the inherent potential of the term at the time of its first use." *Advance Mag. Publishers, Inc. v. Fashion Elecs., Inc.*, Opp. No. 91247034, 2023 TTAB LEXIS 223, at *28 (TTAB 2023) (quoting 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:80 (5th ed. March 2023 Update)).



The cited mark is registered on the Principal Register without a claim of acquired distinctiveness, and therefore it is considered as a whole inherently distinctive, although the mark includes a disclaimer of the term REALTY. *Tea Bd. of India v. Republic of Tea, Inc.*, Opp. No. 91118587, 2006 TTAB LEXIS 330, at *62 (TTAB 2006) (“A mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods.”). Nonetheless, we may consider whether an inherently distinctive mark is “weak as a source indicator” in the course of a *DuPont* analysis. *In re Fat Boys Water Sports LLC*, Ser. No. 86490930, 2016 TTAB LEXIS 150, at *23 (TTAB 2016).

Applicant argues that “[t]he word portion of Registrant’s mark, which is the only portion of Registrant’s mark that bears any similarity, whatsoever, with Applicant’s mark, is weak[,]” based on the dictionary definitions of the literal elements.⁹ Applicant adds that the terms REALTY and NATION “are clearly descriptive” of Registrant’s identified real estate brokerage services and that “the term REALTY NATION is simply a descriptive term for real estate across the country.”¹⁰

⁹ 4 TTABVUE 14.

¹⁰ *Id.*

Recalling that Applicant's third-party registration evidence attached to its brief has been excluded from the record,¹¹ the only evidence of record that touches on the issue of the strength or weakness of the cited mark is the dictionary definition evidence of the terms REALTY and NATION. "[A] term found in the dictionary and one that has a well[-]known meaning to the average person, ... might suggest that it is a 'weak' mark when used in its literal or related meanings." *Indus. Valley Bank & Trust Co. v. Bankers Trust of S.C., N.A.*, proceeding no. unknown, 1979 TTAB LEXIS 9, at *16 (TTAB 1979). The dictionary definition evidence of record shows:

REALTY is defined as "Real estate."¹²

NATION is defined as

1. a. A relatively large group of people organized under a single, usually independent government; a country;
- b. The territory occupied by such a group of people: *All across the nation, people are voting their representatives out.*¹³

Based on the above definitions, and within the context of considering Registrant's



mark in connection with its identified services, we find the term NATION to mean the geographic territory of the continental United States, which understanding is reinforced by Registrant's design of houses in the shape of the continental United States. Thus, we find Registrant's mark to be highly suggestive of real estate brokerage services offered across the country. As this reflects a well-

¹¹ See discussion in Section I(B).


¹² 6 TTABVUE 15.

¹³ *Id.* at 13.

known meaning of the term NATION to the average person, it suggests NATION is a relatively weak term as it is used in its literal sense and thus has some conceptual weakness.

As to commercial strength, in an ex parte appeal such as this one, the owner of the cited registration is not a party, and the Examining Attorney was under no obligation to demonstrate consumers' exposure to or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, Ser. No. 86140341, 2016 TTAB LEXIS 470, at *26 (TTAB 2016). So, the mark's commercial strength, as usual in an ex parte appeal, is treated as neutral. *In re Mr. Recipe, LLC*, Ser. No. 86040643, 2016 TTAB LEXIS 80, at *4-5 (TTAB 2016).



In sum, we find the commercial strength of the cited mark  to be a neutral consideration. While the cited mark as a whole is inherently distinctive, the literal portion is conceptually weak.

C. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties as to appearance, sound, connotation and commercial impression. *In re Detroit Ath.*, 903 F.3d at 1303 (quoting *DuPont*, 476 F.2d at 1361); see also *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn*


at St. John's, 2018 TTAB LEXIS 170, at *13 (quoting *In re Davia*, 2014 TTAB LEXIS 214, at *4).

“The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 1323 (Fed. Cir. 2017) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012)). “The proper perspective on which the analysis must focus is on the recollection of the average customer, who retains a general rather than a specific impression of marks.” *In re i.am.symbolic, llc*, Ser. No. 85916778, 2018 TTAB LEXIS 281, at *11 (TTAB 2018). The average consumer here are consumers of real estate brokerage services.

Similarity is not a binary factor, rather it is a matter of degree. *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014). We also bear in mind that because the identified services are identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the services. *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992) (“When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.”).



We begin by recognizing the obvious: Applicant's mark and the cited

mark  share the literal elements NATION and REALTY, simply in reverse or transposed order. Applicant dismisses the significance of this fact, characterizing it as “[t]he only similarity between [the] two marks.”¹⁴ However, our caselaw finds this to be more significant as “[m]arks that include ‘reverse combinations’ of the same words or elements or a ‘transposition’ of the most important words comprising the marks have been found to be similar.” *Made in Nature*, 2022 TTAB LEXIS 251, at *46-47 (quoting *Bank of Am. Nat’l Trust and Sav. Ass’n v. Am. Nat’l Bank of St. Joseph*, Ser. No. 429049, 1978 TTAB LEXIS 149, at *11 (TTAB 1978) (“the words ‘BANKAMERICA’ and ‘BANK OF AMERICA’, on the one hand, and ‘AMERIBANC’, on the other, convey the same meaning and create substantially similar commercial impressions”)).

Where transposed marks convey similar commercial impressions, likelihood of confusion is ordinarily found. *See, e.g., Made in Nature*, 2022 TTAB LEXIS 251, at *47-48 (NATURE MADE found likely to be confused with MADE IN NATURE); *Carlisle Chem. Works, Inc. v. Hardman & Holden, Ltd.*, 434 F.2d 1403, 1405-06 (CCPA 1970) (reversing dismissal of oppositions to registration of COZIRC based on use of ZIRCO for related goods, finding that the marks “are substantially similar, the difference being in a reversal of syllables which are essentially the same”); *In re Wine*

¹⁴ 4 TTABVUE 9.

Soc’y of Am., Inc., Ser. No. 662515, 1989 TTAB LEXIS 29, at *2 (TTAB 1989) (holding THE WINE SOCIETY OF AMERICA and design for wine club membership services including the supplying of printed materials, and AMERICAN WINE SOCIETY 1967 and design for newsletters, bulletins, and journals, likely to cause confusion); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1207.01(b)(vii) (May 2024) and cases cited therein.

Applicant argues that the marks convey different commercial impressions, rendering them dissimilar.¹⁵ As for its mark, Applicant contends that it conveys “the commercial impression of a spinning wheel, rotating about the stylized NATIONREALTY, where the N and the R are run together, sharing a common vertical element between them[.]”¹⁶ In contrast, Applicant argues, Registrant’s mark “conveys the commercial impression of the continental United States made up of multiple small individual houses with chimneys with the words ‘REALTY NATION’ directly to the right the word ‘REALTY’ over the word ‘NATION’.”¹⁷

On the other hand, the Examining Attorney contends that the marks convey the same commercial impressions: “[w]hen combined, in either order, the terms convey the same meaning of real estate services that are available across the country.”¹⁸

As an initial matter, we find that the literal elements are the dominant portions of each mark. “In marks ‘consisting of words and a design, the words are normally

¹⁵ 4 TTABVUE 9.


¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 6 TTABVUE 6.

accorded greater weight because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the goods [or services].” *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 TTAB LEXIS 464, at *39-40 (TTAB 2021) (quoting *In re Aquitaine Wine USA, LLC*, Ser. No. 86928469, 2018 TTAB LEXIS 108, at *6 (TTAB 2018)). See also *In re Viterra*, 671 F.3d at 1362 (“[T]he verbal portion of a word and design mark likely will be the dominant portion.”); *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 1571 (Fed. Cir. 1983) (“[T]he dominant portion of both parties’ [word-and-design] marks sounds the same when spoken. ... In this situation, any differences in the design of the marks would not serve to avoid confusion.”). Moreover, the stylized enlarged NR in Applicant’s mark merely reinforces the dominant literal elements NATION and REALTY because the letters NR are an initialism of them.

Comparing the marks for similarities, we acknowledge that the marks are somewhat visually dissimilar. However, the marks are phonetically similar to the extent that they share the dominant terms NATION and REALTY. Consistent with our discussion above regarding the strength of Registrant’s mark, we find that the literal elements REALTY NATION, when considered in light of Registrant’s identified services, mean and engender the commercial impression of real estate brokerage services offered across the country. We find that Applicant’s mark has the same meaning and engenders the same commercial impression, even though the literal elements in Applicant’s mark are transposed.

We further find that the lack of a space between the literal elements REALITY and NATION in Applicant's mark  does not distinguish it for likelihood of confusion purposes from that Registrant's mark, where the literal elements appear as two separate words REALTY and NATION. *See, e.g., Seaguard Corp. v. Seaward Int'l, Inc.*, Can. No. 13589, 1984 TTAB LEXIS 75, at *9 (TTAB 1984) (“[T]he marks ‘SEAGUARD’ and ‘SEA GUARD’ are, in contemplation of law, identical.”); *In re Best W. Family Steak House, Inc.*, Ser. No. 315241, 1984 TTAB LEXIS 173, at *1 (TTAB 1984) (“There can be little doubt that the marks [BEEFMASTER and BEEF MASTER] are practically identical[.]”); *Stockpot, Inc. v. Stock Pot Rest., Inc.*, Can. No. 13157, 1983 TTAB LEXIS 83, at *5 (TTAB 1983 (“There is no question that the marks of the parties [STOCKPOT and STOCK POT] are confusingly similar. The word marks are phonetically identical and visually almost identical.”), *aff'd*, 737 F.2d 1576 (Fed. Cir. 1984).

Applicant's use of the same literal elements but in a transposed manner renders the marks, when considered in their entirety, to be similar in sound and to engender the same connotation and commercial impression. These similarities outweigh any differences in the marks, especially when considering that the services are identical and the average purchaser “normally retains a general rather than a specific impression of trademarks.” *Sealed Air Corp. v. Scott Paper Co.*, Ser. No. 391022, 1975 TTAB LEXIS 236, at 6-7 (TTAB 1975).

In view thereof, we find the marks to be more similar than dissimilar. As a result, the first *DuPont* factor weighs in favor of a finding of likelihood of confusion.

D. Balancing the Factors and Conclusion as to Likelihood of Confusion

We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto. Weighing the *DuPont* factors for which there has been evidence and argument, *In re Charger Ventures LLC*, 64 F.4th 1375, 1384 (Fed. Cir. 2023), we find that the services are identical and are presumed to travel in the same channels of trade to the same classes of purchasers. While the cited mark as a whole is inherently distinctive, the literal elements are conceptually weak. “Nevertheless, we are mindful that even a weak mark is entitled to protection against the registration of a very similar mark for closely related goods [or services].” *Top Tobacco, LP v. N. Atl. Operating Co.*, Opp. No. 91157248, 2011 TTAB LEXIS 367, at *31-32 (TTAB 2011); *see also King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 1401 (CCPA 1974) (“The likelihood [of confusion] is to be avoided, as much between ‘weak’ marks as between ‘strong’ marks, or as between a ‘weak’ and a ‘strong’ mark.”). The commercial strength of the cited mark is neutral. The marks are more similar than dissimilar.

We find the first, second and third *DuPont* factors dispositive. Accordingly, we find that confusion is likely between Applicant’s involved mark and the mark in the cited registration for the identified services.

III. Decision

The refusal to register Applicant’s mark of application Serial No. 97497611 is affirmed.