

This Opinion is not a
Precedent of the TTAB

Mailed: September 30, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cygan Law Offices PC

Serial No. 97748442

Joseph T. Cygan of Cygan Law Offices PC
for Cygan Law Offices PC.

Mariam Aziz Mahmoudi, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

Before Heasley, Dunn, and O'Connor,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant, Cygan Law Offices PC, seeks registration on the Principal Register of
the mark PATENT INSANITY (in standard characters, with “PATENT” disclaimed)
for:

Providing online non-downloadable educational videos and audio
recordings regarding patent law, patent applications and patent strategy,
for inventors, entrepreneurs, small business owners, paralegals, patent
administrators and other legal professionals, in International Class 41.¹

¹ Application Serial No. 97748442 was filed on January 10, 2023, based on a declared
intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C.
§ 1051(b).

The Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the registered mark INSANITY (in standard characters) for:

Internet-based online social networking services; Personal social introduction services for networking purposes; Intellectual property licensing; legal services in support of the negotiation property management, namely, providing contract negotiation and contract drafting services, intellectual property watch services, and licensing of copyrights, trademarks, personality rights and image rights for intellectual property owners; copyright management; legal agency services in the form of providing legal counsel and legal services in the fields of intellectual property law, advertising law, entertainment law, licensing law, reputation management law, and brand management law; attorney services; legal advocacy services, namely, providing legal and paralegal services for intellectual property owners, performing artists, recording artists, creative artists, sports figures, singers, celebrities, television hosts and presenters, video bloggers, video personalities, internet publishers, social media personalities, actors and writers; mediation and legal rights negotiation services in the fields of intellectual property law, advertising law, entertainment law, licensing law, reputation management law, and brand management law; provision of information, advisory and consultancy services in the fields of internet-based social networking and intellectual property legal services; none of the aforementioned services relating to exercise, fitness or dietary information or exercise, fitness or dietary instruction, in International Class 45.²

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal proceeded. We affirm the refusal to register.

Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system and identify the documents by title, date, and page in the downloadable .pdf version. Citations to the briefs and other materials in the appeal record refer to the Board's TTABVue online docket system.

² Registration No. 5248426, issued on the Principal Register on July 25, 2017, Section 8 and 15 declarations accepted and acknowledged.

I. Likelihood of Confusion

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

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

15 U.S.C. § 1052(d).

To determine whether there is a likelihood of confusion between marks under Section 2(d), we analyze the evidence and arguments under the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (the “*DuPont* factors”) cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 144 (2015). “Whether a likelihood of confusion exists is aided by application of the thirteen *DuPont* factors.” *Bullshine Distillery LLC v. Sazerac Brands, LLC*, 130 F.4th 1025, 1031 (Fed. Cir. 2025) (internal punctuation omitted). We need not consider every *DuPont* factor, only those that are relevant and of record. *Apex Bank v. CC Serve Corp.*, ___F.4th ___, 2025 WL 2726146, *1 (Fed. Cir. 2025). Of those, we may focus on the factors that are dispositive, such as the similarity of the marks and relatedness of the services. See *Sunkist Growers, Inc. v. Intrastate Distribs., Inc.*, 144 F.4th 1376, 1379 (Fed. Cir. 2025).

A. Comparing the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant’s and Registrant’s marks in their entirety, taking into account their

appearance, sound, connotation and commercial impression. *DuPont*, 476 F.2d at 1361. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 2018 WL 2734893, *5 (TTAB 2018) *aff’d* 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 2014 WL 2531200, *2 (TTAB 2014)).

The respective marks, once again, are Registrant’s INSANITY and Applicant’s PATENT INSANITY (with “PATENT” disclaimed), both in standard characters.

Applicant argues that its two-word compound mark creates a different visual and audio perception from “INSANITY” alone; that pronunciation of its mark requires six syllables rather than the four as required to say “INSANITY”; and that “PATENT INSANITY” conveys a humorous and whimsical wordplay that is suggestive of the term ‘patently insane.’” Applicant contends that the word “PATENT” means “readily visible or intelligible: obvious” as well as a claim of exclusive right to an invention, so the “overall mark PATENT INSANITY gives rise to an idea that patent law and the patent industry is quite complex and requires a skillset to properly navigate.”³

The Examining Attorney objects to Applicant’s proffered definition of “patent,” as Applicant did not make it of record during the course of prosecution, and has merely cited to the hyperlink instead of providing a printout of the definition with the URL and date of access.⁴ The objection is well-founded. *See* Trademark Rule 2.142(d), 37 C.F.R. §2.142(d) (ex parte record must be complete); *In re I-Coat Co., LLC*, 2018 WL

³ Applicant’s brief, 6 TTABVUE 8-10, (citing <https://www.merriam-webster.com/dictionary/patently>).

⁴ Examining Attorney’s brief, 8 TTABVUE 2-3.

2753196, *2 (TTAB 2018) (requirements for admission of documents from the Internet). Nonetheless, we take judicial notice that Applicant’s proffered variant definition of “PATENT” is correct.⁵ See *In re Leathernecks Motorcycle Club Int’l, Inc.*, 2024 WL 2863442, *6 n.6 (TTAB 2024) (the Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or regular fixed editions.).

That said, we agree with the Examining Attorney that the marks are similar. It is true that “PATENT” adds two syllables to “INSANITY,” but “[p]urchasers ... do not engage in trademark syllable counting — they are governed by general impressions made by appearance or sound, or both.” *In re John Scarne Games, Inc.*, 1959 WL 5901, *1 (TTAB 1959). Here, the general impression is that Applicant’s mark encompasses the cited registered mark in its entirety, adding the disclaimed prefatory word “PATENT.” “When one mark incorporates the entirety of another mark, it has been found to be similar.” *Bureau Nat’l. Interprofessionnel du Cognac v. Cologne & Cognac Entm’t.*, 2024 WL 3659100, *7 (Fed. Cir. 2024). While there is no rule that overlapping marks are automatically similar, likelihood of confusion often has been found where the entirety of one mark is incorporated within another. *E.g.*, *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1321-22 (Fed. Cir. 2014) (STONE LION CAPITAL encompassed registered marks LION CAPITAL and LION); *Double Coin Holdings Ltd. v. Tru Development*, 2019 WL 4877349, *8 (TTAB 2019) (finding junior mark, ROAD WARRIOR, confusingly similar to senior mark WARRIOR).

⁵ Merriam-webster.com/dictionary/patent 9/28/2025.

Applicant’s “wordplay” argument assumes that the term “patently insane” has some recognized meaning that would extend to “patent insanity,” but Applicant has not provided any evidence showing this is the case. In addition, Applicant’s argument is belied by its disclaimer of “PATENT” as descriptive or generic for “providing online non-downloadable educational videos and audio recordings regarding patent law, patent applications and patent strategy....” *Real Foods Pty Ltd. v. Frito-Lay North America, Inc.*, 906 F.3d 965, 974 (Fed. Cir. 2018) (disclaimer recognizes descriptive function of disclaimed terms).

Applicant quotes *National Data* for the proposition that “[t]he technicality of a disclaimer in [an] application to register [a] mark has no legal effect on the issue of likelihood of confusion [because] [t]he public is unaware of what words have been disclaimed....” *In re Nat’l Data Corp.*, 753 F.2d 1056, 1059 (Fed. Cir. 1985).⁶ But Applicant’s argument confuses cause with effect. A disclaimed segment of a mark is given less weight, not because the public is aware of the disclaimer, but because the public perceives that segment as descriptive or generic, which warrants the disclaimer. “Whether a term is merely descriptive or not is determined from the viewpoint of the relevant purchasing public.” *In re Korn Ferry*, 2024 WL 3219482, *3 (TTAB 2024). *See also In re Vetements Grp. AG*, 137 F.4th 1317, 1332 (Fed. Cir. 2025) (“A term is generic, and thus precluded from registration on the Principal Register, when the relevant public primarily uses or understands the term sought to be protected to refer to the genus of goods or services in question.”) (internal punctuation

⁶ Applicant’s brief, 6 TTABVUE 8.

omitted). So “while the Board must consider the disclaimed term, an additional word or component may technically differentiate a mark but do little to alleviate confusion.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1382 (Fed. Cir. 2023). “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 Nat’l Data*, 753 F.2d at 1058-59, *quoted in Quiktrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1035 (Fed. Cir. 2021).

Consumers would be more likely to perceive a fanciful or arbitrary term, rather than a descriptive or generic term, as the source-indicating feature of the mark. *See, e.g., In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (affirming TTAB’s finding that “DELTA,” not the disclaimed generic term “CAFE,” is the dominant portion of the mark THE DELTA CAFE). In this case, the dominant, source-indicating feature is the arbitrary word INSANITY, which comprises the entirety of Registrant’s mark. *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 1340 (Fed. Cir. 2004) (defining an arbitrary mark as a “known word used in an unexpected or uncommon way”; such marks are typically strong).

If a junior user takes the entire mark of another and adds a generic or descriptive term, it is generally not sufficient to avoid confusion. *Double Coin Holdings*, 2019 WL 4877349, at *9. “Considering the substantial similarities between the marks in this case, it seems to us that a purchaser who sees one mark and later encounters the other is likely to think, if the two marks are applied to the same or related goods and/or services, that the second mark is the same mark he had seen earlier, or, if he

realizes that there are some differences in the marks, that the second is simply a slightly varied version of the first, with both serving to indicate origin in the same source.” *In re Mucky Duck Mustard Co. Inc.*, 1988 WL 252484, *1 (TTAB 1988).

For these reasons, we find that the marks are similar, and the first *DuPont* factor weighs in favor of finding a likelihood of confusion.

B. Comparing the Services, Channels of Trade, and Classes of Customers

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...,” and the third *DuPont* factor concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361; *Stone Lion v. Lion Cap.*, 746 F.3d at 1319. A proper comparison of the services “considers whether ‘the consuming public may perceive [the respective ... services of the parties] as related enough to cause confusion about the source or origin of the ... services.’” *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002)). “The services need not be identical—the evidence need only establish that the respective [services] are related in some manner and/or [that] the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (internal punctuation omitted).

In this case, we compare Applicant’s services:

“providing online non-downloadable educational videos and audio recordings regarding patent law, patent applications and patent strategy, for inventors, entrepreneurs, small business owners, paralegals, patent administrators and other legal professionals,”

with Registrant’s pertinent services:

“legal agency services in the form of providing legal counsel and legal services in the fields of intellectual property law,”

and

“legal advocacy services, namely, providing legal and paralegal services for intellectual property owners,”

and particularly, Registrant’s

“provision of information, advisory and consultancy services in the fields of internet-based social networking and intellectual property legal services....”

As the Examining Attorney points out, Registrant’s “intellectual property” encompasses patents. The Merriam-Webster dictionary defines “intellectual property” as “a right or registration (such as a patent, trademark, trade secret, or copyright) relating to or protecting this property.”⁷ Applicant argues that International Class 45, in which Registrant’s services reside, contains a number of subclass distinctions, and that Registrant’s recitation of services pertains to “soft IP,” such as trademark, copyright, and entertainment law, not “hard IP,” which pertains to patent law.⁸ It is presumed, however, that a registration “encompasses all goods or

⁷ Merriam-Webster.com, May 3, 2024 Office Action at 9.

⁸ Applicant’s brief, 6 TTABVUE 10-11. Applicant cites the USPTO’s online searchable U.S. Acceptable Identification of Goods and Services Manual (available at: <https://idm-tmng.uspto.gov/id-master-listpublic.html>). *Id.* The Examining Attorney objects to this as new Internet evidence that should have been introduced during prosecution via a printout of the webpage with its URL and date accessed. Examining Attorney’s brief, 8 TTABVUE 2-3. The purpose of requiring the URL and date of access of an Internet printout is to permit the

services of the type described.” *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013), and Registrant’s identified “intellectual property” presumably encompasses patents, as the dictionary evidence shows.

To show the relatedness of the respective services, the Examining Attorney introduces evidence of fifteen websites of third-party law firms that provide both legal services in the field of intellectual property, including patents, and educational videos related to patent law, applications or strategy.⁹ For example:

- **Simpson & Simpson**—“The following educational videos explain basic concepts of patent law.” (October 3, 2023 Office Action at 11.)
- **Feigin & Fridman**— “[H]e prefers to teach what he knows and make intellectual property fun and exciting.” (October 3, 2023 Office Action at 19.)
- **Garvey, Smith & Nehrbass** – “Typical IP Blunders and how to Ideally Avoid Them.” (October 3, 2023 Office Action at 28.)
- **Schwegman, Lundberg, Woessner** – “Patent Protection at the Intersection of Life Science and Computer Science.” (May 3, 2024 Office Action at 27.)
- **John Rizvi, P.A.** – “The Patent Professor, in partnership with Prototype House, is hosting a breakfast to provide inventors with insight on their journey.” (May 3, 2024 Office Action at 36.)
- **Dane IP Law PC** – “Intellectual Property: How-To MAKE ‘EM WORK FOR YOU. Patents, trademarks, copyrights, trade secrets.” (May 3, 2024 Office Action at 66.)
- **HMC Associates** – “Patent Video Series: Patent Searching, PCT Patent

opposing party to verify the information submitted. *In re I-Coat Co.*, 2018 WL 2753196, at *2. This was not a citation to a third-party website, but the Identification of Goods and Services Manual, to which the Examining Attorney has access. The better practice is to print out the pages, but the omission in this case is not fatal. The objection is overruled.

⁹ Examining Attorney’s brief, 8 TTABVUE 11. *See* October 3, 2023 Office Action at 11-66, May 3, 2024 Office Action at 11-98, and April 4, 2025 Office Action at 5-60.

Applications, Utility Patents Compared with Design Patents.” (April 4, 2025 Office Action at 5-6.)

- **Mandelbaum Barrett PC** – “Navigating IP: Patents vs. Trademarks Timelines & Challenges.” (April 4, 2025 Office Action at 19.)

Applicant submits that this evidence shows “disparate law firms providing educational videos for the purpose of marketing/selling their legal representation services. In other words, the educational videos are used as a marketing tool rather than a sellable service.”¹⁰ Applicant adds that “The Examining Attorney has provided no evidence whatsoever of registrations having a concomitant listing of services in both legal services and educational videos.”¹¹

It is true that some law firms offer educational videos in their practice areas, and that these videos may indeed attract clients. But their motivation for providing the educational videos is beside the point. The point, now demonstrated, is that “[b]ecause the record shows that companies are known to offer both ... services under the same mark and, often, on the same website, we find that substantial evidence supports the Board’s finding on these factors [similarity of services and channels of trade].” *In re Charger Ventures*, 64 F.4th at 1382. And as the Examining Attorney states, “The third-party Internet evidence of record is far more probative in value than third-party registrations in that they consist of real world, in use, and relevant marketplace evidence establishing that consumers are accustomed to seeing the same entity commonly providing legal services related to intellectual property, including

¹⁰ Applicant’s brief, 6 TTABVUE 13.

¹¹ Applicant’s brief, 6 TTABVUE 13.

patents and educational videos related to patents and marketing them under the same mark.”¹²

The third-party evidence further demonstrates how such educational and legal services would be offered through the same channels of trade to the same classes of customers. *Id.*

For these reasons, the second and third *DuPont* factors weigh in favor of finding a likelihood of confusion.

C. Sophistication of Customers

Under the fourth *DuPont* factor, we consider “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361.

Applicant asserts, with respect to Du Pont Factor (4), the buyers to whom sales of Registrant’s services are made and those intended buyer[s] of Applicant’s intended services are not impulse buyers but are sophisticated purchasers seeking legal services in the case of Registrant’s services and will be seeking educational services under Applicant’s intended mark, therefore, confusion is not likely.¹³

Applicant offers no evidence in support of this assertion. The subject Application and Registration offer no support, either, as neither is limited as to price points or sophistication of customers. Applicant’s services are directed to legal professionals as well as “inventors, entrepreneurs, [and] small business owners”; Registrant’s informational services are unlimited by type of consumer. Thus, the subject

¹² Examining Attorney’s brief, 8 TTABVUE 12.

¹³ Applicant brief, 6 TTABVUE 15.

educational and informational services are directed toward consumers who may have a broad range of education and income levels. “We must therefore presume that [Registrant’s] and Applicant’s services are offered to both sophisticated and unsophisticated consumers,” such that “the applicable standard of care for the likelihood of confusion analysis is that of the least sophisticated consumer.” *Primrose Retirement Cmtys. LLC v. EdwardRose Senior Living, LLC*, 2016 WL 7655551, *12 (TTAB 2016) (citing *Stone Lion v. Lion Cap.*, 746 F.3d at 1325).

What’s more, given the similarity of the marks, with one encompassing the other, adding only the disclaimed “PATENT,” “even a careful, sophisticated consumer of these [services] is likely to believe that the [services] emanate from a common source. ... In other words, even careful purchasers who do notice the difference in the marks will not ascribe it to differences in the source of the [services], but will see the marks as variations of each other, pointing to a single source.” *In re I-Coat*, 2018 WL 2753196, at *11.

On the whole, we have no reason to find that ordinary consumers of the involved services would exercise more than an ordinary degree of care. This factor is neutral.

D. Strength or Weakness of Cited Registered Mark

“Two of the *DuPont* factors (the fifth and sixth) consider strength.” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023). The fifth *DuPont* factor concerns “[t]he fame of the prior mark (sales, advertising, length of use),” whereas the sixth *DuPont* factor allows Applicant to contract that scope of protection by adducing

evidence of “[t]he number and nature of similar marks in use on similar goods [or services].” *DuPont*, 476 F.2d at 1361.

Applicant asserts that “[r]egarding the fame of Registrant’s mark and service offerings, the mark appears to be relatively unknown, with a lack of any discernable extensive advertising or marketing and therefore there is unlikely to be any consumer recognition of the Registrant’s mark as a brand in connection with its services, especially related to anything to do with patents or patent law.”¹⁴ “Further,” Applicant states, “Registrant’s mark coexists in a sea of other INSANITY marks and compound marks using the word insanity.”¹⁵ During the course of prosecution, Applicant proffered a list of 21 third-party registrations for marks consisting of or containing “INSANITY.”¹⁶ The Examining Attorney advised Applicant that “To make third party registrations part of the record, an applicant must submit copies of the registrations, or the complete electronic equivalent from the USPTO’s automated systems, prior to appeal.”¹⁷ Applicant did so in its Request for Reconsideration, attaching not only the registration certificates, but the entire electronic file history for each third-party registration.¹⁸ Applicant concludes, “Although Applicant understands and appreciates that not all of the above marks are for related goods or

¹⁴ Applicant’s brief, 6 TTABVUE 16.

¹⁵ *Id.*

¹⁶ April 3, 2024 Response to Office Action at 20-27.

¹⁷ May 3, 2024 Response to Office Action at 5.

¹⁸ Nov. 4, 2024 Response to Office Action/Request for Reconsideration at 59-61, 67-1712.

services, they are still offered as evidence of the relative weakness of the mark INSANITY.”¹⁹

In determining strength of a mark, we consider its inherent strength, based on the nature of the mark itself, and its commercial strength or recognition. *In re Chippendales USA Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength”); 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:80 (5th ed. Sept. 2025) (“The first enquiry is for conceptual strength and focuses on the inherent potential of the term at the time of its first use. The second evaluates the actual customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another’s use.”). Likelihood of confusion strength is not “an all-or-nothing measure.” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 1325 (Fed. Cir. 2017). It “varies along a spectrum from very strong to very weak.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1375 (Fed. Cir. 2005).

It is unclear whether Applicant is attempting to prove conceptual or commercial weakness of Registrant’s mark. Conceptually, we must presume the cited INSANITY mark is inherently distinctive because it is registered on the Principal Register without a claim of acquired distinctiveness. 15 U.S.C. § 1057(b); *In re Fat Boys Water Sports LLC*, 2016 WL 3915986, *8 (TTAB 2016). The Examining Attorney is not required to adduce evidence of the mark’s commercial strength, which we treat as

¹⁹ Applicant’s brief, 6 TTABVUE 24.

neutral. *In re Pacer Tech.*, 338 F.3d 1348, 1352 (Fed. Cir. 2003); *In re Mr. Recipe, LLC*, 2016 WL 1380730, *2 (TTAB 2016).

Furthermore, we agree with the Examining Attorney that Applicant's cited third-party registrations "appear to be for goods and/or services that are predominantly different from or unrelated to those identified in the cited registration and applicant's application."²⁰ They cover such disparate goods and services as "fruit sauces" (INSANITY, Reg. No. 3176033), "nutritional and dietary supplements" (INSANITY, Reg. No. 4363779), "batting gloves" (INSANITY, Reg. No. 4641066), "parlor games" (RELATIVE INSANITY, Reg. No. 5510040), "Clothing, Namely T-Shirts, Pants, Skirts, Dresses, Footwear, And Headwear" (PURE INSANITY, Reg. No. 3031806), "Manually-operated exercise equipment" (FITNESS INSANITY, Reg. No. 5513836), "Training of dance instructors (DANZ INSANITY, Reg. No. 5513836), "Detonating fireworks" (MAXIMUM INSANITY, Reg. No. 4626061), "On-line journals, namely, blogs featuring stories related to motherhood, parenting tips, and news of interest to young families" (MOMENTARY INSANITY, Reg. No. 4763102), "Providing educational information about healthcare" (DAUGHTER'S INSANITY, Reg. No. 6890709), and "Pre-recorded DVDs featuring fitness, dietary information and instruction" (INSANITY AT THE ASYLUM, Reg. No. 4007194).²¹

These third-party registrations in unrelated fields "have no bearing on the strength of the term in the context relevant to this case." *TAO Licensing, LLC v.*

²⁰ Examining Attorney's brief, 8 TTABVUE 9.

²¹ Applicant's brief, 6 TTABVUE 17-24.

Bender Consulting Ltd., 2017 WL 6336243, *16 (TTAB 2017) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1328 (Fed. Cir. 2017) (disregarding third-party registrations for other types of goods where the proffering party “has neither introduced evidence, nor provided adequate explanation to support a determination that the existence of [those] marks for goods in other classes, *e.g.*, ... support a finding that registrants’ marks are weak with respect to the goods identified in their registrations.”).

Applicant insists that “some of the above marks are arguably for related services, for example EDGE OF INSANITY which is for ‘Songwriting; Production of musical sound recording’ in class 041 directly related to Registrant’s website advertising.”²² We fail to see the relationship with Registrant’s identified services—services Applicant can neither expand nor contract with extrinsic evidence. *In re Detroit Athl. Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018). The closest recited services adduced by Applicant are “Electronic transmission and streaming of digital media content for others...” (INSANITY, Reg. No. 4935278), which concerns means of transmission, not the content transmitted, “Educational services, namely, providing web-based, classroom and other training in the field of exercise equipment, physical fitness, diet and nutritional programs...” (INSANITY, Reg. No. 4355182), which does not concern patents or legal services, “Pre-recorded digital media in the form of CDs, DVDs, audio files, video files and audiovisual files featuring artistic, music and audio performances....” (INSANITY, Reg. No. 5239039), which does not concern Applicant’s

²² Applicant’s brief, 6 TTABVUE 24.

and Registrant's subject matters, and "Digital media, namely, downloadable audio and video files in the nature of ongoing reality and game show television programming (RELATIVE INSANITY, Reg. No. 4610918).²³

As the Federal Circuit made clear in *Omaha Steaks Int'l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1324 (Fed. Cir. 2018), third-party evidence of similar marks for dissimilar goods or services does not weaken the senior mark, nor does it avoid a likelihood of confusion, as the sixth *DuPont* factor requires us to focus on "similar" goods or services. Applicant's cited third-party registrations are for goods and services far removed from Applicant's and Registrant's recited services.

For these reasons, the fifth and sixth *DuPont* factors are neutral.

E. Extent of Potential Confusion

The twelfth *DuPont* factor addresses "The extent of potential confusion, i.e., whether de minimis or substantial." *DuPont*, 476 F.2d at 1361.

Here Applicant recycles its prior arguments, contending that confusion is unlikely because prospective buyers are sophisticated purchasers in differing channels of trade, "soft IP" and "hard IP."²⁴ These arguments have been considered and rejected.

Beyond that, the twelfth *DuPont* factor is not simply a summation of the factors it precedes. It is rather an assessment of the number of potential consumers who would be exposed to confusingly similar goods or services. As the Board stated in *Davey Products*:

²³ Applicant's brief, 6 TTABVUE 17-24.

²⁴ Applicant's brief, 6 TTABVUE 25.

Under the twelfth *du Pont* factor (the potential for confusion, i.e., whether de minimis or substantial), we find that the goods involved here are the type of goods that would be marketed to and purchased by significant numbers of purchasers, and that the potential for confusion therefore cannot be deemed to be de minimis. The twelfth du Pont factor is neutral, at best.

In re Davey Prods. Pty Ltd., 2009 WL 2420527, *9 (TTAB 2009).

Here, as there, Applicant's and Registrant's services are of a type that can be marketed to a significant number of consumers, and the potential for confusion is not de minimis. The twelfth *DuPont* factor is at best neutral.

II. Conclusion

After careful consideration of the law, evidence, and arguments, we find that the respective marks are similar, that they would be used in connection with related services that would travel through the same channels of trade to the same or overlapping classes of consumers, that these consumers cannot be expected to exercise more than ordinary care and sophistication, that Applicant has not demonstrated that the conceptual or commercial strength of Registrant's mark is weak, and that the extent of potential confusion is more than de minimis. Balancing the relevant *DuPont* factors, we therefore find that confusion is likely.

Decision: The refusal to register Applicant's mark is affirmed. 15 U.S.C. 1052(d).