

This Opinion is not a
Precedent of the TTAB

Mailed: August 14, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Little Mexico LLC
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Serial No. 98111934
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Aaron P. Peacock of Peacock Law Firm PLLC,
for Little Mexico LLC.

Tina Brown, Trademark Examining Attorney, Law Office 118,
Michael Baird, Managing Attorney.

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Before Greenbaum, Goodman, and Stanley,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Little Mexico LLC (“Applicant”) seeks registration on the Principal Register of the mark LITTLE MEXICO (in standard characters, MEXICO disclaimed) for “Take-out restaurant services” in International Class 43.¹

¹ Application Serial No. 98111934 was filed on August 1, 2023, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as June 25, 2001 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

Page references to the application record are to the online database of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board’s TTABVUE docket system. Applicant’s brief is at 4 TTABVUE and the reply brief is at 7 TTABVUE; the Examining Attorney’s brief is at 6 TTABVUE.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark is likely to cause confusion with the mark



(MEXICO and ESTABLISHED 1955

disclaimed) for "Restaurant and bar services; Restaurant services" in International Class 43.²

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, or to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"). See

² Registration No. 3414001 issued April 22, 2008; Section 8 accepted and Section 15 acknowledged; renewed. The description of the mark states: "The mark consists of the wording MONTEREY'S LITTLE MEXICO ESTABLISHED 1955, enclosed in a rectangle border, with a curved line on both sides of the term 'MONTEREY'S' and a jalapeno used in place of an apostrophe. The wording 'ESTABLISHED 1955' has a vertical line on either side of the phrase." Color is not claimed as a feature of the mark.

also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. See, e.g., *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *In re Country Oven, Inc.*, 2019 TTAB LEXIS 381, at *2 (TTAB 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. See *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort 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 [or services] and differences in the marks.”). These factors, and others, are discussed below.

A. Similarity or Dissimilarity of the Services

The second *DuPont* factor considers “[t]he similarity or dissimilarity and nature of the goods [or services] as described in an application or registration.”³ *DuPont*, 476 F.2d at 1361.

In determining the similarity or dissimilarity of the services, we must focus on the services as they are identified in the involved application and the cited registration.

³ Apparently conceding the issue, Applicant did not address this factor in its brief. See *In re Morinaga Nyugyo Kabushiki Kaisha*, 2016 TTAB LEXIS 448, at *3 (TTAB 2016) (“Apparently conceding the issue, Applicant did not address these *du Pont* factors in its brief”).

See In re i.am.symbolic, llc, 866 F.3d at 1327; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of services within a particular class in the application or registration. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

To reiterate, Applicant's services are "Take-out restaurant services" and Registrant's services are "Restaurant and bar services; Restaurant services." The Examining Attorney provided a definition of "restaurant" which is defined as "a business establishment where meals are served to the public." AMERICAN HERITAGE DICTIONARY (ahdictionary.com), April 6, 2024 Office Action at TSDR 3; August 13, 2024 Office Action at TSDR 3.

Registrant's "restaurant services" are broad enough to encompass "take-out restaurant services." *In re Hughes Furniture Indus.*, 2015 TTAB LEXIS 65, at *10 (TTAB 2015) (applicant's broadly worded identification of "furniture" necessarily encompasses registrant's narrowly identified "residential and commercial furniture"). Therefore, the services are legally identical in part.⁴

The second *DuPont* factor supports a finding of likelihood of confusion.

⁴ The Examining Attorney also provided third-party registration evidence to show that take-out restaurant services are related to Registrant's bar services. April 6, 2024 Office Action at TSDR 5-15. While this additional evidence is not needed given the in-part legally identical nature of the services in the subject application and cited registration, this evidence provides additional support for the Examining Attorney's refusal.

B. Trade Channels and Classes of Consumers

We next consider the “similarity or dissimilarity of established, likely-to-continue trade channels” and the classes of consumers for Applicant’s and Registrant’s services. *DuPont*, 476 F.2d at 1361. There are no restrictions in Applicant’s and Registrant’s identifications of services as to the channels of trade or classes of consumers. The classes of consumers for Applicant’s and Registrant’s restaurant services are the general public.

The Examining Attorney did not provide evidence as to trade channels or classes of consumers. However, as to the legally identical restaurant and take-out restaurant services, we presume the channels of trade and classes of consumers will be the same. *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); *see also Genesco Inc. v. Martz*, 2003 TTAB LEXIS 123, at *28 (TTAB 2003) (“Given the in-part identical and in-part related nature of the parties’ goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade.”).

At least as to the in-part legally identical services, the channels of trade and classes of consumers support a finding of likelihood of confusion.

C. Third-party Registrations

Applicant argues that LITTLE MEXICO is a weak term and “entitled to limited protection.” 4 TTABVUE 14. Applicant supports this argument with third-party composite registrations for restaurant services that contain the term LITTLE; its argument is also based on the disclaimer of MEXICO in the cited registration. 4 TTABVUE 13, 14; 7 TTABVUE 7-8. Applicant argues that “[t]he ubiquity of the word LITTLE in the [third-party] registrations ... weigh in favor of no likelihood of confusion.” 4 TTABVUE 15.

The sixth *DuPont* factor considers “[t]he number and nature of similar marks in use on similar goods [or services],” *DuPont*, 476 F.2d at 1361, and assesses both conceptual and commercial strength, if there is evidence in the record.⁵ *Spireon Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (citing *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010)). Active third-party registrations for marks “on similar goods [or services] can bear on a mark’s conceptual strength.”⁶ *Spireon*, 71 F.4th 1363 (citing *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015)).

⁵ The fifth *DuPont* factor examines the extent to which the public perceives the mark as indicating a single source of origin, i.e., its fame or commercial strength. *DuPont*, 476 F.2d at 1361. In an ex parte appeal, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, 2016 TTAB LEXIS 470, at *26 (TTAB 2016). As is normally the case in ex parte proceedings, the fifth *DuPont* factor is neutral. See *In re Thomas*, 2006 TTAB LEXIS 135, at *18 n.11 (TTAB 2006).

⁶ There is no third-party use evidence in the record for either component term (LITTLE or MEXICO) or the combined term LITTLE MEXICO.

The Examining Attorney submitted six third-party registrations for restaurant services and take-out restaurant services that contain the term MEXICO and include a disclaimer of MEXICO.⁷ April 6, 2024 Office Action at TSDR 16-23. These registrations reflect that MEXICO is descriptive when used in connection with restaurant services; this is also reflected by the disclaimer in Registrant's mark.⁸ See *n re Pollio Dairy Prods. Corp.*, 1988 TTAB LEXIS 45, at *3 (TTAB 1988) ("by its disclaimer ... applicant has conceded that the term is merely descriptive as used in connection with applicant's goods.").

Applicant submitted 84 third-party registrations for restaurant services that have LITTLE as a component and first term in the mark for restaurant services, although five are cancelled.⁹ Examples include Little Brazil, Little Argentina, Little Italia, Little Nepal, Little India Pizza, Little Tokyo, Little Wok, Little Beet, Little City, Little Angies, and Little Collins. July 3, 2024 Response to Office Action at TSDR 9-423.

These registrations reflect that LITTLE, as the first term and component of marks, is common in the restaurant industry, and that the term LITTLE is

⁷ One additional registration covered catering services, not restaurant services. The Examining Attorney also provided a dictionary definition of "Mexico" defined as "a country in North America, south of the U.S." COLLINS DICTIONARY, (collinsdictionary.com), April 6, 2024 Office Action at TSDR 15.

⁸ The cited mark is registered on the Principal Register without a claim of acquired distinctiveness and is therefore treated as a whole as inherently distinctive, although its strength is limited somewhat by the disclaimed matter. See *Sock It To Me, Inc. v. Fan*, 2020 TTAB LEXIS 201, at *30-31 (TTAB 2020).

⁹ The Examining Attorney indicates in her brief which registrations are cancelled, leaving 79 active third-party registrations for restaurant services containing the term LITTLE as a component of the mark. 6 TTABVUE 10.

conceptually weak. As a result, consumers may tend to focus on the additional terms or elements in these LITTLE restaurant marks to distinguish them, even if that additional term is descriptive.¹⁰ See *In re Hartz Hotel Svcs.*, 2012 TTAB LEXIS 75, at *11-12 (TTAB 2012) (numerous third-party uses of GRAND HOTEL marks for hotel services show that consumers distinguish between these marks even though the only distinguishing element is a geographically descriptive term). So here, for example, consumers will look to the MEXICO portion of Applicant's and Registrant's marks to distinguish them from other LITTLE marks for restaurant services.

There are no third-party registrations in the record of the combined term LITTLE MEXICO. The third-party LITTLE and MEXICO registrations submitted by Applicant and the Examining Attorney contain additional elements that cause many of them to be less similar to the cited mark and Applicant's mark, making them less probative of the weakness of LITTLE MEXICO as a whole. See *Sabhnani v. Mirage Brands, LLC*, 2021 TTAB LEXIS 464, at *32 (TTAB 2021) (third-party registrations that are less similar than the involved marks and contain additional elements are less probative); *In re Merck & Co.*, 1975 TTAB LEXIS 198, at *2 (TTAB 1975) (third-party registrations showing frequent adoption of the letter "M" as a portion of composite mark do not establish that registrant's mark MVAC as a whole is weak and entitled to limited protection).

We find the sixth *DuPont* factor is neutral.

¹⁰ We note that "even suggestive or weak marks are entitled to protection from the use of a very similar mark for legally identical services." *In re Max Capital Grp. Ltd.*, 2010 TTAB LEXIS 1, at *11-12 (TTAB 2010).

D. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (citing *DuPont*, 476 F.2d at 1361). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re Davia*, 2014 TTAB LEXIS 214, at *4 (TTAB 2014).

The test, under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the services offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general, rather than specific, impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 2014 TTAB LEXIS 166, at *17 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 1975 TTAB LEXIS 236, at *6 (TTAB 1975). Additionally, “[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992).

Our analysis cannot be predicated on dissecting the marks into their various components; the decision must be based on a comparison of the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985).

To reiterate, Applicant's mark is LITTLE MEXICO and Registrant's mark is



Applicant's mark is in standard characters, so we must consider all depictions "regardless of font style, size, or color," which could include the mark being depicted in the font style used in the cited mark for the term LITTLE MEXICO. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 1353 (Fed. Cir. 2011) (a standard character mark is not limited to any particular presentation). *See also Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983) (the rights associated with a mark in typed form (standard characters) reside in the wording and not in any particular display).

Applicant argues that the Examining Attorney ignored components of the cited mark in her analysis and is incorrectly characterizing the cited composite mark as a stylized mark with a design, which it submits is an important distinction. 7 TTABVUE 3; 4 TTABVUE 10-11. Applicant argues that the Examining Attorney did not conduct the proper analysis by ignoring and not weighing "a) the design elements of the composite mark, b) the dominant portions of the composite mark, c) the dominant portion of the applied-for mark, d) the house mark in the composite mark, e) a disclaimed portion of the composite mark, f) the disclaimed portion of the applied-for mark and g) the weakness of the term 'Little' in the composite mark." 7 TTABVUE 4; 4 TTABVUE 6-12.

Applicant is correct in its characterization of the cited mark as a composite mark consisting of words and a design. When a mark comprises both word(s) and a design, the literal portion is normally accorded greater weight because it will be used by purchasers to request the services. *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983); *In re Dakin's Miniatures*, 1999 TTAB LEXIS 636, at *8 (TTAB 1999).

The rectangular design feature of the cited mark (that surrounds the words and frames it) forms a background or “carrier.” The curved and dashed lines in the design merely reinforce the wording MONTEREY’S and ESTABLISHED 1955. Neither the rectangle nor the curved and dashed horizontal lines are strong source identifiers and they do not distinguish the mark. *See In re Ocean Tech., Inc.*, 2019 TTAB LEXIS 382, at *17 (TTAB 2019) (“[O]n the right side of the proposed marks is a common geometric shape that consumers likely would perceive as a background design or carrier to the enclosed wording, rather than as a separable design element with trademark significance.”); *In re Hughes Furniture*, 2015 TTAB LEXIS 65, at *17-18 (“[C]ommon design elements (consisting of a rectangle enclosing the literal elements and two horizontal lines) . . . merely serve as carriers for the wording and do not include a distinctive element with strong source-identifying characteristics.”); *Guess? Inc. v. Nationwide Time Inc.*, 1990 TTAB LEXIS 55, *at 5 (TTAB 1990) (“ordinary geometric shapes such as circles, ovals, squares, etc., even when not used as a background for other marks, are regarded as non-distinctive”) (citation omitted). The jalapeno pepper design element, used in place of an apostrophe in the term MONTEREY’S, is very tiny in relation to the other wording in the mark and is subordinate to the wording.

See also In re Promo Ink, 2006 TTAB LEXIS 138, at *12 (TTAB 2006) (“this punctuation mark does not significantly change the commercial impression of the mark”).

In comparing the marks, they admittedly have both similarities and dissimilarities. Although the composite registered mark contains design elements that Applicant’s mark does not contain, as already stated, we accord the words in the cited mark more weight than the design elements because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request, or search for, the services. We do not ignore the design elements in our analysis of the marks, but we find that they do not suffice to distinguish Applicant’s mark from the cited mark when the marks are viewed in their entirety.

Applicant argues that the marks have different commercial impressions because the dominant portions of the marks differ. Applicant submits that the dominant portion of its mark is LITTLE because MEXICO has been disclaimed. 4 TTABVue 12. However, while we do consider the dominant portions of the cited composite mark which contains additional wording and a design, it is unnecessary to assign dominance to any portion of Applicant’s mark in order to perceive the similarity between the marks. Both marks contain the identical terms LITTLE MEXICO. Therefore, we need not accord any particular weight to either term in Applicant’s mark given the identity with a literal portion of the cited mark.

Applicant argues that MONTEREY’S (and design) in the cited mark is the dominant literal portion of the cited mark because “it is the first word of the mark,

because it is shown prominently at the top of the mark, because it is a house mark,” and because the design elements emphasize MONTEREY’S (and design). 4 TTABVUE 12; 7 TTABVUE 8-9.

Although MONTEREY’S is shown above LITTLE MEXICO and ESTABLISHED 1955 in the cited mark, we find the dominant literal portion is LITTLE MEXICO because it is by far the largest and most prominent term, placed in the center of the mark, and drawing attention as a visual focal point. *See In re Aquitaine Wine USA, LLC*, 2018 TTAB LEXIS 108, at *6-7 (TTAB 2018) (the term LAROQUE displayed in a large bold typeface, and comprising the largest literal portion of the mark in terms of size, position and emphasis, is the dominant element in Applicant’s word and design mark). The term MONTEREY’S (and design), although placed above LITTLE MEXICO, is smaller in size and in a different and more minimalist font style than the prominently featured LITTLE MEXICO portion. The terms ESTABLISHED 1955 have been disclaimed, are in much smaller font, are in a subordinate position to LITTLE MEXICO, and also are entitled to less weight. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 1343 (Fed. Cir. 2004) (descriptive terms are properly given less weight). Although we do not ignore the less prominent terms in the literal portion of the cited mark, these terms are entitled to less weight in the analysis of similarity.

Applicant’s mark LITTLE MEXICO is subsumed within the cited mark. Likelihood of confusion has frequently been found where the entirety of one mark is incorporated within another. *See, e.g., In re Mighty Leaf Tea*, 601 F.3d 1342, 1347-48 (Fed. Cir. 2010) (applicant’s mark ML is similar to registrant’s mark ML MARK

LEES); *DowntownDC Bus. Improvement Dist. v. Clarke*, 2024 TTAB LEXIS 412, *67-68 (TTAB 2024) (DOWNTOWNDC DISTRICT OF FASHION similar to DISTRICT OF FASHION). LITTLE MEXICO is the sole component in Applicant's mark and the dominant portion of the cited mark. The identity of Applicant's mark and the dominant portion of the cited mark "is especially important in the restaurant industry 'because restaurants are often recommended by word of mouth and referred to orally, [so] it is the word portion ... which is more likely to be impressed on the consumer's memory.'" *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (quoting *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570 (Fed. Cir. 1983)).

Addressing the house mark argument of Applicant, there is nothing in the record to establish that Registrant uses MONTEREY'S as a house mark or that consumers of the identified services would perceive MONTEREY'S as a house mark, or would be acquainted with such asserted house mark usage. Therefore, in comparing the marks, we focus our analysis on whether the additional words and design elements in the cited mark are sufficient to distinguish the marks for the in-part legally identical services.

Considering the marks in their entirety, we acknowledge that the marks have some dissimilarities in sound and appearance to the extent that the cited mark includes the additional terms MONTEREY'S and ESTABLISHED 1955, and has design elements. However, as we have often stated, "the presence of an additional term in the mark does not necessarily eliminate the likelihood of confusion if some

terms are identical.” *In re Mighty Leaf Tea*, 601 F.3d at 1347-48; *China Healthways Inst., Inc. v. Wang*, 491 F.3d 1337, 1341 (Fed. Cir. 2007). *See also Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d at 1266 (even though applicant’s mark PACKARD TECHNOLOGIES (with TECHNOLOGIES disclaimed) did not incorporate every feature of opposer’s HEWLETT PACKARD marks, they create a similar overall commercial impression).

As to connotation, the additional wording and design elements in the cited mark do not change the meaning of LITTLE MEXICO as a whole in such a way as to distinguish it in connotation from Applicant’s LITTLE MEXICO mark. In terms of overall commercial impression, we find that Applicant’s mark is similar to the cited mark due to the identity of the term LITTLE MEXICO.

As noted above, where the services at issue are identical or legally identical, as they are in this case, the degree of similarity between the marks which is necessary to support a finding of likelihood of confusion is less than it would be if the services were disparate. We must anticipate the likely situation whereby consumers already familiar with Registrant’s mark will encounter Applicant’s mark in connection with legally identical restaurant services. In that scenario, consumers are very likely to mistakenly believe that there is an association or relationship between the Registrant’s restaurant services and the take-out restaurant services offered under Applicant’s mark.

In sum, the additional wording and design elements in the cited mark, fail to sufficiently distinguish the marks and are outweighed by the presence of LITTLE MEXICO in both marks. We find the marks similar.

The first *DuPont* factor favors a finding of likelihood of confusion.

II. Conclusion

The final step is to weigh the *DuPont* factors for which there is evidence and argument. *In re Charger Ventures LLC*, 64 F.4th 1375, 1384 (Fed. Cir. 2023). The services are in-part legally identical, and the trade channels and classes of consumers overlap, at least for the legally identical services. The second and third factors weigh heavily in favor of likelihood of confusion.

The marks are similar in commercial impression and this factor also weighs in favor of likelihood of confusion. The sixth *DuPont* factor is neutral.

In view of the in-part legally identical services, overlapping trade channels for the legally identical services, overlapping classes of customers, and similar marks, we find that confusion is likely.

Decision: The Section 2(d) refusal to register Applicant's mark LITTLE MEXICO is affirmed.