

This Opinion is Not a
Precedent of the TTAB

Mailed: May 8, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sycamore Growth Group, LLC

Serial No. 98125231

Janice Housey of Litmus Law PLLC,
for Sycamore Growth Group, LLC.

Rebecca Gilbert, Trademark Examining Attorney, Law Office 103,
Stacy Wahlberg, Managing Attorney.


Before English, Cohen and O'Connor,
Administrative Trademark Judges.

Opinion by Cohen, Administrative Trademark Judge:

Sycamore Growth Group, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark SYCAMORE GROWTH GROUP for services ultimately identified as “tax consulting services in connection with identifying tax credits” in International Class 35.¹

¹ Application Serial No. 98125231 (the “Application”) was filed on August 9, 2023 based upon Applicant’s allegation of use in commerce and anywhere of 2016 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). The word GROUP has been disclaimed. The Examining Attorney withdrew a requirement that Applicant also disclaim the word GROWTH. *See* September 23, 2024 Denial of Request for Reconsideration, at TSDR 2.

The Trademark Examining Attorney 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 so resembles the marks SYCAMORE CAPITAL² and ³ registered on the Principal Register to the same entity for "financial services, namely, financial management, investment advice, mutual fund investment, financial planning services, and investment management services" in International Class 36 as to be likely, when used in connection with the services identified in the Application, to cause confusion, to cause mistake, or to deceive.⁴ When the refusal was made final, Applicant filed a notice of appeal and a request for reconsideration, which was denied. The appeal resumed and is fully briefed. We reverse the refusal to register.⁵

² Registration No. 4935792 issued April 12, 2016, CAPITAL disclaimed. The registration has been maintained.

³ Registration No. 4935791 issued April 12, 2016, CAPITAL disclaimed. The mark consists of a design of a tree with the roots within a rectangle border. The words "SYCAMORE CAPITAL" bisect the tree. Color is not claimed as a feature of the mark. The registration has been maintained.

⁴ The Examining Attorney withdrew the Section 2(d) basis for refusing registration as to SYCAMORE LEGAL for "legal consultation services" (Reg. No. 4769534). *See* June 20, 2024 Final Office Action at TSDR 3.

⁵ Citations in this opinion to the briefs and other materials in the case docket refer to TTABVUE, the Board's online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, No. 91216455, 2020 WL 2853282, at *1 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. 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.

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I. Section 2(d) Refusal

“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 of the likelihood of confusion under Section 2(d) of the Trademark Act 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 *Charger Ventures*, 64 F.4th at 1379. 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 any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the [goods or] services.” *Monster Energy Co. v. Lo*, No. 91225050, 2023 WL 417620, at *6 (TTAB 2023) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976)).

A. Initial Matter

We focus our analysis on the standard character mark SYCAMORE CAPITAL that is the subject of Registration No. 4935792 for “financial services, namely,

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 includes the proceeding numbers, when available, and employs citations to the WESTLAW (WL) database.

financial management, investment advice, mutual fund investment, financial planning services, and investment management services” in International Class 36 (the “792 Mark” or “792 Registration”), because if confusion is likely between this mark and Applicant’s mark for the identified services, there is no need for us to consider whether there is a likelihood of confusion with the composite word and design mark; conversely, if there is no likelihood of confusion between Applicant’s mark and the ’792 Mark, then there would be no likelihood of confusion with the composite word and design mark. *See Sock It To Me, Inc. v. Fan*, No. 91230554, 2020 WL 3027605, at *9 (TTAB 2020) (confining Section 2(d) analysis to most similar pleaded mark) (citing *N. Face Apparel Corp. v. Sanyang Indus. Co.*, No. 91187593, 2015 WL 6467820, at *7 (TTAB 2015)).

We now address the relevant *DuPont* factors.

B. Similarity or Dissimilarity of the Services, Channels of Trade

“The second *DuPont* factor ‘considers [t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration.’” *In re Embiid*, No. 88202890, 2021 WL 2285576, at *10 (TTAB 2021) (quoting *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361)).

“In analyzing the services, the Board considers [t]he similarity or dissimilarity and nature of the ... services as described in an application or registration....” *In re OSF Healthcare Sys.*, No. 88706809, 2023 WL 6140427, at *4 (TTAB 2023) (quoting *Embiid*, 2021 WL 2285576, at *10) (internal quotation marks omitted). “[I]t is not necessary that the respective goods [or services] be identical or even competitive in

order to find that they are related for purposes of our likelihood of confusion analysis.” *In re Davey Prods. Pty Ltd.*, No. 77029776, 2009 WL 2420527, at *4 (TTAB 2009). The issue here is not whether consumers would confuse the services, but whether there is a likelihood of confusion as to the source of those services. *L’Oreal S.A. v. Marcon*, No. 91184456, 2012 WL 1267956, at *5 (TTAB 2012).

Applicant argues that while the involved services are “in the broad financial field, they are in highly disparate specific fields. ... Applicant’s Services are tax services The Cited Marks’ Services are traditional financial services in the financial management and investment field.”⁶

The Examining Attorney argues that the services are “of a kind that may emanate from a single source under a single mark.”⁷ In support, the Examining Attorney submitted over twenty-five (25) use-based, third-party registrations⁸ that identify both Applicant’s tax consulting services and Opposer’s financial planning services provided by a single entity under a single mark including, by way of example:

- TAXES ARE OVERRATED for various services including “tax advisory services”; “tax preparation”; and “financial planning”;⁹
- PICOCO, LLC and design for various services including “tax consultation”; “tax preparation”; and financial management”; and “investment advice”;¹⁰

⁶ 6 TTABVUE 23.

⁷ 8 TTABVUE 11.

⁸ June 20, 2024 Final Office Action at TSDR 10-77. The third-party registrations do not specify “identifying tax credits” but the identified tax consultation, advisory and preparation services are broad enough to encompass this service. *In re Country Oven, Inc.*, No. 87354443, 2019 WL 6170483, at *5 (TTAB 2019).

⁹ *Id.* at 10.

¹⁰ *Id.* at 14.

- HEALTHY GROWTH CHECKUP for various services including “business assistance ... business organization, tax planning ... tax advisory services”; “providing financial information and advice to others regarding the establishment and operation of businesses; ... advisory services, consultancy, and information in the field of estate planning, accounting”;¹¹
- ANNEX WEALTH MANAGEMENT for various services including “tax consultation and tax assessment”; “financial portfolio management”; and “financial management and planning”;¹²
- YOU HAVE THE DREAMS. WE HAVE THE TOOLS for a variety of services including “tax advisory services; tax consultation; tax filing services”; and “financial advice and consultancy services ... financial planning consultation”;¹³
- TOTAL RETURN PROCESS for various services including “tax consultation” and “financial planning”;¹⁴
- BUILDING AND PRESERVING WEALTH BY DESIGN ~ NOT BY CHANCE for a variety of services including “tax advisory services; tax preparation services” and “investment consultation and advice”;¹⁵
- PRO FOOTBALL FINANCIAL FREEDOM for various services including “tax preparation”; “tax advisory services” and “financial planning”;¹⁶
- THE ROSELINE GROUP for various services including “tax advisory services”; “tax preparation”; “financial consultation” and “investment consultation”;¹⁷ and

¹¹ *Id.* at 16.

¹² *Id.* at 18.

¹³ *Id.* at 20.

¹⁴ *Id.* at 22.

¹⁵ *Id.* at 24.

¹⁶ *Id.* at 28.

¹⁷ *Id.* at 36.

- STRADA FINANCIAL GROUP and design for various services including “tax preparation”; and “financial advice and consulting services.”¹⁸

As a general proposition, third-party registrations that cover services in both the cited registration and the involved application are relevant to show that the services are of a type that may emanate from a single source under a single mark. *Country Oven*, 2019 WL 6170483, at *5; *see also, e.g., Embiid*, 2021 WL 2285576, at *10 (evidence of relatedness may include prior use-based registrations covering both applicant’s and registrant’s goods or services).

The Examining Attorney also introduced printouts from seven (7) third-party websites showing that tax planning and consultancy services are inherently related to financial planning and advising as shown by the examples below:¹⁹

- CREATIVEPLANNING.COM reads “Because taxes can quickly erode your investment returns, strategic tax planning is at the core of our comprehensive financial planning process ... your financial advisor will work with in-house CPAs to help ensure your portfolio is tax-optimized,”²⁰ “As a registered investment advisory firm, we have a fiduciary responsibility to act in your best interests ... every decision we make on your behalf takes into consideration any potential tax implications. We integrate custom tax guidance with your overall wealth management and financial planning strategies.”;²¹
- An article on SMARTASSET.COM reads “Financial advisors who specialize in tax planning help clients optimize a tax strategy As a subset of the broader category of financial advisors, tax planning financial advisors may also help clients with budgeting, saving,

¹⁸ *Id.* at 48.

¹⁹ *Id.* at 78-113.

²⁰ *Id.* at 78.

²¹ *Id.* at 79.

investing and retirement planning, in addition to tax-specific services like preparing tax returns”;²²

- CPA.COM offers a workshop about “Financial Planning Advisory Services: An Extension of Your Tax Practice,”²³ and reads “As tax compliance services face increasing competition, now is the time to extend your practice to include a high-value, future-ready personal financial planning service”;²⁴
- BRICKLEYWEALTH.COM contains a blog post entitled “Benefits of Having a CPA and Financial Adviser Under One Roof”²⁵ and reads “Having both professionals working together seamlessly can ensure that all areas of your financial plan are coordinated and working together to meet your goals ... When you work with a combined CPA and financial adviser, you get access to a more comprehensive approach to financial planning”;²⁶
- DISCOVER.RANGE.COM reads “Tax & investment strategy, financial planning and tax services, estate planning and more – your entire financial profile and plan, all in one place”;²⁷
- LETSMAKEAPLAN.COM for the entity, CFP Board of Standards, Inc., reads “The less money you pay in taxes, the more you have to devote toward your financial goals. A big part of financial planning is tax planning”;²⁸ and
- CARSONWEALTH.COM reads “Financial planning and tax efficiency go hand-in-hand. Whether you’re looking to properly save for retirement, help improve your income tax situation or want help with your business taxes – we can create a customized plan for you.”²⁹

²² *Id.* at 83.

²³ *Id.* at 90.

²⁴ *Id.* at 91.

²⁵ *Id.* at 97.

²⁶ *Id.* at 98.

²⁷ *Id.* at 101.

²⁸ *Id.* at 107.

²⁹ *Id.* at 109-10.

In addition, three of the third-party marks that Applicant introduced to demonstrate weakness of the word SYCAMORE support that Applicant's tax and Registrant's financial services are related.³⁰

The evidence of third-party use supports that consumers are accustomed to encountering both types of services identified in the Application and '792 Registration from the same source under the same mark. *See, e.g., In re Code Consultants, Inc.*, No. 75645560, 2001 WL 1149619, at *4 (TTAB 2001) ("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 re Summit Hotel Corp.*, 1983 WL 51899, at *1 (TTAB 1983) (finding restaurant and hotel services related because the services are complementary); *see also Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024) ("[T]estimony that third-party companies sell both types of goods [or services] is pertinent to the relatedness of the goods [or services]."); *In re Charger Ventures LLC*, 64 F.4th 1375, 1382 (Fed. Cir. 2023) (evidence that companies offer services of both applicant and registrant under the same mark supported Board's finding that services were related).

Based on the record as a whole, we find that the identified services are related.

We now turn to the third *DuPont* factor, which "considers '[t]he similarity or dissimilarity of established, likely-to-continue trade channels.'" *Detroit Athletic*, 903

³⁰ *See infra*, pp.13-15 (SYCAMORE FINANCIAL, SYCAMORE BOOKKEEPING and SYCAMORE WEALTH MANAGEMENT).

F.3d at 1306 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361)). There are no limitations as to channels of trade or classes of consumers in the Application or the '792 Registration. We therefore presume that Applicant's and Registrant's services are offered in all ordinary channels of trade to all the usual classes of purchasers for these services. *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013).

The third-party website evidence discussed above supports that Applicant's tax services and the financial services identified in the '792 Registration travel in some of the same or overlapping channels of trade and are offered to some of the same consumers.

C. Strength or Weakness of the '792 Mark

We now consider the strength or weakness of the '792 Mark under the sixth *DuPont* factor.³¹ See *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023). “[T]he strength of a mark is not a binary factor” and “varies along a spectrum from very strong to very weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015) (internal citations omitted). “The weaker [the cited] mark, the closer an applicant's mark can come without causing a likelihood of confusion and

³¹ In the context of an ex parte proceeding, the fame of a mark under the fifth *DuPont* factor is generally not pertinent, and it is not here. See, e.g., *In re Integrated Embedded*, No. 86140341, 2016 WL 7368696, at *9 (TTAB 2016) (“the Examining Attorney is under no obligation to demonstrate the fame of the cited mark”); *In re Thomas*, No. 78334625, 2006 WL 1258862, at *6 n.11 (TTAB 2006) (“Because this is an ex parte proceeding, we would not expect the examining attorney to submit evidence of fame of the cited mark.”).

thereby invading what amounts to its comparatively narrower range of protection.”
Id. at 1338 (internal citations omitted).

Third-party use may be “relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1324 (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772.*, 396 F.3d 1369, 1373 (Fed. Cir. 2005)). Applicant submitted over twenty (20) third-party uses³² of SYCAMORE-formative marks for financial planning or tax-related services (which we have found related under the second *DuPont* factor),³³ including:

- SYCAMORE FINANCIAL PLANNING, SYCAMOREFINANCIALPLANNING.COM, for a variety of services including “financial planning” in the “Triangle Area of North

³² Applicant also submitted two third-party use-based registrations: (1) SYCAMORE for charitable fundraising services; and (2) SYCAMORE PRAIRIE for “real estate development services,” September 9, 2024 Request for Reconsideration at TSDR 58-60, and relied on a registration previously cited by the Examining Attorney – SYCAMORE LEGAL for “legal consultation services,” April 10, 2024 Office Action at TSDR 9; June 9, 2024 Response to Office Action at TSDR 14.

None of the third-party registrations that include the term SYCAMORE are for services that have been proven similar or otherwise related to Registrant’s financial services. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 1328 (Fed. Cir. 2017) (applicant did not offer evidence or adequately explain why third-party registered marks weakened the cited mark for different goods); *Omaha Steaks*, 908 F.3d at 1324-25 (Board erred in considering marks for unrelated goods); *see also Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371 (Fed. Cir. 2018) (“Attorney argument is no substitute for evidence.”) (cleaned up). Also, the coexistence of the three noted registered marks on the Principal Register does not bind the Board; we must decide each application on its own merits. *See, e.g., In re Shinnecock Smoke Shop*, 571 F.3d 1171, 1174 (Fed. Cir. 2009) (“Applicant’s allegations regarding similar marks are irrelevant because each application must be considered on its own merits.”).

³³ Some of the third-party uses of SYCAMORE are for legal services or hotel development and operation services. The record does not support that financial services are related or similar to legal or hotel related services and as such, these third-party uses are of little probative value. *See, e.g.*, June 9, 2024 Response to Office Action at TSDR 76-77; September 9, 2024 Request for Reconsideration at TSDR 41.

Carolina serving Durham, Raleigh, Chapel Hill, Charlotte and all surrounding areas”;³⁴

- SYCAMORE FINANCIAL GROUP, SYCAMOREWEB.COM, which describes itself as a “regional financial services corporation”;³⁵
- SYCAMORE WEALTH MANAGEMENT, SYCAMOREWEALTHMANAGEMENT.COM, which “provides a technology-driven, low-cost entry point to investing and financial planning” located in Carmel, IN;³⁶
- SYCAMORE TREE CAPITAL PARTNERS, SycamoreLP.com, which describes itself as “a value-oriented, durable alpha investment firm specializing in alternative credit, consisting of bank loans, high yield bonds, structured products and special situations”;³⁷
- THE SYCAMORE GROUP AT MORGAN STANLEY, MORGANSTANLEY.COM/THE-SYCAMORE-GROUP, which reads “we can help you preserve and grow your wealth. You’ll have access to some of the world’s most seasoned and respected investment professionals”;³⁸
- SYCAMORE FINANCIAL ADVISORS, SYCAMOREFA.COM, for a variety of services including “Investment Management ... Financial & Estate Planning”;³⁹
- SYCAMORE FINANCIAL, SYCAMOREFINANCIAL.COM, describing its services as “Investment management, tax planning, insurance planning, and goal projection all in one place from a competent and qualified financial advisor”;⁴⁰

³⁴ June 9, 2024 Response to Office Action at TSDR 60-61; September 9, 2024 Request for Reconsideration at TSDR 44.

³⁵ June 9, 2024 Response to Office Action at TSDR 64.

³⁶ *Id.* at 68-69.

³⁷ *Id.* at 70-71.

³⁸ *Id.* at 74-75.

³⁹ September 9, 2024 Request for Reconsideration at TSDR 29.

⁴⁰ *Id.* at 30.

- SYCAMORE VALUATION, SYCAMOREVAL.COM, describing itself as providing financial reporting, tax reporting, complex financial instruments to “public and private companies”;⁴¹
- SYCAMORE ASSOCIATES, SYCAMOREASSOCIATES.COM, which describes itself as a “small firm of experienced corporate finance, treasury, and risk management experts” who has clients that are “primarily U.S. based multinational companies, both private and public, and represent a diverse group of industries and markets. However, our base continues to be in the Great Lakes and Upper Midwest”;⁴²
- SYCAMORE TAX SERVICE, SYCAMORETAXSERVICE.COM, which provides “full-service tax preparation and filing services” and is located in Terre Haute, IN;⁴³
- SYCAMORE BOOKKEEPING, SYCAMORETAXSERVICES.COM, which describes itself as “assisting you with any of your financial difficulties. We are a Certified Tax Preparer and can help you with everything from personal or business income tax filing to budgeting and financial planning” based in Vista, CA;⁴⁴
- SYCAMORE FINANCIAL CONSULTING, SYCAMORE-FINANCIAL.COM, which develops and implements financial policies and procedures to grow a company, offers “CFO and Controller services,” will set-up accounting systems and related training;⁴⁵
- SYCAMORE ASSET MANAGEMENT, SYCAMOREASSET.NET, located in Zionsville, IN offering “financial planning and investment management advice to clients across the Midwest”;⁴⁶
- SYCAMORE WEALTH MANAGEMENT, SYCAMOREWEALTH.COM, which reads “Retirement planning ... involves establishing a sound,

⁴¹ *Id.* at 31.

⁴² *Id.* at 32.

⁴³ *Id.* at 33.

⁴⁴ *Id.* at 34.

⁴⁵ *Id.* at 35.

⁴⁶ *Id.* at 37.

realistic financial plan that includes income, expense, and investment management”;⁴⁷

- SYCAMORE WEALTH MANAGEMENT, SYCAMOREWEALTHMGMT.COM, offering investments, financial planning including retirement plans and tax plans, and insurance;⁴⁸
- SYCAMORE WEALTH ADVISORS, AMERIPRISEADVISORS.COM, described as “A private wealth advisory practice of Ameriprise Financial Services, LLC” providing “financial advice, investment and solution recommendations”;⁴⁹
- THE SYCAMORE HILL GROUP AT MORGAN STANLEY, ADVISOR.MORGANSTANLEY.COM/THE-SYCAMORE-HILL-GROUP, providing wealth management advice to individuals, generational families, institutional leaders and organizations”;⁵⁰ and
- SYCAMORE CANYON CAPITAL, SYCAMORECANYONCAPITOL.COM, “an independent investment and financial advisory firm dedicated to helping clients achieve their long-term financial goals.”⁵¹

We find the number of third-party marks incorporating SYCAMORE in connection with tax and financial services is “powerful on its face.” *Juice Generation*, 794 F.3d at 1338. The third-party uses support that consumers have become conditioned to distinguish between different SYCAMORE-formative marks based on minute distinctions. *See Palm Bay Imps.*, 396 F.3d at 1374. In addition, the over twenty third-party uses indicate that SYCAMORE has a significance in the financial and tax fields. *Juice Generation*, 794 F.3d at 1338 (extensive third-party use and registration is “powerful on its face”). To this end, the dictionary definition of SYCAMORE – a very

⁴⁷ *Id.* at 38.

⁴⁸ *Id.* at 39.

⁴⁹ *Id.* at 40.

⁵⁰ *Id.* at 47.

⁵¹ *Id.* at 48.

large spreading tree⁵² – indicates the term is likely used by so many in connection with tax and financial services because it conveys the concept of a strong financial strategy and growing wealth.

The only additional element in the '792 Mark is the generic word CAPITAL. On the record before us we find that the '792 Mark falls on the lower end of the “spectrum from very strong to very weak,” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, Inc.*, 857 F.3d 1323, 1325 (Fed. Cir. 2017), and that it is entitled to only a very narrow scope of protection.

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.’” *Sabhnani v. Mirage Brands, LLC*, No. 92068086, 2021 WL 6072822, at *13 (TTAB 2021) (quoting *Palm Bay Imps.*, 396 F.2d at 1371). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Id.* (quoting *Inn at St. John’s*, 2018 WL 2734893, at *5 (TTAB 2018) (internal quotation omitted)). “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.’” *Id.* (quoting *Cai*, 901 F.3d at 1373

⁵² We take judicial notice from MERRIAM-WEBSTER.COM accessed May 5, 2005. The Board may take judicial notice of dictionary definitions, including definitions from online dictionaries that exist in printed format or have fixed regular editions. *In re Cordua Rests. LP*, No. 85214191, 2014 WL 1390504, at *2 n.4 (TTAB 2014).

(internal quotation omitted)). 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) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 685 (CCPA 1977)).

“No element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone.” *In re Electrolyte Labs. Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990) (citing *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 1298 (CCPA 1974)). “On the other hand, in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985).

As a reminder, the involved standard character marks are SYCAMORE CAPITAL (CAPITAL disclaimed) and SYCAMORE GROWTH GROUP (GROUP disclaimed). We agree with the Examining Attorney⁵³ that because SYCAMORE is the first part of the marks “it is most likely to be impressed in purchasers’ memories.” *In re Dare Foods Inc.*, No. 88758625, 2022 WL 970319, at *6 (TTAB 2022) (citing *Detroit Athletic*, 903 F.3d at 1303). The Examining Attorney also asserts that the additional wording in each mark is descriptive, if not generic, with little source identifying capacity.⁵⁴

⁵³ 8 TTABVUE 7.

⁵⁴ *Id.* at 5; June 20, 2024 Final Office Action at TSDR 4.

Indeed, one reason for giving less weight to an element in a mark is if the matter (here, CAPITAL and GROUP) is disclaimed. *See, e.g., In re Detroit Athletic*, 903 F.3d at 1305; *In re Aquataine Wine USA, LLC*, No. 86928469, 2018 WL 1620989, at *3 (TTAB 2018). Although Applicant has not disclaimed GROWTH, the term does not appreciably alter the overall meaning of the mark. In the context of the relevant services, the addition of GROWTH to Applicant's mark is likely to be seen by consumers as emphasizing Applicant's use of SYCAMORE to connote growth in wealth via tax credits. While we are careful to consider each mark in its entirety, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided that our ultimate conclusion rests upon a comparison of the marks in their entireties. *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). For these reasons, we find that the marks are similar in sound, appearance, connotation and commercial impression. Notwithstanding the foregoing, given that Applicant's mark contains the wording GROWTH GROUP and Registrant's mark contains CAPITAL and keeping in mind that we have found SYCAMORE weak for tax and financial services, we think it likely that consumers would be able to distinguish the marks based on their differences.

E. Purchasing Conditions and Sophistication of Consumers

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 that the relevant consumers are sophisticated and “careful customers who are well aware of what they are purchasing

and from whom they are purchasing it.”⁵⁵ Applicant’s identification of services does not include any of Applicant’s asserted restrictions, limitations, or specifications as to potential consumers or purchasing conditions. And Applicant does not submit any evidence in support of this assertion. “Attorney argument is no substitute for evidence.” *Cai*, 901 F.3d at 1371 (quotation omitted).

Nevertheless, based on the services involved, one would expect the tax and financial services would likely be purchased with some amount of care by some informed consumers. But given the broad nature of the identifications, the services also are a type offered to ordinary consumers seeking tax or financial services who may not exercise any particular degree of care. We must make our determination based on the least sophisticated consumer. *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1325 (Fed. Cir. 2014) (affirming that the Board properly considered all potential investors for recited services, which included sophisticated investors, but that precedent requires consumer care for likelihood of confusion decision to be based “on the least sophisticated potential purchasers”). Moreover, even sophisticated buyers are not immune from confusion. *In re Decombe*, No. 73592586, 1988 WL 252337, at *3 (TTAB 1988).

II. Summary

Varying weights 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, 1356 (Fed. Cir. 2011). Here, the first, second and third *DuPont* factors weigh in favor of finding

⁵⁵ *Id.* at 21.

a likelihood of confusion as the marks are similar, the services are related and the trade channels and consumers overlap, while the degree of consumer care under the fourth factor is neutral. That said, a single *DuPont* factor may be dispositive in a particular case. *See, e.g., Kellogg Co. v. Pack-Em Enters., Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991). Here, we find that the weakness of the mark SYCAMORE CAPITAL under the sixth *DuPont* factor weighs heavily against finding a likelihood of confusion and is dispositive. *In re Hartz Hotel Servs.*, No. 76692673, 2012 WL 1193704, at *6 (TTAB 2012) (finding the sixth *DuPont* factor dispositive). The record demonstrates that consumers are able to distinguish among numerous SYCAMORE-formative marks for tax and financial services based on the presence of additional wording – even descriptive or generic wording. Thus, we find that Applicant’s mark SYCAMORE GROWTH GROUP for “tax consulting services in connection with identifying tax credits” is not likely to cause confusion with the mark SYCAMORE CAPITAL for “financial services, namely, financial management, investment advice, mutual fund investment, financial planning services, and investment management services”.

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