

**This Opinion is Not a
Precedent of the TTAB**

Mailed: February 24, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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*In re Global Tel*Link Corporation*
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Serial No. 98157825
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Jon A. Schiffrin of Schiffrin & Longo, P.C.,
for Global Tel*Link Corporation.

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Before Coggins, Allard, and Brock,
Administrative Trademark Judges.

Opinion by Brock, Administrative Trademark Judge:

Global Tel*Link Corporation (“Applicant”) seeks registration on the Principal Register of the standard-character mark EMPOWERING FUTURES for “Education services, namely, providing classes, seminars and workshops for incarcerated and formerly incarcerated individuals in the fields of obtaining job skills, language arts, science and math, and mental health coping skills” in International Class 41.¹

¹ Application Serial No. 98157825 was filed on August 30, 2023, based upon Applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard-character mark EMPOWERING FUTURES registered on the Principal Register for “Legal services” in International Class 45.²

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

I. Analysis

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on likelihood of confusion. *In re E. I. DuPont de*

² Registration No. 6081925 was issued on June 16, 2020. The registration covers additional services in International Class 36, but the Section 2(d) refusal is based solely on the services in International Class 45. See July 18, 2024 Final Office Action, TSDR 2-3.

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

As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, the citation form in this opinion varies from the citation form recommended in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion employs citation to the Lexis legal database. Until further notice, practitioners should continue to adhere to the practice set forth in TBMP § 101.03.

Nemours & Co., 476 F.2d 1357 (CCPA 1973) (“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 144 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). In considering the evidence of record 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 [or services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976).

We consider each *DuPont* factor for which there is evidence and argument. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns., Inc.*, 450 F.3d 1378, 1381 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, Opp. No. 91194974, 2015 TTAB LEXIS 67, at *26 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). 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”).

Applicant and the Examining Attorney both present arguments regarding the similarities and dissimilarities between the marks and the relatedness of services—two key considerations in any likelihood of confusion analysis. See *In re Chatam Int’l*, 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *Federated Foods*, 544 F.2d at 1103.

A. 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.” *DuPont*, 476 F.2d at 1361; *see also Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1319 (Fed. Cir. 2014). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s*, Ser. No. 87075988, 2018 TTAB LEXIS 170, at *13 (2018) (citing *In re Davia*, Ser. No. 85497617, 2014 TTAB LEXIS 214, at *4 (TTAB 2014)), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

In this case, the marks are identical and Applicant does not argue otherwise. We therefore find that the marks are identical in appearance, sound, meaning, and commercial impression. The first *DuPont* factor weighs heavily in favor of a finding of likelihood of confusion.

B. Similarity or Dissimilarity of Services, Trade Channels, and Consumers

Under the second *DuPont* factor, we consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration” and under the third and fourth *DuPont* factors we consider “the similarity or dissimilarity of established, likely-to-continue trade channels” and that portion of the fourth *DuPont* factor that addresses “the conditions under which and buyers to whom sales are made.” *DuPont*, 476 F.2d at 1361; *In re Detroit Ath. Co.*, 903 F.3d 1297, 1306,

1308 (Fed. Cir. 2018); *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 TTAB LEXIS 464, at *20 (TTAB 2021).

Applicant applied to register the EMPOWERING FUTURES mark in connection with “[e]ducation services, namely, providing classes, seminars and workshops for incarcerated and formerly incarcerated individuals in the fields of obtaining job skills, language arts, science and math, and mental health coping skills”; the services in the Cited Registration include “[l]egal services.” Although Applicant’s services are restricted, the Cited Registration contains no restrictions. We are required to “give full sweep” to an identification regardless of a registrant’s actual business. *Paula Payne Prods. Co. v. Johnson Publ’g Co., Inc.*, 473 F.2d 901, 902 (CCPA 1973). As “we must construe the services identified in the cited registration as broadly as reasonably possible ‘to include all [services] of the nature and type described therein,’” *In re OSF Healthcare Sys.*, Ser. No. 88706809, 2023 TTAB LEXIS 353, at *11 (TTAB 2023) at *5 (quoting *In re Solid State Design Inc.*, Ser. No. 87269041, 2018 TTAB LEXIS 1, at *16 (TTAB 2018) (internal quotation omitted)), Registrant’s “legal services” are presumed to encompass all services of the type described, to move in all normal channels of trade, and to be available to all classes of purchasers. *See, e.g., Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013).

Although Applicant argues that Registrant’s website shows a focus on estate planning and elder law,³ the Board may not consider arguments “about how the

³ Appeal Brief, 4 TTABVUE 12.

parties' actual goods, services, customers, trade channels, and conditions of sale are narrower or different from the goods and services identified in the applications and registrations." *In re FCA US LLC*, Ser. No. 85650654, 2018 TTAB LEXIS 116, at *12 n.18 (TTAB 2018); *see also, e.g., In re i.am.symbolic, llc*, 866 F.3d 1315, 1327 (Fed. Cir. 2017) ("[T]he Board properly declined to import restrictions into the identification of goods based on alleged real world conditions."); *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d at 1373 ("The PTO proceedings are 'based on the content of the registration application' and not upon any specific use of the challenged mark in commerce."); *In re Thor Tech, Inc.*, Ser. No. 78634024, 2009 TTAB LEXIS 253, at *15 (TTAB 2009) ("We have no authority to read any restrictions or limitations into the registrant's description of goods."). We must base our comparisons under the third and fourth *DuPont* factors on the services identified in the involved application and cited registration. *Sabhnani*, 2021 TTAB LEXIS 464, at *25 ("[A]s with the relatedness of the goods, the similarity or dissimilarity of the channels of trade must be determined based on the identifications of goods [or services] in the parties' registrations rather than current real-world conditions").

Regarding consumers, Applicant's are incarcerated and formerly incarcerated individuals. As the Cited Registration contains no restrictions, the legal services are presumed to be offered to all members of the public including incarcerated and formerly incarcerated individuals. Therefore, there is overlap in the consumers of Registrant's and Applicant's services. Applicant argues without supporting evidence (which it acknowledges) that Registrant's purchasers of legal services "are likely to

exercise some degree of care” which could minimize confusion, because the cost of legal services “are not typically considered a nominal amount.”⁴ We discuss the evidence in greater detail below, but note here that the evidence shows third parties offering legal services at little to no charge.⁵ Nevertheless, we recognize that “even in the case of the least sophisticated purchaser, [important decisions] will be made with some thought and research, even when made hastily.” *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 2016 TTAB LEXIS 604, at *30 (TTAB 2016). However, even “careful or sophisticated consumers are not immune from source confusion,” *In re Rsch. & Trading Corp.*, 793 F.2d 1276, 1279 (Fed. Cir. 1986), especially when the marks are “very similar,” *In re Shell Oil Co.*, 992 F.2d 1204, 1208, (Fed. Cir. 1993), and here, they are identical. We find that this portion of the fourth *DuPont* factor is neutral.

Applicant argues variously that legal services such as Registrant’s do not encompass educational services for incarcerated and formerly incarcerated individuals such as Applicant’s;⁶ Applicant’s services are not referenced in the identification of services in the Cited Registration and vice versa;⁷ and the Examining Attorney is improperly “expanding the recitation of services [of the Cited Registration] to attempt to find a relationship between legal services and Applicant’s

⁴ *Id.* at 13.

⁵ May 13, 2024 Nonfinal Office Action, TSDR 14; July 18, 2024 Final Office Action, TSDR 14, 19, 34, 36, 38, 45-46, and 56.

⁶ Appeal Brief, 4 TTABVUE 5.

⁷ *Id.* at 7.

very specific educational services targeting incarcerated and formerly incarcerated individuals....”⁸ These arguments are similar and assume that in order to find a likelihood of confusion, the services in the Cited Registration must encompass, overlap, or expand to include Applicant’s services. This is not the case; in fact, Applicant’s and Registrant’s identified services need not be identical or even competitive to find a likelihood of confusion. *On-line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1086 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000). The respective services need only be “related in some manner and/or if the circumstances surrounding their marketing [be] 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) (quoting *7-Eleven Inc. v. Wechsler*, Opp. No. 91117739, 2007 TTAB LEXIS 58, at *28-29 (TTAB 2007)).

Moreover, in comparing the services, we keep in mind that where the marks are highly similar—and in this case the marks are identical—the degree of similarity between the parties’ services necessary to support a finding of likely confusion declines. *See, e.g., In re Thor Tech, Inc.*, 2009 TTAB LEXIS 253, at *4-5 (“[T]he greater the degree of similarity between the applicant’s mark and the registered mark, the lesser the degree of similarity between the applicant’s goods [or services] and registrant’s goods [or services] that is required to support a finding of likelihood of confusion.”); *Time Warner Entm’t Co. v. Jones*, Opp. No. 91112409, 2002 TTAB LEXIS 462, at *29-30 (TTAB 2002) (same).

⁸ *Id.* at 8.

Evidence of relatedness might include news articles and/or evidence from computer databases showing that the relevant services are used together or used by the same purchasers; advertisements showing that the relevant services are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both an applicant's services and the services listed in the cited registration. *See, e.g., In re Davia*, 2014 TTAB LEXIS 214, at *25 (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

To show that legal services are related to “[e]ducation services, namely, providing classes, seminars and workshops for incarcerated and formerly incarcerated individuals in the fields of obtaining job skills, language arts, science and math, and mental health coping skills,” the Examining Attorney introduced Internet evidence of third parties using a single mark for both types of services:⁹ A New Way of Life,¹⁰ All Square,¹¹ Equal Justice Initiative,¹² California State University,¹³ Stanford Law School,¹⁴ Georgetown University,¹⁵ D.O.O.R.S Community Reentry Center,¹⁶ Re-

⁹ May 13, 2024 Nonfinal Office Action, TSDR 9-38; July 18, 2024 Final Office Action, TSDR 7-64.

¹⁰ May 13, 2024 Nonfinal Office Action, TSDR 11-12, 14-15.

¹¹ *Id.* at 18-19, 24-25.

¹² *Id.* at 31, 36.

¹³ November 8, 2023 Final Office Action, TSDR 7-8, 10, 14.

¹⁴ *Id.* at 15, 19.

¹⁵ *Id.* at 28-29, 32.

¹⁶ *Id.* at 36.

Entry One,¹⁷ Legal Aid Bureau Of Buffalo,¹⁸ GOSO Getting Out Staying Out,¹⁹ and Arc Antirecidivism Coalition.²⁰ Taken together, this evidence shows that it is not uncommon for the same entity to offer legal services and educational services for incarcerated and formerly incarcerated individuals in the fields of obtaining job skills, language arts, science and math, and mental health coping skills under the same mark. *See Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002). The evidence also demonstrates that at least some types of legal services and educational services offered to incarcerated and formerly incarcerated individuals travel in the same channels of trade.

Although Applicant argues that the subject matter of its educational services “differentiat[es] Applicant’s services from legal services,”²¹ the evidence of record shows precisely these subjects—namely, Applicant’s “English, Math, and Science [i.e., a liberal arts education], job skills, and mental health coping skills”²²—offered by the above third parties to incarcerated and formerly incarcerated people²³ alongside legal representation.

¹⁷ *Id.* at 38, 40.

¹⁸ *Id.* at 42-43, 45.

¹⁹ *Id.* at. 48.

²⁰ *Id.* at 53, 55-63.

²¹ *Id.* at 9.

²² *Id.* at 8-9.

²³ All offer legal services and job skills training. *See, generally*, n.8 *supra*. General education services are offered by California State University, November 8, 2023 Final Office Action, TSDR 10, 14, Georgetown University, *id.* at 28-29, D.O.O.R.S Community Reentry Center, *id.* at 36, Legal Aid Bureau of Buffalo, *id.* at 42-43, and GOSO Getting Out Staying Out, *id.* at 48. Similarly, nearly all offer counseling or education in mental health coping skills, namely, All Square, May 13, 2024 Nonfinal Office Action, TSDR 18, Equal Justice Initiative,

Applicant argues that this evidence is “cherry-picked” and quantitatively insufficient, given the lack of third party registrations in evidence, citing *Juice Generation, Inc. v. GS Enters., LLC*, 794 F.3d 1334 (Fed. Cir. 2015) and *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGaA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363 (Fed. Cir. 2015).²⁴ Applicant’s reliance on these inter partes decisions is misplaced as the evidence was submitted in these cases to limit the scope of protection of a mark.²⁵ In contrast, in the instant ex parte appeal, the Examining Attorney submitted third-party evidence to demonstrate that Applicant’s and Registrant’s respective services may emanate from a single source under one mark and are thus related. As to the quantity of this evidence, the Court of Appeals for the Federal Circuit and the Board have long recognized that “the PTO is an agency of limited resources” for obtaining evidence when examining applications for registration and the practicalities of these limited resources are routinely taken into account. *See In re Pacer Tech.*, 338 F.3d 1348, 1352 (Fed. Cir. 2003). The Examining Attorney submitted eleven examples of third parties offering similar services under one mark

id. at 31, California State University, November 8, 2023 Final Office Action, TSDR 7-8, 10, Georgetown University, *id.* at 28-29, D.O.O.R.S Community Reentry Center, *id.* at 36, Legal Aid Bureau of Buffalo, *id.* at 42-43, and GOSO Getting Out Staying Out, *id.* at 48.

²⁴ Appeal Brief, 4 TTABVUE 9.

²⁵ The strength of Registrant’s mark is not at issue here; Applicant has not put forth evidence or arguments in this regard, so we do not reach this *DuPont* factor. *See, e.g., Azeka Bldg. Corp. v. Azeka*, Opp. No. 91218679, 2017 TTAB LEXIS 123, at *4 (TTAB 2017) (Board has “discretion to decide only those claims necessary to enter judgment and dispose of the case”) (quoting *Multisorb Tech., Inc. v. Pactive Corp.*, Can. No. 92054730, 2013 TTAB LEXIS 616, at *3 (TTAB 2013)).

which we find is sufficient to show that legal services and educational services offered to incarcerated and formerly incarcerated people are related.²⁶

Based on the Examining Attorney's evidence of third-party use, we find that Applicant's and Registrant's services are related. This weighs in favor of finding a likelihood of confusion. The portion of the fourth *DuPont* factor addressing sales conditions and purchasers is neutral. Despite Applicant's argument, there is overlap with Registrant's unlimited trade channels, and this, too, weighs in favor of finding a likelihood of confusion.

II. Conclusion: Balancing of the *DuPont* Factors

The marks are identical. The services are related. The trade channels overlap. The purchasers overlap as well, although we found this factor neutral. Because all of the relevant *DuPont* factors weigh in favor of finding a likelihood of confusion or are neutral, we find that Applicant's Mark is likely to cause confusion with the Cited Registration.

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

²⁶ Applicant also argues that "if Applicant had submitted an acceptable ID that did not indicate that its consumers were incarcerated or formerly incarcerated individuals, this would actually be a **broader recitation of services** that probably would have been accepted and avoided a refusal based on legal services. By narrowing the focus to incarcerated and formerly incarcerated individuals, this triggered a refusal based on some connection to the field of law." Appeal Brief, 4 TTABVue 7 (emphasis in original). Although this issue is not before us, given the identical nature of the marks at issue, and on this record, there is ample evidence of third parties offering both legal services and educational services (to the general population, which includes incarcerated and formerly incarcerated individuals) under the same mark to find that the services are related.