

This Opinion is not a
Precedent of the TTAB

Mailed: August 4, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Public Joint Stock Company Acron

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Serial No. 79301495

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Camille M. Miller of Cozen O'Connor,
for Public Joint Stock Company Acron.

Samantha Agreda, Trademark Examining Attorney, Law Office 123,
Susan Hayash, Managing Attorney.

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Before Zervas, Shaw and Goodman,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Public Joint Stock Company Acron (“Applicant”) seeks registration on the
Principal Register of the mark **ACRON** for “Gardening; landscape
gardening; horticulture services; aerial and surface spreading of fertilizers and other
agricultural chemicals; plant nursery services” in International Class 44.¹

¹ Application Serial No. 79301495 was filed on October 16, 2020 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), requesting an extension of protection based on Applicant’s International Registration No. 1568655, issued October 16, 2020. The description of the mark provided by Applicant states: “The mark consists of the stylized wording ACRON in dark green.” The color green is claimed as a feature of the mark.

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 of likelihood of confusion with the standard-character mark ACRON for, in relevant part, "Construction, namely construction consultancy, construction planning" in International Class 37.²

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration,³ the appeal was resumed. We reverse 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, to cause mistake, or to deceive. 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, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"). We consider each *DuPont*

Citations to the application record refer to the online database pages 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; the Examining Attorney's brief is at 6 TTABVUE.

² Registration No. 5319591 issued October 31, 2017. The registration also includes the following International Class 36 services: "Financial and monetary affaires, namely financial information, management and analysis; Real estate affaires, namely real estate consultancy, real estate investment services."

³ The Examining Attorney objected to consideration of Applicant's website exhibits attached to the request for reconsideration because they lacked a URL and date.

factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. Similarity or Dissimilarity of the Services

The second *DuPont* factor considers the “similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *DuPont*, 177 USPQ at 567. *See also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014).

The 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, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the services] emanate from the same source.” *Coach Services Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). It is sufficient for a finding of likelihood of confusion as to a particular class if relatedness is established for any identified services within that class in the

application or cited registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Applicant's services are gardening; landscape gardening; horticulture services; aerial and surface spreading of fertilizers and other agricultural chemicals; plant nursery services. Registrant's relevant services are construction, namely construction consultancy, construction planning.

Applicant argues that "the evidence showing the refusals does not ... support that the services at issue are related" and that the services "may seem related on a superficial level, but the services are not related when one understands their respective relative purposes and functions." 4 TTABVUE 8, 9.


The Examining Attorney argues, on the other hand, that "the parties' services are similar because consumers are accustomed to seeing construction and landscaping or horticulture services offered from the same commercial source" and that the submitted evidence supports her arguments. 6 TTABVUE 8-9.

The Examining Attorney provided six third-party registrations to show the relatedness of the services. Third-party registrations have some probative value to the extent they may serve to suggest that such services are of a type which emanate from the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, n.6 (TTAB 1988). However, four of these registrations cover "construction services," rather than "construction consultancy" and "construction planning" services. The remaining two relevant registrations are as follows:

- Registration No. 6238611 for the mark PENINSULA PAVERS for services that include “construction consultation services” in Class 37 and “landscape gardening” services in International Class 44.

Jul. 16, 2021 Office action at TSDR at 14-16.



- Registration No. 6256284 for the mark  for services that include “Consulting services for the construction and installation of masonry walls and structures” in Class 37 and “Landscape gardening” in Class 44.

Id. 17-19.

The Examining Attorney also submitted website evidence from ten third-parties to show relatedness. Website evidence showing use of the same mark with the same goods or services has been found probative of relatedness. *See, e.g., In re Joel Embiid*, 2021 USPQ2d 577, at *28 (TTAB 2021) (webpages from three clothing companies that offer shoes, shirts, or sweat shirts under the same mark “is evidence that consumers are accustomed to seeing shoes and clothes sold under the same mark”). Again, much of this evidence relates to general construction (building) services rather than the services of construction consultancy and construction planning. The most relevant third-party use is the following:

Done Right Landscape (donerightlandscape.com) offers a full range of construction services including “plans and specifications” and “budgeting and planning.” It also offers “floriculture” and can address “all landscape needs.”

Id. at 31-42.

We find that there is very little evidence in the record showing a direct relationship between Applicant’s landscape gardening services and Registrant’s

construction consultancy and construction planning services. Almost all of the Examining Attorney's evidence relates to general construction (building) services and not the specific construction consultancy and construction planning services identified by Registrant's registration. *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002) ("There is little evidence in this record that is clearly relevant to applicant's identified goods and services.").

The two third-party registrations in the record are neither sufficiently significant in number nor are the registrations themselves compelling evidence that companies generally offer Applicant's and Registrant's respective services identified by a single mark. The two third-party registrations offering construction consultation and landscape gardening services and the one third-party use offering construction planning and landscape gardening services is not sufficient for us to find that the Examining Attorney has established a relationship between the respective services. *In re Donnay Int'l, Societe Anonyme*, 31 USPQ2d 1953, 1955 (TTAB 1994) (two third-party registrations submitted by the Examining Attorney not sufficient to establish that "it is the norm for companies to sell both rackets and soccer balls and to adopt a single product mark for both, or that customers would be aware of such a practice, such that they would assume that the products emanate from the same source if they were sold under the same or similar marks."). Therefore, we cannot conclude, based on the limited evidence before us, that the services are related.

The Examining Attorney has failed to prove that Applicant's identified services and the Class 37 services identified in the cited registration are related. Although we

have considered all arguments and evidence, we need not address in this decision the remaining *DuPont* factors argued by Applicant and the Examining Attorney. That is, because, on this record, the Office has not met its burden of proving that consumers would believe that the services emanate from the same source if they were offered under the same or confusingly similar marks, we cannot find likelihood of confusion with respect to Applicant's services and Registrant's Class 37 services.

Decision: The refusal to register Applicant's mark **ACRON** is reversed.