

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

Mailed: August 19, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re 412 Public House, LLC*  
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Serial No. 88205268  
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C. Brandon Browning of Maynard, Cooper & Gale, PC,  
for 412 Public House, LLC.

Mark Shiner, Trademark Examining Attorney, Law Office 105,  
Jennifer Williston, Managing Attorney.

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Before Zervas, Goodman and Hudis,  
Administrative Trademark Judges.

Opinion by Hudis, Administrative Trademark Judge:

412 Public House, LLC (“Applicant”) seeks registration on the Principal Register of the mark 412 PUBLIC HOUSE (in standard characters, “Public House” disclaimed) for “Bar services; Restaurant services” in International Class 43.<sup>1</sup>

The Trademark Examining Attorney refused registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, as applied to

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<sup>1</sup> Application Serial No. 88205268 was filed on November 26, 2018 under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere since at least as early as March 21, 2017, and its claim of first use in commerce since at least as early as July 26, 2017.

the services recited in the Application, so resembles the mark 412 BBQ (in standard characters, “BBQ” disclaimed) for:

Catering for the provision of food and beverages; Catering of food and drinks; Restaurant and bar services; Restaurant and café services; Restaurant and catering services; Restaurant services featuring sandwiches; Restaurants featuring home delivery; Booking of catering services for others; Fast casual restaurants; Mobile restaurant services; Restaurant and catering services, in International Class 43<sup>2</sup>

on the Principal Register as to be likely to cause confusion, to cause mistake, or to deceive.

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

## **I. Evidentiary Issue**

Before proceeding to the merits of the refusal, we address an evidentiary matter concerning documents attached to Applicant’s Brief, as follows:<sup>3</sup>

- Exhibit A: A WIKIPEDIA page titled, “Pub”;
- Exhibit B: A WIKIPEDIA page titled, “Barbecue”;
- Exhibit C: An article purportedly from Registrant’s website titled, “The Story: Why we love what we do”;
- Exhibit D: A dinner menu page from 412 Public House; and
- Exhibits E through Exhibit S: printouts of fifteen third-party registrations.

The Examining Attorney objects to Applicant’s Exhibits B, C, and E through S because, instead of filing these materials during the course of prosecution, Applicant

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<sup>2</sup> Registration No. 5459904 was issued on May 1, 2018.

<sup>3</sup> Applicant’s Brief, 4 TTABVue 17-36. Applicant’s Exhs. A and D already were submitted during prosecution, and Applicant did not need to submit these materials again.

untimely submitted them with its Appeal Brief. The Examining Attorney requests that we disregard these exhibits and Applicant's accompanying arguments in its Appeal Brief based thereon. We sustain the Examining Attorney's objections.

We discourage the practice of attaching to a brief on appeal copies of the same exhibits that already were submitted with an Applicant's office action responses (Applicant's Exhs. A and D). *In re Allegiance Staffing*, 115 USPQ2d 1319, 1323 (TTAB 2015). Moreover, "[t]he record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal." Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). *See also, In re ADCO Industries – Technologies, L.P.*, 2020 USPQ2d 53786, at \*2 (TTAB 2020) (evidence submitted for the first time in supplemental brief not considered). Therefore, we have not considered the materials submitted as part of Applicant's Appeal Brief (Applicant's Exhs. B, C, and E through S), unless those materials already were submitted during prosecution.

## **II. Applicable Law: Likelihood of Confusion**

We base our determination of likelihood of confusion under Trademark Act Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the factors enunciated in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* 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). However, "each case

must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973).

In applying the *DuPont* factors, we bear in mind the fundamental purposes underlying Trademark Act Section 2(d), which are to prevent confusion as to source and to protect registrants from damage caused by registration of confusingly similar marks. *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 34 USPQ2d 1161, 1163 (1995); *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985); *DuPont*, 177 USPQ at 566.

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“the various evidentiary factors may play more or less weighty roles in any particular determination”). Two key considerations are the similarities between the marks and the relatedness of the goods or services. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”)).

### **III. Analysis**

The likelihood of confusion factors Applicant focused on in this appeal are the similarity or dissimilarity of the 412 PUBLIC HOUSE and 412 BBQ marks, the similarity or dissimilarity and nature of the respective services, the conditions under

which and buyers to whom sales are made, and another fact Applicant says is probative of the effect of use – that is, “the existence on the Principle Register of [third-party] trademark registrations that include identical numbers in combination with arguably descriptive words.”<sup>4</sup>

The factors focused on by the Examining Attorney are the similarity or dissimilarity of the marks, nature of the respective services, and established, likely-to-continue trade channels. The Examining Attorney also counters Applicant’s arguments regarding the conditions under which and buyers to whom sales are made, and the relevance of third-party registrations on the Principal Register.

**A. The Similarity or Dissimilarity and Nature of the Services**

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the ... services as described in an application or registration....” *DuPont*, 177 USPQ at 567. “This factor 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, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)).

To determine the relationship between the services, we are bound by the identifications in Applicant’s involved Application and the cited Registration. *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (“Likelihood of confusion must be determined based on an analysis of the mark[s] as applied to the

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<sup>4</sup> Applicant’s Brief, 4 TTABVUE 13-15.

... services recited in applicant’s application vis-à-vis the ... services recited in [a] ... registration, rather than what the evidence shows the ... services to be.”) (citing *Canadian Imperial Bank v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987)).

In this case, Applicant’s described services (“Bar services; Restaurant services”) are identical to two of Registrant’s described services (in particular, Registrant’s “Restaurant and bar services”). As noted by the Examining Attorney,<sup>5</sup> “[A]pplicant does not argue in its [B]rief that there are differences in the services.”

By extrinsic evidence (an article purportedly taken from Registrant’s website), Applicant attempts to limit the scope of Registrant’s services to “barbeque and, more particularly, to barbeque sauces.”<sup>6</sup> This argument is unavailing for two reasons. First, Applicant’s relies on an article submitted for the first time with its Appeal Brief, which (as noted above) we decline to consider. Second, Applicant cannot narrow the scope of Registrant’s services by extrinsic evidence allegedly showing Registrant’s actual use of its mark. *In re Dixie Rests. Inc.*, 41 USPQ2d at 1534.

We therefore find the second *DuPont* factor, the similarity and related nature of the services as described in the 412 PUBLIC HOUSE Application and the 412 BBQ Registration, supports a conclusion that confusion is likely.

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<sup>5</sup> Examiner’s Brief, 6 TTABVUE 5.

<sup>6</sup> Applicant’s Brief, 4 TTABVUE 12.

**B. The Similarity or Dissimilarity of Trade Channels and Classes of Purchasers**

Under the third *DuPont* factor, we must base our determination regarding the similarities or dissimilarities between channels of trade and classes of purchasers for the services as they are identified in the application and the cited registration at issue. *Octocom Sys., Inc. v. Hous. Comp. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *Canadian Imperial Bank*, 1 USPQ2d at 1815; *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1471 (TTAB 2016). Neither the 412 PUBLIC HOUSE Application nor the 412 BBQ Registration has any limitations as to trade channels or classes of customers, nor may we read any limitation into them. *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981) (citing *Kalart Co., Inc. v. Camera-Mart, Inc.*, 119 USPQ 139 (CCPA 1958)).

As we noted above, the services in the 412 PUBLIC HOUSE Application and two of the services in the 412 BBQ Registration are identical. Thus, it is presumed that the channels of trade and classes of purchasers for these respective services (members of the general public for restaurant and bar services) are presumed to be the same. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)).

Thus, the third *DuPont* factor, channels of trade and classes of purchasers, weighs in favor of a finding a likelihood of confusion.

### C. The Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1048 (Fed. Cir. 2018). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (mem) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

"The proper test 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." *In re i.am.symbolic, llc*, 123 USPQ2d at 1748. The parties' marks "must be considered ... in light of the fallibility of memory ...." *In re St. Helena*, 113 USPQ2d at 1085 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). Therefore, "[t]he focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks." *In re Assoc. of the U.S. Army*, 85 USPQ2d 1264, 1268 (TTAB 2007).

Where the services are identical, as they are in this case (at least in part), the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods. See *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016) (citing *Coach Servs., Inc. v. Triumph*

*Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014) (quoting *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992)).

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”).

On the other hand, different features may be analyzed to determine whether the marks are similar. *Price Candy Co. v. Gold Medal Candy Corp.*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955). Therefore, “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.” *In re Nat'l Data*, 224 USPQ at 751. That is, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 101 USPQ2d at 1908.

We find the numerical designation “412” to be the dominant portion of Applicant’s and Registrant’s marks. That is because, reading from left to right, “412” is the first element of both marks, and consumers are generally more inclined to focus on the first literal portion in any mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (finding similarity between VEUVE ROYALE and two VEUVE CLICQUOT marks in part because “VEUVE . . . remains a ‘prominent feature’ as the first word in the mark and the first word to appear on the label”).

The Examining Attorney made of record the definition of the other term in Applicant’s mark, “PUBLIC HOUSE”, as meaning “a place, such as a tavern or bar . . . , [which] is licensed to sell alcoholic beverages.”<sup>7</sup> The other term in Registrant’s mark, “BBQ”, is an acronym for “barbeque.” BARBECUE, in turn, means “to roast or broil on a rack or revolving spit over or before a source of heat (such as hot coals).”<sup>8</sup> As noted at the beginning of this decision, “PUBLIC HOUSE” has been disclaimed in the 412 PUBLIC HOUSE Application and “BBQ” has been disclaimed in the cited 412 BBQ Registration.

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<sup>7</sup> Office Action of February 26, 2019, at TSDR 11.

<sup>8</sup> ACRONYM FINDER, <https://www.acronymfinder.com/BBQ.html> (accessed August 18, 2020); MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/barbecue> (accessed August 18, 2020); The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *See In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014) *aff’d* 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006) (Board may take judicial notice of widely-known reference readily available in specifically denoted editions via the Internet although not available in print).

Thus, the wording other than “412” in Applicant’s 412 PUBLIC HOUSE mark and Registrant’s 412 BBQ mark is merely descriptive of the respective services,<sup>9</sup> and appropriately these terms were disclaimed. Merely descriptive or generic matter that has been disclaimed is typically less significant or less dominant when comparing marks. *In re Detroit Athletic*, 128 USPQ2d at 1050 (citing *In re Dixie Rests., Inc.*, 41 USPQ2d at 1533-34).

Giving proper weight to each element of the respective marks, consumers will focus on “412” as the dominant element and use it, rather than the merely descriptive elements of the marks (“BBQ” and “PUBLIC HOUSE”), to distinguish the source of the services. While “BBQ” and “PUBLIC HOUSE” have different definitions, they both carry the general connotation of restaurant and bar services. *See In re Nat’l Data Corp.*, 224 USPQ at 752 (finding that ACCOUNT and EXCHANGE, while not synonyms, have a similar monetary connotation in finding CASH MANAGEMENT ACCOUNT and THE CASH MANAGEMENT EXCHANGE confusingly similar). In their entirety, the marks convey a similar connotation and commercial impression because they share the same dominant element combined with similar usage of descriptive wording for restaurants and bars.

Applicant’s argument that confusion is unlikely because (1) one mark has two words and the other mark has three, (2) the terms other than the shared designation

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<sup>9</sup> *See* Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (“A mark is merely descriptive if it consists merely of words descriptive of the qualities, ingredients or characteristics of the goods or services related to the mark.”) (internal quotes omitted).

“412” look and sound different, and (3) the other terms have different dictionary definitions<sup>10</sup> are all misplaced. Confusing similarity between the marks may be found if any one of the elements – appearance, sound, connotation and commercial impression – is found to be similar. *In re Inn at St. John’s*, 126 USPQ2d at 1746; *In re Davia*, 110 USPQ2d at 1812. Here, the marks have an identical dominant element, and subordinate elements that have similar connotations in connection with restaurant and bar services.

“Two ... [marks] may be dissimilar in appearance yet create the same mental impression because they share the same meaning or connotation. To the extent that the similarity of mental impression predominates over the dissimilarities in appearance, a likelihood of confusion may result.” RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 21 cmt. F, at 231 (1995). There are numerous examples of this premise. *See, e.g., Hancock v. Am. Steel & Wire Co. of N.J.*, 203 F.2d 737, 97 USPQ 330, 333 (CCPA 1953) (CYCLONE v. TORNADO, both for fencing); *Jellibeans, Inc. v. Skating Clubs of Ga. Inc.*, 716 F.2d 833, 222 USPQ 10, 18 (11<sup>th</sup> Cir. 1983) (JELLIBEANS v. LOLLIPOPS, both for roller rinks); *H. Sichel Söhne GmbH v. John Gross & Co.*, 204 USPQ 257, 260 (TTAB 1984) (BLUE NUN v. BLUE CHAPEL, both for wine).

In fact, the Examining Attorney made of record evidence showing eight (8) different eating establishments, including Applicant itself, having the term “PUBLIC

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<sup>10</sup> Applicant’s Brief, 4 TTABVUE 10-12.

HOUSE” in their names that feature barbeque food items on the menu.<sup>11</sup> Thus, the terms “PUBLIC HOUSE” and “BBQ” are not mutually exclusive in connection with restaurant and bar services such that they would serve to distinguish the marks to the consuming public.

We find the first *DuPont* factor, the similarities between the marks, supports the conclusion that confusion is likely. The dominant element of the marks 412 PUBLIC HOUSE and 412 BBQ is the identical arbitrary numerical designation “412” in sound and appearance. The overall general commercial impression of each mark is similar as both marks follow a similar structure – combining “412” with a merely descriptive term for restaurants and bars. The differences between the marks are insufficient to distinguish them to the public who will look to the numerical designation “412” to identify the source of the services, and view “PUBLIC HOUSE” and “BBQ” as conveying that restaurant and bar services are provided rather than differentiating the source of those services.

**D. The Conditions under which and Buyers to whom Sales are made, i.e. “Impulse” v. Careful, Sophisticated Purchasing**

“The fourth *DuPont* factor considers ‘[t]he conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.’” *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *DuPont*, 177 USPQ at 567). “Board precedent requires our

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<sup>11</sup> Third-party online menus, and Applicant’s menu, made of record with Office Action of September 11, 2019, at TSDR 6-44.

decision to be based on the least sophisticated potential purchasers.” *In re FCA US LLC*, 126 USPQ2d 1214, 1222 (TTAB 2018) (citing *Stone Lion*, 110 USPQ2d at 1163).

There is nothing in the record to show that the least sophisticated purchasers of the identified services would exercise anything more than ordinary care. The Board in the past has considered arguments concerning the degree of sophistication and care exercised by restaurant patrons:

Applicant argues, additionally, that the goods and services of the parties [restaurant services and promotional merchandise such as jewelry and clothing], are “purchased with deliberation by sophisticated and discriminating purchasers and are not impulse purchases.” Applicant has presented no evidence on this point. However, the evidence of record indicates that the parties’ goods and services are likely to be purchased by ordinary consumers without special training or expertise. While ordinary consumers can be said to choose their restaurants with a certain degree of care based on their own experience and the recommendations of others, **we do not find** this fact to warrant the conclusion, with respect to likelihood of confusion, **that consumers exercise a high degree of discrimination or sophistication with regard to their decision to patronize certain eating establishments.**

*Hard Rock Cafe Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1407 (TTAB 1998) (emphasis added). Applicant concedes this in its Brief: “Applicant’s Services ... [and] Registrant’s Services are ... purchased by consumers exercising a reasonable degree of care.”<sup>12</sup> The fourth *DuPont* factor, purchasing conditions and buyer sophistication, is accordingly neutral.

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<sup>12</sup> Applicant’s Brief, 4 TTABVUE 12.

**E. Any other Established Fact probative of the Effect of Use.**

The thirteenth *DuPont* factor is “any other established fact probative of the effect of use, *DuPont*, 177 USPQ at 567. The other “fact” Applicant wishes to call to our attention is “the existence on the Principal Register of [fifteen (15) third-party] trademark registrations that include identical numbers in combination with arguably descriptive words.”<sup>13</sup> From this, Applicant argues that “if no likelihood of confusion exists between ... [these groupings of marks and associated services], then no likelihood of confusion exiting [sic] between [the marks] 412 PUBLIC HOUSE for ... [the identified services] and 412 BBQ for ... [the recited services].” This argument is unpersuasive.

First, as noted above, Applicant’s argument relies upon untimely provided evidence with Applicant’s Appeal Brief. Second, even if this evidence was properly made of record, prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the Board. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Each case is decided on its own facts, and each mark stands on its own merits. *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d 1790, 1793 n.10 (TTAB 2017) (quoting *In re Boulevard Entm’t*, 334 F.3d 1336, 1343, 67 USPQ2d 1475, 1480 (Fed. Cir. 2003)).

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<sup>13</sup> Applicant’s Brief, 4 TTABVUE 13.

**F. Conclusion on Likelihood of Confusion**

The first, second and third *DuPont* factors favor finding a likelihood of confusion. The fourth factor is neutral. We are not persuaded by Applicant's argument on the thirteenth factor. Neither Applicant nor the Examining Attorney presented evidence or argument in their briefs as to the other *DuPont* factors. The marks at issue are similar, Applicant's services are identical to two of Registrant's services, and we presume identical trade channels as well as classes of purchasers. Consumers of the respective services would exercise an ordinary standard of care in their purchase choices. We find that Applicant's 412 PUBLIC HOUSE mark, used in connection with Applicant's services, so closely resembles the registered mark 412 BBQ as to be likely to cause confusion, mistake or deception as to the source of Applicant's services.

**Decision:** The refusal to register Applicant's mark 412 PUBLIC HOUSE on grounds of likelihood of confusion pursuant to Trademark Act Section 2(d) is affirmed.