

This Opinion is Not a
Precedent of the TTAB

Mailed: September 15, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Zena E. M. Conway

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Serial No. 88801050

Ticora E. Davis of The Creator's Law Firm,
for Zena E. M. Conway.

Brian Pino, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Acting Managing Attorney.

—
Before Lykos, Goodman and English,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Zena E. M. Conway ("Applicant"), an individual residing in North Carolina, seeks to register on the Principal Register the standard character mark Y/NG GR8TNESS ("GREATNESS" disclaimed)¹ for

Educational services, namely, providing on-line classes, seminars, conferences, programs, workshops, and forums in the fields of personal development and improvement,

¹ Consistent with our case law, the Examining Attorney required a disclaimer of the correct spelling of the laudatory term "greatness." See *In re Omaha Nat'l Corp.*, 819 F.2d 1117, 112 USPQ2d 1859, 1861 (Fed. Cir. 1987); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009). See also TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") § 1213.08(c) (July 2022).

customer service, entrepreneurship, mentorship, business, consciousness, personal confidence, health, wellness, love and happiness; educational and entertainment services, namely, providing motivational speaking services in the fields of education, business, finance, career success, wellness, self-improvement, self-motivation, personal development and improvement, consciousness, and personal confidence; educational and entertainment services, namely, providing personal coaching services in the fields of education, business, finance, career success, self-improvement, self-motivation, personal development and improvement, consciousness, and personal confidence; providing a website featuring non-downloadable videos in the fields of personal development, improvement, customer service, entrepreneurship, mentorship, business, finance, health, wellness, love, happiness, self-improvement, financial success, career success and self-motivation; providing workshops, seminars and business training, featuring personal development, improvement, customer service, entrepreneurship, business, finance, mentorship, health, wellness, love, happiness, self-improvement, career success and self-motivation; organization and presentation of seminars spanning various industries, topics and life experiences in the field of learning to achieve personal goals and consciousness in International Class 41.²

Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the registered marks below, both owned by the same entity, YPO, Inc., that it is likely to cause confusion

² Application Serial No. 88801050, filed February 18, 2020 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming June 29, 2018 as the date of first use anywhere and in commerce.

Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system. Citations to briefs refer to the actual page number, if available, as well as TTABVUE, the Board's online docketing system. The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

or mistake or to deceive:

Registration No. 5434934 for the standard character mark YNG on the Principal Register for “Business networking services; providing an on-line computer database in the field of business information and business and personal contacts; provision of commercial and business contact information; providing career information; providing an on-line searchable database featuring business information and business contacts,” in International Class 35; and “Providing educational mentoring services and programs in the field of business and personal development; organizing educational and cultural events in the nature of personal and professional development; arranging seminars in the field of education; vocational guidance, namely, providing educational mentoring services in the field of business and personal development; educational services, namely, conducting classes, seminars, conferences, and programs in the fields of business networking” in International Class 41.³

Registration No. 5425354, for the standard character mark YNG+ on the Principal Register for “Business networking services; providing a database of available internship, job and project opportunities; providing an on-line computer database in the field of business information and business and personal contacts; provision of commercial and business contact information; providing career information; providing business information in the field of job opportunities; providing an on-line searchable database featuring business information and business contacts,” in International Class 35; and “Providing educational mentoring services and programs in the field of business and personal development; organizing educational and cultural events in the nature of personal and professional development; arranging seminars in the field of education; vocational guidance, namely, providing educational mentoring services in the field of business and personal development; career counseling, namely, providing advice concerning education options to pursue career opportunities; educational services, namely, conducting

³ Registered March 27, 2018.

classes, seminars, conferences, and programs in the fields of business networking” in International Class 41.⁴

The Examining Attorney also cited as a bar to registration under Trademark Act Section 2(d) Registration No. 6164553, which according to Office records is owned by “Zena E. Conway,” for the standard character mark Y/NG GR8TNESS for “On-line retail store services featuring subscription boxes containing sweatshirts, hoodies, shirts, notebooks, journals, hats, and mugs; On-line retail store services featuring sweatshirts, hoodies, shirts, notebooks, journals, hats, and mugs” in International Class 35.⁵ In addition, the Examining Attorney refused registration on the ground that Applicant did not fully comply with a request for information concerning the identified services pursuant to Trademark Rule 2.61(b), 37 C.F.R. § 2.61(b).

Following issuance of the final refusal, Applicant timely filed a notice of appeal and request for reconsideration. The Board suspended the appeal. After the Examining Attorney denied Applicant’s request for reconsideration, the appeal was resumed. Applicant and the Examining Attorney then filed briefs.

I. Applicant’s Claim of Ownership - Cited Registration No. 6164553

As noted above, the Examining Attorney has cited as a bar to registration under Section 2(d) Registration No. 6164553. Registration was refused on the ground that “the applicant’s name is not exact to the name in the instant application and the addresses are different.”⁶ The Examining Attorney, citing 15 U.S.C. § 1060; 37 C.F.R.

⁴ Registered March 13, 2018.

⁵ Registered September 29, 2020 on the Principal Register.

⁶ See June 7, 2021 Office Action TSDR 4. See also May 14, 2020 Office Action TSDR 5 (advisory because underlying application had yet to mature to registration).

§§ 2.193(e)(1), 3.25, 3.73(a)-(b); TMEP §§ 502.02(a) and 812.01, advised Applicant that she could provide evidence of ownership of the mark by satisfying one of the following:

(1) Record any assignment with the USPTO's Assignment Recordation Branch (ownership transfer documents such as assignments can be filed online at <http://etas.uspto.gov>) and promptly notify the trademark examining attorney that the assignment has been duly recorded;

(2) Submit copies of documents evidencing the chain of title; or

(3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“Applicant is the owner of Application Serial No(s). 87944549.”** To provide this statement using the Trademark Electronic Application System (TEAS), use the “Response to Office Action” form; answer “yes” to wizard questions #3 and #9; then, continuing on to the next portion of the form, in the “Additional Statement(s)” section, check the box for “Miscellaneous Statement” and write in the free form text field for the “Miscellaneous Statement” that “Applicant is the owner of Application Serial No(s). 87944549,” inserting the relevant application serial number(s); and follow the instructions within the form for signing. The form must be signed twice; a signature is required both in the “Declaration Signature” section and in the “Response Signature” section.⁷

Emphasis in original.

Applicant responded by entering a formal claim of ownership in her application.⁸

Applicant argued that “[a]s entered under the prior registration information,

⁷ See May 14, 2020 Office Action TSDR 5.

⁸ See June 17, 2021 Response to Office Action TSDR 3-4 (entry on “Trademark Snap Shot Amendment & Mail Processing Stylesheet).

Applicant for Y/NG GR8TNESS (Ser. No. 88801050) owns the cited registered trademark Y/NG GR8TNESS (Reg. No. 6164553).⁹ The Examining Attorney, finding this unacceptable, issued a final refusal explaining that “[t]he applicant’s ownership claim of this registration cannot be accepted because it was not supported by the required verification, e.g., declaration.”¹⁰ The same reason was reiterated in the Examining Attorney’s denial of Applicant’s Request for Reconsideration.¹¹ On appeal, Applicant continues to maintain that the Section 2(d) refusal based on this cited registration is improper.

Trademark Rule 2.36, 37 C.F.R. § 2.36, states that

[p]rior registrations of the same or similar marks owned by the applicant should be identified in the application if the owner(s) last listed in Office records of the prior registrations differs from the owner(s) listed in the application.

As guidance in interpreting Trademark Rule 2.36, TMEP Section 812 provides:

The rule does not precisely define when an applicant should claim ownership of prior registration(s), and the examining attorney may exercise discretion in invoking the rule. The main purpose of the rule is to provide the examining attorney with information necessary for proper examination. The information does not have to be given in any specific form.

However, TMEP Section 812.01 states:

If an applicant includes a claim of ownership of a prior registration, or a pending application, in the application as filed, the examining attorney must accept the claim without further proof of ownership and must not cite the

⁹ See June 17, 2021 Response to Office Action TSDR 3.

¹⁰ See July 6, 2021 Office Action, n.1.

¹¹ See January 27, 2022 Denial of Applicant’s Request for Reconsideration.

registration for likelihood of confusion under §2(d) of the Act or advise the applicant that there may be a conflict with the earlier-filed application. ...

However, if an applicant does not assert ownership of a pertinent registration in an application when it is filed, and the USPTO's records do not indicate that it is owned by the applicant, the registration must be cited against the current application under §2(d). If so, the applicant must do one of the following to verify its ownership claim of the cited registration: (1) state for the record that the documents have been recorded in the Assignment Recordation Branch for a registration based on an application under §1 or §44 of the Trademark Act, or with the IB for a §66(a) registration; (2) submit copies of documents evidencing the chain of title; or (3) submit a statement, supported by an affidavit or declaration under 37 C.F.R. §2.20, that the applicant is the owner of the cited registration. This also applies to pending conflicting applications that are cited as a potential bar to registration.

According to the ownership records, the present application is owned by:

Current Owner(s) Information	
Conway, Zena E. M.	Owner Name:
3050 Grace Meadow Lane Charlotte, NORTH CAROLINA UNITED STATES 28214	Owner Address:
INDIVIDUAL	Legal Entity Type:
UNITED STATES	Citizenship:

The ownership records show the following for cited Registration No. 6164553:

Current Owner(s) Information	
Conway, Zena E.	Owner Name:
1304 Parkview Drive Elizabeth City, NORTH CAROLINA UNITED STATES 27909	Owner Address:
INDIVIDUAL	Legal Entity Type:
UNITED STATES	Citizenship:

The application and registration show a slight discrepancy in the middle initials as to the individual owner names. As pointed out by the Examining Attorney, according to the Office records, each “owner” resides at a different address in a different city in North Carolina. Both the application and registration show no assignments recorded in the Assignment Division.

Applicant had the option, as the Examining Attorney suggested, of simply submitting a statement, supported by an affidavit or declaration under 37 C.F.R. § 2.20, that Applicant owns cited Registration No. 6164553 or evidence of chain of title either under separate cover or via TEAS. This would have easily obviated the Section 2(d) refusal based on this registration. The Board therefore finds that the Examining Attorney properly maintained the Section 2(d) final refusal based on this cited registration.

II. Likelihood of Confusion

We now consider the Section 2(d) refusal before us, focusing on Registration Nos. 5434934 and 5425354, both owned by YPO, Inc., for the standard character marks YNG and YNG+ for the services identified therein. This is because when those marks are considered vis-à-vis the applied-for mark Y/NG GR8TNESS for the identified services, it is those particular marks and services that are most likely to support a finding of likelihood of confusion. In other words, if confusion is likely between these marks and services, there is no need for us to consider likelihood of confusion with Registration No. 6164553. *See, e.g., In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). *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 or argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the services, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

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, 1261 (Fed. Cir. 2011); *Shell Oil*, 26 USPQ2d at 1688 (“the various evidentiary factors may play more or less weighty roles in any particular determination”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the 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)); *see also In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *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.”). These factors, and the others, are discussed below.

A. The Services¹² and The Similarity or Dissimilarity of Established, Likely-To-Continue Trade Channels and Classes of Consumers

We commence by comparing the services as they are identified in the involved application and cited registrations, the second *DuPont* factor. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018); *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The Examining Attorney need not prove, and we need not find, similarity as to each service listed in the cited marks. “It is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of [services] within a particular class in the application.” *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015); *see also Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

¹² Applicant, in a footnote in her appeal brief, offered “to further amend [her] identification of services to emphasize the differences in services. If the Examining Attorney believes an amendment would eliminate the need for a Section 2(d) refusal, please call counsel to discuss.” Applicant’s Brief, p. 11; 6 TTABVUE 17. The preferred practice would have been for Applicant to file a separately captioned written request for remand and suspension of proceedings with the Board, ideally prior to the deadline for filing an appeal brief, with a proposed amendment to her recitation of services. *See In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *1 (TTAB 2020). For further information on preferred practices for amending an application during appeal, *see* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 1205.01(b)(2) (2022).

The first item listed in Applicant's identification of services is "**Educational services, namely**, providing on-line classes, seminars, conferences, **programs**, workshops, and forums **in the fields of personal development** and improvement, customer service, entrepreneurship, mentorship, **business**, consciousness, personal confidence, health, wellness, love and happiness." Emphasis added. The services in both cited registrations for the marks YNG and YNG+ include "**Providing educational** mentoring services and **programs in the field of business and personal development.**" Emphasis added. Although worded slightly differently, both Applicant's and Registrant's identified services include educational programs in the same fields of business and personal development without any qualifying language. As such, the services are in-part identical.

This brings us to the similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers, the third *DuPont* factor. Applicant argues that she is only using her applied-for mark in connection with "educational and coaching services that allow consumers of an online web interface to learn and grow through online programs and videos in the field of self-motivation and wellness."¹³ Relying on information posted on Registrant YPO Inc.'s website, she contends that by contrast, those services are limited to the children of "extraordinary chief executives" of the Young Presidents' Organization (YPO), and that "in order to even qualify for membership in YPO a candidate must meet one requirement of the following four criteria: 45 years of age; hold the title of President, CEO, Chairperson

¹³ Applicant's Brief, p. 9; 6 TTABVue 14.

of the Board, Managing Director, Managing Partner, or the equivalent thereof; have either 50 employees or 15+ full time employees and a minimum of \$2,000,000 annual employee compensation; or enterprise value of \$20,000,000+.”¹⁴

Applicant is impermissibly reading limitations into both her own and Registrant’s identification of services. According to the language in the identifications, the services are in-part identical and unrestricted as to those trade channels; therefore, we must presume that these particular services travel in the same ordinary trade and distribution channels and will be marketed to the same potential consumers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (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); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011). We cannot look to extrinsic evidence about the actual services, consumers, or channels of trade as Applicant urges. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981) (citing *Kalart Co., Inc. v. Camera-Mart, Inc.*, 119 USPQ 139 (CCPA 1958)).

Moreover, Applicant’s arguments regarding her actual use of her mark in connection with only some of the services listed in the application is misplaced. Because the scope of the registration Applicant seeks is defined by her application

¹⁴ *Id.* at 9-10; 6 TTABVUE 14-15.

and not by actual use, it is the identification of services in her application and not actual use in commerce that we use as our guide:

The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of [services] set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's [services], the particular channels of trade or the class of purchasers to which sales of the [services] are directed.

Octocom, 16 USPQ2d at 1787. For this reason, in the context of an ex parte appeal, the right to register a mark must be determined as to how the services are identified in the application regardless of the manner of actual use. *Jim Beam Brands Co. v. Beamish & Crawford, Ltd.*, 937 F.2d 729, 19 USPQ2d 1352, 1356 (2d Cir. 1991) (distinguishing infringement proceedings from Board proceedings); see also *Bellbrook Dairies, Inc. v. Hawthorn-Mellody Farms Dairy, Inc.*, 117 USPQ 213, 214 (CCPA 1958); *Blue Cross and Blue Shield Ass'n v. Harvard Cmty. Health Plan Inc.*, 17 USPQ2d 1075, 1077 (TTAB 1990).

Accordingly, the in-part identical nature of the services, and the presumed identity in trade channels and classes of purchasers as to those services weigh heavily in favor of finding a likelihood of confusion.

B. The Marks

Keeping in mind that in cases where the services are identical, the degree of similarity between the marks necessary to support a determination that confusion is likely declines, *Bridgestone Ams. Tire Operations, LLC v. Fed. Corp.*, 673 F.3d 1330, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012), we now turn to the first *DuPont* factor which involves an analysis of the similarity or dissimilarity of the marks in their entireties

as to appearance, sound, connotation and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (citing *DuPont*, 177 USPQ at 567). “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) (citing *In re Davia*, 110 USPQ2d, 1810, 1812 (TTAB 2014)), *aff’d mem.*, (Fed. Cir. Sept. 13, 2019). *Accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted). “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.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012).

Moreover, the marks at issue “must be considered ... in light of the fallibility of memory” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). Consequently, the proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *Inn at St. John’s*, 126 USPQ2d at 1746 (internal citations omitted).

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, 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 entirety. Indeed, this type of analysis appears to be unavoidable.” *Nat'l Data Corp.*, 224 USPQ at 751.

Applicant argues that her applied-for mark Y/NG GR8TNESS and the cited marks YNG and YNG+ have notable differences in sound, appearance, connotation and commercial impression. Applicant, focusing on visual and aural distinctions, emphasizes that Y/NG GR8TNESS mark is comprised of two words, whereas the cited marks YNG and YNG+ are single terms. She explains that the deliberate inclusion of a “slash” between the letters “Y” and “NG” in her applied-for mark is intended to stand for an abbreviation for the phrase “young energy.” She further contends that the addition of GR8TNESS, the phonetic equivalent of “greatness,” differentiates the marks not only by the number of syllables but also as to connotation and commercial impression. As evidentiary support, Applicant points to the dictionary definition of “greatness” as signifying the superiority and high level quality of her services.¹⁵ By

¹⁵ *See* definition of “greatness,” MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/greatness> (last visited January 6, 2022) submitted with Applicant’s January 6, 2022 Request for Reconsideration TSDR 33.

contrast, Applicant postulates that the cited mark YNG and the YNG portion of the cited mark YNG+ will be perceived as an acronym for Registrant's trade name which begins with the letter "Y" and the phrase "next generation." In support thereof, Applicant made of record printouts from Registrant's website.¹⁶

Applicant's arguments are unpersuasive. Consumers do not focus on minutia such as the number of syllables in marks but rather overall impressions. *See In re John Scarne Games, Inc.*, 120 USPQ 315, 315-16 (TTAB 1959) ("Purchasers of game boards do not engage in trademark syllable counting — they are governed by general impressions made by appearance or sound, or both."). Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *Viterra*, 101 USPQ2d at 1908. It well established that consumers are generally more inclined to focus on the first term in a trademark. *See Detroit Athletic Co.*, 128 USPQ2d at 1049 (finding "the identity of the marks' two initial words is particularly significant because consumers typically notice those words first"); *Palm Bay*, 73 USPQ2d at 1692 (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"); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed Cir. 1992) (finding similarity between CENTURY 21 and CENTURY LIFE OF AMERICA in part because "consumers must first notice th[e]

¹⁶ Printouts from YPO's website submitted with Request for Reconsideration TSDR 42-60, <https://www.yngcommunity.org/login?ec=302&startURL=%2Fs%2F>; <https://www.yponextgen.org/> (last visited January 6, 2022).

identical lead word”). Applicant’s mark commences with the term Y/NG making it the dominant element.

Another reason Y/NG is the dominant term in Applicant’s mark is because the disclaimed misspelling of the word “greatness” is laudatory, making it merely descriptive in connection with the services. Disclaimed matter that is descriptive of an applicant’s services is typically less significant or less dominant when comparing marks. *Detroit Athletic Co.*, 128 USPQ2d at 1050 (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)). This is especially true for laudatory terms. “Self-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the [services].” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1759 (Fed. Cir. 2012) (quoting *In re Boston Beer Co.*, 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999)).

As to the cited mark YNG+, because it is the initial term, we find YNG the dominant portion of the mark YNG+. And even if consumers pronounce YNG+ as “YNG plus,” YNG remains the first portion. Furthermore, this mark engenders a highly similar meaning and commercial impression to Y/NG GR8TNESS. The word “plus” may defined as “greater than specified.”¹⁷ This meaning is almost synonymous with the phonetic equivalent of the word “greatness” in Applicant’s mark.

¹⁷ See definition of “plus,” MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriamwebster.com/dictionary/plus> (last visited January 6, 2022) submitted with Applicant’s January 6, 2022 Request for Reconsideration TSDR 37.

In addition, we are unpersuaded by Applicant's argument that consumers are likely to perceive the designation Y/NG as having an entirely different connotation and commercial impression when compared with the YNG component in Registrant's marks YNG and YNG+. We have taken into account that Applicant's mark contains a forward slash between the letters "Y," and "NG," but other than Applicant's self-ascribed meaning, the record is devoid of evidence that this punctuation mark significantly alters the connotation or commercial impression of the mark. *See, e.g., Pinocchio's Pizza Inc. v. Sandra Inc.*, 11 USPQ2d 1227, 1228 (TTAB 1989) ("[T]he marks are virtually identical, the only difference being the insignificant inclusion of an apostrophe in registrant's PINOCCHIO'S mark."). *Cf. In re Litehouse Inc.*, 82 USPQ2d 1471 (TTAB 2007) (punctuation marks in the mark CAESAR!CAESAR! do not significantly change commercial impression of the mark and do not suffice to cure mere descriptiveness of the mark for salad dressing); *In re Vanilla Gorilla, L.P.*, 80 USPQ2d 1637 (TTAB 2006) (finding that the presence of a hyphen in the mark "3-0's" does not negate mere descriptiveness of the mark for automobile wheel rims). As to the cited marks, nothing suggests in the record that YNG is a widely known corporate designation for "YPO Next Generation" or that YNG is a well-known brand acronym for Registrant's services. According to the record, the acronyms are coined. As such, consumers familiar with the cited marks are likely to perceive Applicant's mark as a variation denoting a service line extension. *See, e.g., Schieffelin & Co. v. Molson Cos., Ltd.*, 9 USPQ2d 2069, 2073 (TTAB 1989) ("Those consumers who do recognize the differences in the marks may believe that applicant's mark is a

variation of opposer's mark that opposer has adopted for use on a different product.”); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (VANTAGE TITAN “more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus, namely, medical ultrasound devices”). In other words, consumers, focusing on the first shared common element letter string “Y,” “N” and “G,” are likely to perceive the applied-for mark as a modification of the cited marks. *Cf. In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988) (when the same words are used in marks, the presence or absence of hyphens or other punctuation marks generally will be of little significance). Applicant's and Registrant's marks therefore engender highly similar connotations and commercial impressions as well.

Although we have pointed to the identical dominant portions of the marks, we acknowledge the fundamental rule that the marks must be considered in their entirety. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1134 (Fed. Cir. 2015) *Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 273-74 (CCPA 1974). We note the specific differences pointed out by Applicant. These differences, however, are outweighed by the similarities of the marks. Thus, when comparing the marks overall, they are similar in sound, meaning, connotation and overall commercial impression. The similarity of the marks also weighs in favor of

finding a likelihood of confusion.

C. Conditions of Sale

Lastly, we consider the fourth *DuPont* factor, the conditions under which the services are likely to be purchased, *e.g.*, whether on impulse or after careful consideration, as well as the degree, if any, of sophistication of the consumers. Purchaser sophistication or degree of care may tend to minimize likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 224 USPQ 969, 971 (Fed. Cir. 1985) (because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED). Conversely, impulse purchases of inexpensive items may tend to have the opposite effect. *Palm Bay*, 73 USPQ2d at 1695.

Applicant argues that prospective consumers of Applicant's and Registrant's services possess a higher level of sophistication and are unlikely to purchase the services on impulse. Applicant asserts that the primary clients of her customized services are "enterprises ... represented by business managers and owners," and that she works closely with each client to tailor her services to meet their individualized needs.¹⁸ She further contends that Registrant's client base is similarly sophisticated since its services are only offered to "the inclusive community of young adult children of YPO members."¹⁹

¹⁸ Applicant's Appeal Brief, p. 10; 6 TTABVUE 15.

¹⁹ *Id.*

Applicant's arguments are unpersuasive. As identified, Applicant's and Registrant's respective educational programs in the fields of business and personal development are not limited in any way as to conditions of sale. It therefore must be assumed that their services are available to all members of the public, and not just entrepreneurs, business owners, or the young adult children of Registrant's members. In addition, since the services are unrestricted, we must assume that prospective consumers include both discriminating corporate clients seeking customized services to further hone their business and personal development skills as well as ordinary members of the public looking to learn more about these fields. Ordinary consumers of these services are likely to exercise only ordinary care. *See Stone Lion*, 110 USPQ2d at 1163-64 (recognizing Board precedent requiring consideration of the "least sophisticated consumer in the class"). In addition, Applicant's and Registrant's respective educational programs in the fields of business and personal development are not limited in any way as to price point. Hence, we must assume that these services are sold at all price ranges and to all types of buyers and overlap to include both high-end corporate clients and ordinary members of the public.

Focusing on the least sophisticated potential customers of the respective services, which in this case consists of members of the general public, we find that the fourth *DuPont* factor weighs in favor of a likelihood of confusion. *See Stone Lion*, at 110 USPQ2d at 1163 ("Although the services recited in the application also encompass sophisticated investors, Board precedent requires the decision to be based 'on the least sophisticated potential purchasers.'").

D. Balancing the *DuPont* Factors

We have carefully considered all of the evidence made of record, as well as all arguments related thereto. It is well-settled that where the services are identical in part, as is the case here, less similarity between the marks is needed for us to find a likelihood of confusion. *Coach Servs.*, 101 USPQ2d at 1721; *Century 21*, 23 USPQ2d at 1700 (“When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.”). The similarities of the marks coupled with the in-part identical services marketed in overlapping trade channels to the same classes of consumers exercising ordinary care lead us to the conclusion that prospective consumers are likely to confuse the involved services as originating from or associated with or sponsored by the same entity.

III. Requirement for Further Information

In her appeal brief, Applicant did not address the refusal based on her failure to fully comply with the Examining Attorney’s information request pursuant to Trademark Rule 2.61(b), 37 C.F.R § 2.61(b). In view thereof, Applicant waived her appeal of this refusal. *See In re Katch, LLC*, 2019 USPQ2d 233842, at *1-2 (TTAB 2019) (applicant who briefed only the refusal under Section 23(c) waived her appeal of the refusal to registration under Trademark Sections 1, 2, 3 and 45).

Decision: The Section 2(d) refusal to register Applicant’s mark is affirmed with regard to cited Registration Nos. 5434934 and 5425354. In view thereof, we need not reach the merits of the Section 2(d) refusal with respect to the cited Registration No. 6164553.