

This Opinion is Not a  
Precedent of the TTAB

Mailed: September 9, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board  
—

*In re HIFI Brands, LLC*  
—

Serial Nos. 88905094 and 88905116  
—

Kristina D. Diesner and Christopher W. Niro of Aronberg Goldgehn Davis  
& Garmisa for HIFI Brands, LLC.

Candace W. Hays, Trademark Examining Attorney, Law Office 110,  
Chris A.F. Pedersen, Managing Attorney.

—

Before Zervas, Hudis, and Johnson,  
Administrative Trademark Judges.

Opinion by Johnson, Administrative Trademark Judge:

HIFI Brands, LLC (“Applicant”) seeks registration on the Principal Register of the HIFI<sup>1</sup> standard character mark, and the HIFI stylized mark, in the form shown below (collectively, “Applicant’s Marks”), for “Branding services, namely, consulting, development, brand strategic positioning, management and marketing of brands for businesses and/or individuals,” in International Class 35, and “Branding design

---

<sup>1</sup> Application Serial No. 88905094 was filed on May 7, 2020, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intent to use the mark in commerce.

services, namely, graphic design services for creating graphic elements of corporate logos,” in International Class 42 (collectively, “Applicant’s Services”).

The logo consists of the lowercase letters 'h', 'i', 'f', and 'i' in a stylized, italicized font. The 'f' and the second 'i' are lowercase and italicized, while the 'h' and the first 'i' are in a slightly different, less italicized font style.

2

The Trademark Examining Attorney refused registration of Applicant’s Marks under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that the marks, as used in connection with Applicant’s Services, so resemble the composite mark shown below:

The logo features the words 'High Fidelity' in a bold, sans-serif font. Above the 'i' in 'Fidelity' is a circular emblem containing a stylized 'H' with a vertical line through its center. A small number '3' is positioned to the right of the logo.

---

<sup>2</sup> Application Serial No. 88905116 was filed on May 7, 2020, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intent to use the mark in commerce. The mark is described in the application as follows: “The mark consists of the letters ‘h i f i’ in lower case stylized font with the ‘f’ and ‘i’ in lower case italicized and the top right portion of ‘f’ forming the dot on the italicized ‘i.’” Color is not claimed as a feature of the mark.

Citations to the appeal record are from the publicly available documents in TTABVUE, the Board’s electronic docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). 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, if applicable.

Citations to the application record are to downloadable .pdf versions of the documents in the Trademark Status and Document Retrieval (TSDR) database of the United States Patent and Trademark Office (USPTO).

<sup>3</sup> Registration No. 6013842 issued on March 17, 2020. The mark is described in the registration as follows: “The mark consists of the wording ‘HIGH FIDELITY’ below a circle.

(“Registrant’s Mark” or “Registered Mark”), registered on the Principal Register for:

Advertising, marketing and publicity services; on-line arranging of trading transactions to facilitate the exchange of real and virtual goods of others; arranging and conducting of auction sales; business advice and information; online retail store services featuring a wide variety of consumer goods; online business networking services; online advertising and marketing services; promoting the goods and services of others via a global computer network; promoting concerts and events of others, in International Class 35;

Entertainment services, namely, providing an on-line real-time computer game by means of communications networks, in International Class 41; and

Design and development of multimedia and three dimensional real-time virtual environment software, in International Class 42

(collectively, “Registrant’s Services”), as to be likely to cause confusion, to cause mistake, or to deceive.

When the refusals were made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the requests for reconsideration, the appeals were continued. The appeals have been fully briefed. We affirm the refusals to register.

---

Inside the circle is a figure resembling the letter ‘H’ consisting of three lines and four small, filled circles arranged as follows: two of the lines are vertical and the vertical line on the left is higher than the vertical line on the right. A third line that slopes downward from left to right connects the vertical lines. Each vertical line has a small, filled circle at the top and bottom of each line.” Color is not claimed as a feature of the mark.

## **I. Appeals Consolidated**

The Examining Attorney moved to consolidate the appeals (8 TTABVUE), and the Board granted the motion (9 TTABVUE). Unless otherwise indicated, we refer to the record in Serial No. 88905094 for the HIFI standard character mark.

## **II. Evidentiary Issue**

Applicant attached documents to its Appeal Brief (6 TTABVUE) and Reply Brief (12 TTABVUE), most of which were not included in the prosecution records for the two applications.

“The 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* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1203.02(e) (2022) (“Exhibits attached to a brief that were not made of record during examination are untimely, and generally will not be considered.”); *see also* TBMP §§ 1203.01, 1207.01; *In re tapio GmbH*, 2020 USPQ2d 11387, at \*3 (TTAB 2020) (“screen shots” from applicant’s website that were embedded in applicant’s brief and other materials that were first filed with applicant’s appeal brief not considered). Further, “[i]t is not necessary to attach as exhibits to a brief evidence that is already in the application because the appeal brief is associated with the application. Such evidence should not, as a matter of course, be resubmitted as exhibits to the brief.” TBMP § 1203.02(e); *see also In re Information Builders Inc.*, 2020 USPQ2d 10444, at \*2 n.4 (TTAB 2020) (attaching previously

submitted evidence to an appeal brief is unnecessary and impedes efficient disposition of the appeal by the Board), *appeal dismissed*, No. 20-1979 (Oct. 20, 2020).

Consequently, we will consider evidence that was properly introduced into the record during examination. Any other documents, such as those submitted with the briefs (*see* exhibits attached to 12 TTABVUE), will not be considered.

### III. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark must be refused registration if it “[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive ... .” 15 U.S.C. § 1052(d).

To determine whether there is a likelihood of confusion between the marks under Section 2(d), we analyze the evidence and arguments under the so-called *DuPont* factors. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. ... Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at \*3 (Fed. Cir. 2020). “In any likelihood of confusion analysis, two key considerations are the similarities between the marks

and the similarities between the goods or services.” *Chutter, Inc. v. Great Mgmt. Grp., LLC*, 2021 USPQ2d 1001, at \*29 (TTAB 2021) (citing *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)).

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

We begin with the second *DuPont* factor, which concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration.” When analyzing the second *DuPont* factor, we look to the identifications of services in the applications and cited registration. *Stone Lion Capital Partners v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“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.”).

The services do not have to be identical or even competitive in order to find that there is a likelihood of confusion. *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1368 (TTAB 2009). The issue is not whether the services will be confused with each other, but rather whether the public will be confused as to their source. *See Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the [services] in

question are different from, and thus not related to, one another in kind, the same [services] can be related in the mind of the consuming public as to the origin of the [services]. It is this sense of relatedness that matters in the likelihood of confusion analysis.”). It is sufficient that the services of the applicant and the registrant are related in some manner or that the conditions surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (citation omitted); *On-Line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000).

Evidence of relatedness may include pages from third-party websites showing that the relevant services are used by purchasers for the same purpose; advertisements showing that the relevant services are advertised together; or copies of use-based registrations of the same mark for both Applicant’s identified services and the services listed in the cited registrations. *See, e.g., In re Davia*, 110 USPQ2d 1810, 1817 (TTAB 2014) (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes because consumers were likely to purchase the products at the same time and in the same stores).

Applicant’s Services are:

Branding services, namely, consulting, development, brand strategic positioning, management and marketing of brands for businesses and/or individuals, in International Class 35; and

Branding design services, namely, graphic design services for creating graphic elements of corporate logos, in International Class 42.

Registrant's Services that are relevant are:

Advertising, marketing and publicity services; on-line arranging of trading transactions to facilitate the exchange of real and virtual goods of others; arranging and conducting of auction sales; business advice and information; online retail store services featuring a wide variety of consumer goods; online business networking services; online advertising and marketing services; promoting the goods and services of others via a global computer network; promoting concerts and events of others, in International Class 35;

and

Design and development of multimedia and three dimensional real-time virtual environment software, in International Class 42.

We find that the services at issue in Classes 35 and 42 overlap, inasmuch as Registrant's broadly-worded marketing services in Class 35 encompass Applicant's narrower "marketing of brands for businesses and/or individuals," and Registrant's broadly-worded "design and development of multimedia" encompasses Applicant's narrower "branding design services" and "graphic design services." *See, e.g., In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'").

We do not agree with Applicant's contention that that the services are narrowly tailored, making them dissimilar. (6 TTABVUE 14-16). First, as previously discussed, the Board must base its determination of likelihood of confusion on the identification

of services in the applications and registration at issue; limitations cannot be read into the identifications of services. *Stone Lion*, 110 USPQ2d at 1162; *Octocom Sys.*, 16 USPQ2d at 1787. Second, as explained above, the services are related to one another. The Examining Attorney need not prove, and we need not find, similarity as to each service listed in Class 35 and Class 42. See *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (a finding of likely confusion must be made with respect to at least one item in each opposed class of the application to establish likely confusion as to that class of goods); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (“[I]t is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application”).

Also, the Examining Attorney made of record pages from several third-party websites, listed below, to demonstrate that the services identified in the application and registration, which differ from those discussed above, may also derive from the same source under the same mark and are offered through the same trade channels.<sup>4</sup> See *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (relatedness supported by evidence that third parties sell both types of goods under same mark, showing that “consumers are accustomed to seeing a single mark associated with a source that sells both.”).

---

<sup>4</sup> Aug. 21, 2020 Office Action, pp. 28-45; June 10, 2021 Final Office Action, pp. 7-21.

- Hollinden.com,<sup>5</sup> Houston Texas – Hollinden marketers + strategists offer a variety of services, including marketing strategy consulting, digital content marketing, search engine marketing, digital media marketing, and branding.
- Manifestoagency.com,<sup>6</sup> Portland, Oregon and Milwaukee, Wisconsin – Manifesto offers a variety of services, including branding and strategy “identity and naming” and “positioning and messaging”; brand and product launch campaigns, and “brand actualization” services.
- Ipnny.com,<sup>7</sup> New York, New York – IPNY offers a variety of services, including advertising, digital marketing, social media, and brand campaigns.
- Blattel.com<sup>8</sup> (location unknown) – Blattel Communications offers a variety of services, including marketing, advertising, corporate identity, and branding and identity services.
- Thriveagency.com<sup>9</sup> (multiple locations throughout the United States) – Thrive Internet Marketing Agency is a full service digital marketing agency that offers a variety of services, including search engine optimization (SEO), professional web design, and social media marketing.

---

<sup>5</sup> Aug. 21, 2020 Office Action, pp. 28-34.

<sup>6</sup> *Id.* at pp. 35-40.

<sup>7</sup> *Id.* at pp. 41-44.

<sup>8</sup> *Id.* at p. 45.

<sup>9</sup> June 10, 2021 Final Office Action at pp. 7-14.

- Experiacreative.com,<sup>10</sup> San Diego and Santa Barbara, California – Experia Creative offers a variety of services, including branding, web design, logo design, marketing, social media, graphic design, packaging design, and product photography.
- 90degreedesign.com,<sup>11</sup> Raleigh, North Carolina -- 90 Degree Design, LLC is a design and marketing solutions firm that offers a variety of services, including brand development, logo design, web design, video production, digital marketing, and marketing consulting services.

The Examining Attorney’s third-party website evidence, which we find highly probative of relatedness, plainly shows that the same entity offers marketing, branding, and branding design services all under the same mark.

Overall, considering the overlap in the Class 35 and Class 42 services, as well as the third-party website evidence pertaining to other services in these two classes, the second *DuPont* factor strongly supports a finding of a likelihood of confusion.

**B. Established, Likely-to-Continue Channels of Trade and Classes of Purchasers**

Next, we consider the similarity or dissimilarity of established, likely-to-continue channels of trade and the classes of purchasers. *See generally In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1750-51 (Fed. Cir. 2017) (discussing relatedness of the services, trade channels, and purchaser sophistication).

---

<sup>10</sup> *Id.* at pp. 15-17.

<sup>11</sup> *Id.* at pp. 18-21.

As previously discussed, the evidence of record demonstrates that third-party entities offer marketing and branding services, categorized in Class 35, under the same mark. The evidence of record also demonstrates that third-party entities offer multimedia design, branding design, and graphic design services, categorized in Class 42, under the same mark. There are no limitations as to trade channels or classes of purchasers in the application or cited registration, so it is presumed that the application and registration encompass all services of the type described, that the services move in all normal trade channels for those services, and that the services are available to all classes of purchasers. *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Such purchasers are discussed below in Section III.C.

We find that the third-party website evidence demonstrating the same services offered on the same webpages is probative of the similarity of the channels of trade and classes of purchasers, as well as the relatedness of the services in Classes 35 and 42. *See, e.g., In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1672 (TTAB 2018) (while legal identity of goods identified as “cosmetics” was sufficient to establish that goods were related, the examining attorney’s evidence also established that other goods identified in the application were related to “cosmetics”). These *DuPont* factors also support a finding of a likelihood of confusion.

### **C. Degree of Purchaser Care**

Turning to the next *DuPont* factor, the conditions under which the services are likely to be purchased, e.g., whether on impulse or after careful consideration (i.e.,

“consumer purchasing care”), purchaser sophistication or degree of care when encountering marks may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items where consumers pay little attention to the source of the products may tend to have the opposite effect. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1695 (Fed. Cir. 2005).

Applicant claims its “sophisticated, deliberate buyers minimizes [sic] a likelihood of confusion,” (6 TTABVUE 16), and that its services are directed towards businesses with branding and design issues, not individuals. (12 TTABVUE 11). Specifically, Applicant contends that its customers exercise a high level of care when seeking Applicant’s branding services, as “businesses afford a great amount of energy, time, and money into their branding,” which requires a high level of care and “a long, drawn-out relationship between the parties.” (12 TTABVUE 11-12). In support of its argument, Applicant proffers a page from its website which features “sophisticated companies” (6 TTABVUE 16),<sup>12</sup> and cites a decision in which the Board found that the nature of senior living community services and the high costs associated therewith weighed against a finding of likelihood of confusion. *Primrose Ret. Cmty., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039 (TTAB 2016).

*Primrose* is inapposite, since the record here is devoid of any evidence showing that Applicant’s branding services are expensive, or are the type of services that cause consumers to conduct significant research or make “educated, pragmatic decisions.”

---

<sup>12</sup> Sept. 30, 2020 Response to Office Action at p. 17.

*Id.* at 1039. Applicant's webpage, the relevant portions of which are cropped and shown below, fails to support Applicant's sophisticated purchaser argument since the display of corporate logos on a webpage, without more, does not connote that Applicant's customers are sophisticated purchasers.

**hifi** is a creative branding agency.  
We cut clutter, inspire substance,  
and create clarity out of chaos.

*Full site coming soon*

*We use our masterful powers of brand strategy & graphic design to craft effective & streamlined creative solutions for our partners in the Chicago area & beyond.*

**Brand Strategy**

- Get to Know You & Your Brand
- Research & Analyze Insights
- Identify Opportunities for Growth
- Brainstorm Big Ideas
- Find Your Brand Voice

**Logo & Identity Systems**

- Logo & Identity Design
- Graphic Design & Art Direction
- Color & Typography
- Iconography & Illustration
- Brand Books & Guidelines

**Package & Print Design**

- FMCG Package Design
- Private Label Packaging Design
- Business & Restaurant Collateral
- Merchandise & Swag
- Posters & Everything Else

**Environmental Design**

- Guest Experience Strategy
- Signage & Wayfinding
- Environmental Graphics
- Menuboards & Retail Merchandising
- Murals & Artwork Curation

**Web & Digital Design**

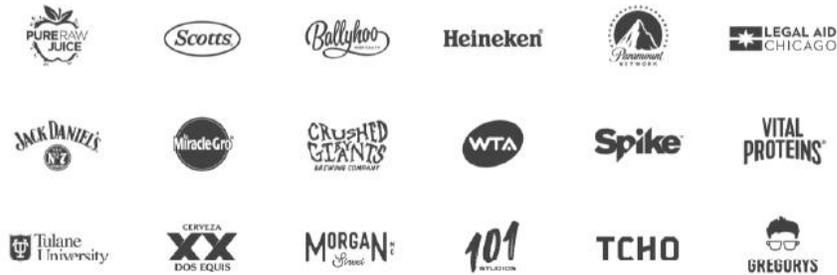
- Website Design & Development
- Social Media Strategy
- Content Creation
- Advertising & Promotions
- Digital Campaigns

**Marketing & Consulting**

- Brand & Marketing Consultation
- Influencer & Partnership Strategy
- Sponsorship Activation
- Pop-Up Events
- Emotional Support

*Got questions? Ping us a note.* [sayhi@hifibrands.design](mailto:sayhi@hifibrands.design)

*Brand Experience*



Industry Expertise: FMCG Packaging & Private Label, Restaraunt & Retail, Media & Entertainment, Food & Drink.

Moreover, the identifications for classes 35 and 42 in the application and registration are not limited to professional purchasers of the services, so we must presume that the purchasers consist of both professionals and the public, and that the standard of care for purchasing the services recited in classes 35 and 42 is that of the least sophisticated potential purchaser. *In re FCA US LLC*, 126 USPQ2d 1214, 1222 (TTAB 2018) (citing *Stone Lion*, 110 USPQ2d at 1163). And “[a]ttorney argument is no substitute for evidence.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018).

On this record, we find that consumers of “[b]randing services, namely, consulting, development, brand strategic positioning, management and marketing of brands for businesses and/or individuals,” and “[b]randing design services, namely, graphic design services for creating graphic elements of corporate logos,” include businesses of all sizes and degrees of sophistication (from small shop owners to Fortune 100 companies) having branding and design needs. Focusing on the least sophisticated

potential purchasers of the respective services, *see Stone Lion*, 110 USPQ2d at 1163- 64, we find this *DuPont* factor to be neutral.

#### **D. The Similarity or Dissimilarity of the Marks**

Finally, we consider the *DuPont* factor relating to the similarity or dissimilarity of the respective marks. In comparing the marks we must consider their appearance, sound, meaning, and overall commercial impression when considered in their entireties. *Palm Bay Imps.*, 73 USPQ2d at 1692. Similarity as to any one of these factors may be sufficient to support a finding that the marks are confusingly similar. *See Krim- Ko Corp. v. Coca- Cola 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.”); *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (“Similarity in any one of these elements may be sufficient to find the marks confusingly similar.”), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. Sept. 13, 2019) (quoting *In re Davia*, 110 USPQ2d at 1812). In comparing the marks, we are mindful that where, as here, the services overlap, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the services. *See Coach Servs.*, 101 USPQ2d at 1721; *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

“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*, 123 USPQ2d at 1748 (quoting *Coach Servs.*,

101 USPQ2d at 1721); *see also In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (“[M]arks must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison.”).

Our analysis must focus on the recollection of the average purchaser — here, an ordinary consumer of branding services and branding design services — who normally retains a general, rather than specific, impression of service marks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014) (“The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks.”) (citations omitted).

When marks consist of words and a design, we normally accord the words greater weight because the words are likely to make more of an impression upon purchasers and purchasers will remember the words and use them to request the products. *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); *In re Viterra*, 101 USPQ2d 1908, 1911 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Herbko Int’l v. Kappa Books*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (“Because the impact of the design in the overall commercial impression is minor when compared with the words, a consumer viewing Herbko’s mark would attach greater significance to the words CROSSWORD COMPANION than to the crossword puzzle design.”). “[I]f the dominant portion of both marks is the same, then confusion may be likely

notwithstanding peripheral differences.” *In re Denisi*, 225 USPQ 624, 624 (TTAB 1985).

Overall, “our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on a comparison of the entire marks, not just part of the marks.” *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at \*4 (TTAB 2020) (citing *Stone Lion*, 110 USPQ2d at 1161). In making such a determination, “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 a consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant argues that its HIFI mark, which could appear in any font or stylization, is dissimilar from Registrant’s **High Fidelity**  composite mark in sound, appearance, meaning, and overall commercial impression. Specifically, as to meaning and overall commercial impression, Applicant argues that its HIFI mark is dissimilar because HIFI is not an abbreviation for “high fidelity.” (6 TTABVUE 11-14).

The Examining Attorney, who contends that the marks are similar in meaning and commercial impression and thus, similar overall (10 TTABVUE 6-7), proffered during examination several definitions of “hifi” and “high fidelity” in support of her argument. “Hi-Fi” is a noun defined as “high fidelity,” and as “equipment for

reproduction of sound with high fidelity.”<sup>13</sup> “High fidelity” is a noun defined as “the reproduction of an effect (such as sound or an image) that is very faithful to the original.”<sup>14</sup> The Examining Attorney also proffered evidence supporting that “‘HiFi’ or ‘Hi-Fi’ is recognized as a shortened form of ‘high fidelity.’”<sup>15</sup> (10 TTABVUE 7).

Although Applicant’s and Registrant’s marks are not identical in sound or appearance, we do find we find that the propensity of consumers to shorten marks — here, the literal elements of Registrant’s “high fidelity” mark shortened to “hifi” — makes the marks more similar than dissimilar in meaning; as a result, the marks would be remembered by consumers as “hifi.” *See, e.g., In re Abcor Dev. Corp.*, 588 F.2d 511, 200 USPQ 215, 219 (CCPA 1978) (Rich, J., concurring) (acknowledging that generally, “users of language have a universal habit of shortening full names from haste or laziness or just economy of words”); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1961 (TTAB 2016) (“In fact, the commercial impression engendered by Applicant’s mark is merely that it is the ‘Blonde’ brew of TIME TRAVELER brand beers. That is to say, when Applicant’s and Registrant’s marks are considered in their entirety, the term BLONDE does very little or nothing to distinguish them. In saying this, we also keep in mind the penchant of consumers to shorten marks.”); *Big M Inc. v. U. S. Shoe Co.*, 228 USPQ 614, 616 (TTAB 1985) (“[W]e cannot ignore

---

<sup>13</sup> Aug. 21, 2020 Office Action at pp. 14-16 (MERRIAM-WEBSTER DICTIONARY); *see also* Aug. 21, 2020 Office Action at pp. 24-25 (AMERICAN HERITAGE DICTIONARY).

<sup>14</sup> *Id.* at pp. 19-22 (MERRIAM-WEBSTER DICTIONARY); *see id.* at pp. 26-27 (AMERICAN HERITAGE DICTIONARY).

<sup>15</sup> June 10, 2021 Final Office Action at pp. 22-24 (high fidelity is “often shortened to ‘hi-fi’ or ‘hifi.’”).

the propensity of consumers to often shorten trademarks[.]”). Moreover, “an applicant’s or registrant’s intended interpretation of the mark is not necessarily the same as the consumer’s perception of it.” *In re Yale Sportswear Corp.*, 88 USPQ2d 1121, 1125 (TTAB 2008) (citation omitted).

Further, in arguing that “HIFI” is not an abbreviation for “high fidelity,” Applicant cites a non-precedential federal district court case in which the court found that the plaintiff’s mark, CATHOLIC NEWS SERVICE, which was commonly abbreviated as “CNS,” and the defendant’s marks, CYBERCAST NEWS SERVICES, CNS NEWS, and CNSNEWS.COM, were not confusingly similar in sight, sound, and appearance. *U.S. Conf. of Cath. Bishops v. Media Res. Ctr.*, 432 F.Supp.2d 616, 627 (E.D. Va. 2006). In addition to the fact that *Cath. Bishops* is not binding on the Board, the case can be easily distinguished. There, in addition to the parties’ uses, the initialism CNS was also subject to at least thirty-five distinct third party uses. Here, the nature of the evidence is much different: the record contains only two dictionary definitions of record for “hi-fi,” both showing the primary definition as the abbreviation for “high fidelity.”<sup>16</sup> Thus, the record reflects, definitively, that “hi-fi” (or “hifi”) is an abbreviation for “high fidelity.”

Applicant also relies on three Board decisions in support of its argument that its marks are arbitrary and create a different commercial impression from Registrant’s Mark. (6 TTABVUE 12 (citing *In re Sears, Roebuck & Co.*, 2 USPQ2d 1312, 1314

---

<sup>16</sup> Aug. 21, 2020 Office Action at p. 14 (MERRIAM-WEBSTER DICTIONARY); Aug. 21, 2020 Office Action at p. 24 (AMERICAN HERITAGE DICTIONARY).

(TTAB 1987) (CROSS-OVER for brassieres and CROSSOVER for ladies' sportswear, namely, tops, shorts, and pants, had different meanings when the marks were applied to the different goods of applicant and registrant); *In re British Bulldog, Ltd.*, 224 USPQ 854, 856 (TTAB 1984) (PLAYERS for men's underwear and PLAYERS for shoes, sold in the same department stores to the same classes of purchasers, were found to be distinct in that the goods were ordinarily displayed in different sections of the stores; the goods were not complementary or companion items; and the men's underwear was purchased "off the shelf," whereas the shoes were purchased with care, usually with the assistance of a sales associate); *In re Sydel Lingerie Co.*, 197 USPQ 629, 630 (TTAB 1977) (BOTTOMS UP for ladies' and children's underwear, and BOTTOMS UP for men's suits, coats, and trousers, had distinct commercial impressions; the goods were found in different areas of department stores, and the mark for men's suits, coats, and trousers was associated with the phrase "drink up!")). But in those cases, due to the nature of the identified goods, the involved marks had different meanings when applied to the goods, and thus created distinct commercial impressions.

In this case, there is no evidence of record to support a finding that HIFI and **High Fidelity** <sup>®</sup> have different meanings when used in connection with branding services, multimedia design services, branding design services, and "advertising, marketing, and publicity" services, based on the nature of the services, which we have found to be related. Given the marks (which consumers would remember as "hifi"), their meaning, as well as their use in conjunction with related services, we find the

overall commercial impressions of Applicant's Marks and Registrant's Mark to be similar. *Cf. In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1630-35 (TTAB 2018) (extensive discussion of the commercial impressions created by the involved marks and the goods offered under them).

**hifi**

As to the appearance of Applicant's stylized mark, **hifi**, while its appearance does differ from Registrant's **High Fidelity** <sup>®</sup> mark, the degree of

**hifi**

stylization of Applicant's **hifi** mark is not notable apart from the literal element "hifi," and does not serve to distinguish it from Registrant's Mark. *See, e.g., Centraz Indus. Inc. v. Spartan Chem. Co.*, 77 USPQ2d 1698, 1700 (TTAB 2006) (stylization of applicant's iSHINE mark was not sufficient to distinguish the mark from registrant's ICE SHINE standard character mark for identical goods, where the stylization of applicant's mark was "not striking or otherwise dramatic" and prospective purchasers "would readily perceive the essence of applicant's mark as 'iSHINE.'").

Finally, Applicant argues that the Registrant's Mark is "suggestive, if not descriptive, of its services" because it is "related to audio, sound, and noise." (6 TTABVUE 13). To the extent that Applicant maintains the Registered Mark is merely descriptive, it challenges the validity of the Registered Mark. We note that the validity of a cited registration "cannot be challenged in an ex parte proceeding."

*In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517 (TTAB 2016). Furthermore, there is nothing in Registrant’s identification of services that suggests that the mark is merely descriptive due to any “audio, sound, and noise” in connection with the identified services, and the record does not support such a conclusion. Again, “[a]ttorney argument is no substitute for evidence.” *Cai*, 127 USPQ2d at 1799.

On balance, the similarities of the HIFI, , and  marks in meaning and overall commercial impression outweigh any dissimilarities among them. Considering the marks in their entireties, on this record, they are sufficiently similar in meaning and overall commercial impression as to be likely to cause confusion when concurrently used in the sale or offer for sale of the identified services. Therefore, this *DuPont* factor also weighs in favor of a finding of likelihood of confusion.

#### IV. Conclusion

Having considered all of the arguments and evidence relating to the relevant likelihood of confusion factors, we find that on this record, confusion is likely between

Applicant’s Marks, HIFI and , for “Branding services, namely, consulting, development, brand strategic positioning, management and marketing of brands for businesses and/or individuals,” in International Class 35, and “Branding design services, namely, graphic design services for creating graphic elements of corporate

Serial Nos. 88905094 and 88905116

logos,” in International Class 42, and Registrant’s Mark, **High Fidelity** <sup>®</sup>, given the overlapping services, related trade channels, similarity in classes of purchasers, and similarities in meaning and overall commercial impression.

**Decision:** The refusals to register Applicant’s Marks, HIFI and **hifi**, of Application Serial Nos. 88905094 and 88905116, under Trademark Act Section 2(d), are affirmed.