

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

Mailed: December 5, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Fundamental Capital, LLC
v.
Global Select Research LLC
—

Opposition No. 91221151
to Application Serial No. 86328359
—

Bruce D. Holloway of Law Offices of Bruce D. Holloway
for Fundamental Capital, LLC.

Norman E. Lehrer of Norman E. Lehrer PC
for Global Select Research LLC.

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Before Kuhlke, Wolfson and Masiello,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, Global Select Research LLC, seeks registration of the mark FUNDAMENTAL DASHBOARD in standard characters for services identified as “Financial investment analysis and stock research; Providing financial information via a web site; Providing information and research in the field of finance and financial investments; Providing information in the field of financial stock and

equity markets; Providing investors with financial information,” in International Class 36.¹

Opposer, Fundamental Capital, LLC, has opposed registration of Applicant’s mark on the ground that as used in connection with Applicant’s services, the mark so resembles Opposer’s registered mark FUNDAMENTAL CAPITAL for “financial investment in the field of securities, investment consultation, investment management, and investment of funds for others,” and for “business organizational consultation, planning, management and consultation, and business acquisition and merger consultation; and temporary employment agency services,” as to be likely to cause confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).² By its answer, Applicant denied the salient allegations.

RECORD

The pleadings and, by operation of the Trademark Rules, the file of the subject application are of record. Trademark Rule 2.122, 37 C.F.R. § 2.122.

Opposer submitted under notice of reliance (Opp. NOR) printouts from the USPTO Trademark Status & Document Retrieval database (TSDR) consisting of

¹ Application Serial No. 86328359, filed on July 3, 2014, based on an allegation of first use and first use in commerce on March 24, 2014, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

² Opposer’s allegations in support of a claim of false suggestion of a connection are insufficient to support such a claim under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a). Moreover, Opposer did not argue this claim in its brief and under such circumstances the Board considers the claim waived.

copies of its pleaded registrations showing their current status and title.³ The registrations are summarized as follows:

Registration No. 3111084 on the Principal Register for the mark FUNDAMENTAL CAPITAL in standard characters for “business organizational consultation, planning, management and consultation, and business acquisition and merger consultation; and temporary employment agency services,” in International Class 35, filed on May 25, 2004, issued on July 4, 2006, section 8 and 15 combined declaration accepted and acknowledged, renewed; and

Registration No. 4297387 on the Principal Register under Section 2(f) based on acquired distinctiveness for the mark FUNDAMENTAL CAPITAL in standard characters for “financial investment in the field of securities, investment consultation, investment management, and investment of funds for others,” in International Class 36, filed on February 15, 2012, issued on March 5, 2013.

In addition, Opposer submitted under notice of reliance: (1) Applicant’s responses to Opposer’s interrogatories, including documents submitted in response to certain interrogatories, and Applicant’s responses to Opposer’s requests for admission;⁴ (2) dictionary definitions for the word “dashboard”;⁵ and (5) printouts from third-party websites purportedly showing generic usage of the word “dashboard” in the technology, business and financial services industries.⁶

Applicant submitted under notice of reliance (App. NOR):⁷ (1) excerpts of third-party websites to show “how persons in the relevant field understand the meaning

³ Opp. NOR, 7 TTABVUE.

⁴ Opp. NOR, 7 TTABVUE.

⁵ Opp. NOR, 8 TTABVUE.

⁶ Opp. NOR, 9 TTABVUE.

⁷ Opp. NOR, 10 TTABVUE.

of the term FUNDAMENTAL”;⁸ (2) dictionary definitions for the word “fundamental”; (3) third-party registrations for marks in the financial services industry that have the word “fundamental” in the marks; and (4) the file history for Opposer’s unpleaded Reg. No. 3077876/Application Serial No. 76594114.

Only Opposer submitted a brief on the case. *See* Trademark Rule 2.128(a)(1), 37 CFR § 2.128(a)(1) (“The brief of the party in the position of defendant, if filed, shall be due not later than thirty days after the due date of the first brief.”); TBMP § 801.02(b) (2016) (“The filing of a brief on the case is optional, not mandatory, for a party in the position of defendant.”).

STANDING/PRIORITY

Because Opposer’s pleaded registrations are of record, are valid and subsisting, and owned by Opposer, Opposer’s standing to oppose registration of Applicant’s mark is established and Opposer’s priority is not in issue as to the marks and services listed in the registrations. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); and *King Candy Co., Inc. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

We turn to the issue of likelihood of confusion under Section 2(d).

⁸ Opp. NOR, 10 TTABVUE 3.

LIKELIHOOD OF CONFUSION

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also, In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003) (listing thirteen factors). Two key considerations are the similarities between the marks and the similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). Further, “[a]lthough confusion, mistake or deception about source or origin is the usual issue posed under Section 2(d), any confusion made likely by a junior user’s mark is cause for refusal; likelihood of confusion encompasses confusion of sponsorship, affiliation or connection.” *Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, 1429 (TTAB 1993); *see also Majestic*, 65 USPQ2d at 1205 (“[M]istaken belief that [a good] is manufactured or sponsored by the same entity ... is precisely the mistake that Section 2(d) of the Lanham Act seeks to prevent”). For purposes of determining likelihood of confusion, we focus on Opposer’s Registration No. 4297387 for the financial investment services because if we do not find a likelihood of confusion with respect to those services, then there would be no likelihood of confusion with respect to the services in the other pleaded registration. *See In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

Relatedness of the Services, Channels of Trade, Classes of Consumers

We turn first to the services, channels of trade and classes of purchasers. We must make our determinations under these factors based on the services as they are recited in the application and registration, respectively. *See Octocom Systems Inc. v. Houston Computers Services, 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 goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which sales of the goods are directed.”); and *In re Elbaum*, 211 USPQ 636 (TTAB 1981).

Applicant’s services are:

Financial investment analysis and stock research;
Providing financial information via a web site; Providing
information and research in the field of finance and
financial investments; Providing information in the field
of financial stock and equity markets; Providing investors
with financial information

Opposer’s services are:

financial investment in the field of securities, investment
consultation, investment management, and investment of
funds for others.

Opposer asserts that the parties’ respective services are in the field of investment and that Applicant’s services are a subset of Opposer’s services. *Opp. Br.*, 11 TTABVUE 8. More specifically, Opposer argues based on the face of the identifications of services that the parties’ services are “extremely closely related”:

Opposer performs investment services, investment management services and investment consultation services. Applicant's services are internal to the process of Opposer providing its services. It is impossible to conceive, for example, of Opposer making investments for its clients, managing those investments (which necessarily implies sales and new investments over time), and consulting with its investors and providing the associated advice, without performing financial investment analysis and stock research so that Opposer can consult and advise the investors and provide the investors with the financial and investment information that they need to make informed investment decisions. In fact, it is Opposer's legal obligation under federal and state securities [sic] to provide its investors with complete and accurate investment information. In short, Applicant's services are more than closely related to Opposer's services. They are an essential subset of those services.

Opp. Br., 11 TTABVUE 24.

We agree with Opposer's characterization of the services and that Opposer's broadly worded identification "financial investment in the field of securities, investment consultation, investment management, and investment of funds for others" encompasses Applicant's "Providing investors with financial information." We also agree that Opposer's "investment consultation" is very closely related to Applicant's "financial investment analysis and stock research; Providing financial information via a web site; Providing information and research in the field of finance and financial investments; Providing information in the field of financial stock and equity markets." We further note, the record contains examples of third-party registrations that include both parties' services. *See, e.g.*, Reg. No. 2899623 FUNDAMENTAL CHOICE for "investment advisory and management services" and "financial analysis and research services"; Reg. No. 3648915 CHICAGO

FUNDAMENTAL INVESTMENT PARTNERS, LLC for “financial services, namely, investment management and advisory services”; Reg. No. 4354068 FUNDAMENTAL INVESTORS for “financial services, namely, financial analysis, evaluation and consultation; investment management and advice.”⁹

Considering the channels of trade and classes of purchasers, because there are no limitations as to channels of trade or classes of purchasers in either the application or Opposer’s registration, we must presume that Applicant’s and Opposer’s services travel through all usual trade channels for such services and are offered to all classes of prospective purchasers for those services. *See Paula Payne Prods. Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77-78 (CCPA 1973); and *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). Thus, to the extent Applicant’s services are encompassed by the Registrant’s services, *i.e.*, are legally identical, we must presume that the purchasers and channels of trade for such services are identical. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) (“Given the in-part identical and in-part related nature of the parties’ goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade”); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) (“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers”); *see In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908

⁹ App. NOR, 10 TTABVUE 44, 49, 63

(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). We further note an example of use of FUNDAMENTAL INVESTORS registered for providing “financial analysis, evaluation and consultation; investment management and advice” corroborating the overlapping channel of trade for the subject services.¹⁰

Similarity/Dissimilarity of the Marks

We turn then to the *du Pont* factor of the similarities and dissimilarities between Applicant’s mark FUNDAMENTAL DASHBOARD and Opposer’s mark FUNDAMENTAL CAPITAL. We analyze “the marks in their entirety as to appearance, sound, connotation and commercial impression.” *Viterra*, 101 USPQ2d at 1908 quoting *du Pont*, 177 USPQ at 567. See also *Palm Bay v. Veuve Clicquot*, 73 USPQ2d at 1691. “When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992).

Opposer argues that the common element in the marks, the word FUNDAMENTAL, is the dominant portion of both marks because it is the first portion and “most likely to be impressed upon the mind of a purchaser and remembered.” *Presto Prods. Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). In addition, Opposer argues that the differing words of their

¹⁰ App. NOR, 10 TTABVUE 13-19.

respective marks, CAPITAL and DASHBOARD, are highly descriptive of their financial services and “[a]s a result, and because they are not the first element in each mark, those elements are not the dominant elements of the respective marks.” Opp. Br., 11 TTABVUE 17-18. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) ([T]here 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. ... That a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark ...”).

We begin by noting that Opposer’s mark was registered based upon acquired distinctiveness, which serves as a concession that the mark in its entirety is not inherently distinctive. *See Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009). The record clearly establishes that the word “capital” is merely descriptive of financial services, not only by Opposer’s effective concession registering under Section 2(f) but also by the dictionary definition of “capital” as “wealth in the form of money or property, used or accumulated in a business by a person, partnership or corporation...Material wealth used or available for use in the production of more wealth.”¹¹

Likewise “dashboard” is merely descriptive of providing financial information based on: (1) the definitions “A graphical summary of various pieces of important

¹¹ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000), App., NOR 10 TTABVUE 97.

information, typically used to give an overview of a business: an executive dashboard enables a CEO to see bank balances, ...”¹² and “a Web page or portal that provides links to key information and useful tools on a website: You can see financial reports with just one click from the dashboard”;¹³ and (2) Applicant’s admission that “the word ‘DASHBOARD’ is sometimes used in a business and financial setting to describe a graphical summary of key data and performance metrics for business or financial data as set forth in this request.”¹⁴ In addition, the record includes the following examples of the term “dashboard” being used descriptively as a way to present business and financial data:

- A business intelligence dashboard is a data visualization tool that displays the current status of metrics and key performance indicators for an enterprise. Dashboards consolidate and arrange numbers, metrics and sometimes performance scorecards on a single screen [and] Financial analysis software can speed up the creation of reports and present the data in an executive dashboard, a graphical presentation that is easier to read and interpret than a series of spreadsheets and pivot tables;¹⁵
- A dashboard is a financial reporting tool used for quick visual comparative analysis of key performance indicator data, often in the form of a series of side-by-side trend diagrams. Dashboards can distill a great deal of data on and visually summarize a wide variety of results on a single page;¹⁶ and
- Accurate and informative reporting dashboards are critical to the efficient management of the investment operation. Investment Managers and middle office Risk Managers have a need for a dashboard that provides

¹² OXFORD DICTIONARY (2016) www.oxforddictionaries.com/us/definition/american_english, App., NOR 8 TTABVUE 7.

¹³ Dictionary.com based on the RANDOM HOUSE DICTIONARY (2016), Opp. NOR, 8 TTABVUE 12.

¹⁴ Opp. NOR, 8 TTABVUE 54.

¹⁵ <http://searchbusinessanalytics.techtarget.com>, Opp. NOR, 9 TTABVUE 12, 21.

¹⁶ <https://f2.washington.edu>, Opp. NOR, 9 TTABVUE 35.

them with a holistic view of their investment operations activity, with views of their positions and risk activity all in one easy to use tool.¹⁷

Based on this record, we find that the common element FUNDAMENTAL is the dominant portion of each mark. We turn then to the inquiry as to whether this common term is enough to find that the marks are confusingly similar.

As noted above, Opposer's registration of FUNDAMENTAL CAPITAL based on acquired distinctiveness under Section 2(f) is a concession that the entire phrase which includes the word FUNDAMENTAL is merely descriptive. The record includes evidence pertaining to the *du Pont* factor of the number and nature of similar marks in use on similar services which addresses the potential weakness of the common element FUNDAMENTAL in the field of financial services. "Fundamental" is defined, *inter alia*, as "forming a necessary base or core of central importance."¹⁸ There are also excerpts from nine third-party websites in the financial industry using the term in a trademark manner or a descriptive manner. A few examples are set forth below:¹⁹

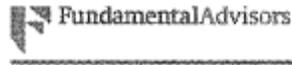


RAFI Fundamental Index is Research Affiliates' breakthrough solution for smart beta investing in equities.

¹⁷ Wallstreet Suite, www.wallstreetsystems.com, Opp. NOR, 9 TTABVUE 66.

¹⁸ OXFORD DICTIONARY (2016) www.oxforddictionaries.com/us/definition/american_english, App. NOR, 10 TTABVUE 26.

¹⁹ App. NOR, 10 TTABVUE 5-20.



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Overview



Publications: Fundamental Value Indicator®-TOP50

Fundamental Investors - ANCFX | American Funds

Using principles of fundamental analysis, the fund seeks undervalued and/or overlooked opportunities with the potential for long-term growth. Companies under consideration for the portfolio often have strong balance sheets, high-quality products and leading market share. The fund seeks to invest in companies that represent good value and possess above-average potential for growth in sales, earnings and dividends.

In addition, Applicant submitted printouts of third-party registrations from the Trademark Electronic Search System (TESS) that include the word FUNDAMENTAL in the marks and are in the financial services field.²⁰

²⁰ App. NOR, 10 TTABVUE 42-66. The application and the registration issued under Section 66 of the Trademark Act have little to no probative value on this issue. *See Frito-Lay North America, Inc. v. Princeton Vanguard, LLC*, 109 USPQ2d 1949, 1956 n.9 (TTAB 2014) (“The applications are not evidence of anything except that they were filed.”), *on appeal*, No. 14-1517 (Fed. Cir.); *cf. Calypso Tech., Inc. v. Calypso Capital Mgmt., LP*, 100 USPQ2d 1213, 1221 n.15 (TTAB 2011).

Registration No. / Owner	Mark	Services
2399367 Schaeffer's Investment Research, Inc.	FUNDAMENTAL TECHNICAL SENTIMENT	financial services, namely providing financial analysis, financial research, and investment research services
2524688 Northern Trust Corporation	NORTHERN TRUST FUNDAMENTALS	investment portfolio management services provided via the internet
2899623 Prudential Securities, Inc.	FUNDAMENTAL CHOICE	financial and investment services, namely the purchase and sale of securities for others; investment advisory and management services; portfolio management services; financial analysis and research services
3286704 Research Affiliates, LLC	FUNDAMENTAL INDEX	index-based portfolio of securities and mutual funds portfolio management fields of dementia care and Alzheimer's care for senior citizens
3506500 Wunderlich Securities, Inc.	FUNDAMENTAL BROKERS INTER-DEALER	financial services, namely, stock brokerage, bond brokerage, security brokerage; investment consultation; capital investment consultation; funds investment
3648915 Chicago Fundamental Investment Partners, LLC	CHICAGO FUNDAMENTAL INVESTMENT PARTNERS, LLC	financial services, namely, investment management and advisory services
3658684 Twin Capital	FUNDAMENTAL TILT	investment services, namely, asset acquisition,

Management, Inc.		consultation, development and management services
3671162 IRvalue	FUNDAMENTAL VALUE INDICATOR	providing stock/securities market information
3706038 Research Affiliates, LLC	FUNDAMENTAL US LARGE COMPANY	financial services, namely, providing financial and investment information services in the nature of an index of securities values; compiling and managing an index-based portfolio of securities and mutual funds portfolio management
3706039 Research Affiliates, LLC	FUNDAMENTAL US SMALL-MID COMPANY	financial services, namely, providing financial and investment information services in the nature of an index of securities values; compiling and managing an index-based portfolio of securities and mutual funds portfolio management
3709449 Research Affiliates, LLC	FUNDAMENTAL LARGE COMPANY	financial service, namely, providing financial and investment information services in the nature of an index of securities values; compiling and managing an index-based portfolio of securities and mutual funds portfolio management
3734868 Research Affiliates, LLC	THE FUNDAMENTALINDEX	index-based portfolio of securities and mutual funds portfolio management; providing temporary use of on0line non-downloadable computer software for

		management and administration of index-based portfolios of securities and mutual funds portfolio management
3735100 Mandis Holdings LLC	COMBINING FUNDAMENTAL VALUE AND SOCIALLY RESPONSIBLE INVESTING	investment fund management; investment advisory services; investment consultation
3956110 Centinela Capital Partners LLC	FUNDAMENTAL PRIVATE EQUITY INVESTOR	business data analysis; economic forecasting and analysis; market analysis
40866672 American Funds Distributors, Inc.	AMERICAN FUNDS FUNDAMENTAL INVESTORS	financial services, namely, financial analysis, evaluation and consultation; investment management and advice; mutual fund investment management and distribution; annuity services, namely investment management and distribution of variable annuities; fiduciary services, namely, serving as trustee for directed and discretionary trust accounts; estate planning; and financial administration of employee benefit, pension and retirement plans in connection therewith
4086672 American Funds Distributors, Inc.	AMERICAN FUNDS FUNDAMENTAL INVESTORS	Financial services, namely, financial analysis, evaluation and consultation; investment management and advice etc.
4114048 LS Associates Daniel Sipe	FUNDAMENTAL EQUITY	financial planning and investment advisory

and Thomas Lee	DEVELOPMENT STRATEGIES	services
4354068 American Funds Distributors, Inc.	FUNDAMENTAL INVESTORS	Financial services, namely, financial analysis, evaluation and consultation; investment management and advice; etc.

While there are no specifics regarding the extent of sales or promotional efforts surrounding the third-party marks, third-party registrations coupled with evidence of third-party use in the form of web pages may be sufficient to show weakness of a mark where a considerable number of third parties use similar marks in connection with similar goods or services. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-1675 (Fed. Cir. 2015). *See also Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (cert. denied January 25, 2016). With only three examples of the manner of use of registered marks, this record does not reveal “extensive evidence of third-party use and registrations” in connection with various financial services. *Jack Wolfskin v. New Millennium*, 116 USPQ2d at 1136 (Court noted fourteen examples of use and registration).

The probative evidentiary value of the third-party registrations standing alone is in showing the sense in which the term FUNDAMENTAL is used and understood such that it may be suggestive or merely descriptive. *Id.* at 1675; *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976) (third-party registrations “may be given some weight to show the meaning of a mark in the same

way that dictionaries are used”). Here, there are eleven registrants for eighteen registrations for marks that include the word FUNDAMENTAL(S). Combined with examples of use the record tends to show at minimum suggestiveness of the term FUNDAMENTAL in this field. However, only two of the registrations have a similar construct (FUNDAMENTAL + highly descriptive term) FUNDAMENTAL INDEX and FUNDAMENTAL INVESTORS. Two others are close in construct FUNDAMENTAL TILT and FUNDAMENTAL CHOICE. The other third-party registrations include more distinguishing elements and a different construction. *E.g.*, NORTHERN TRUST FUNDAMENTALS, CHICAGO FUNDAMENTAL INVESTMENT PARTNERS, LLC, AMERICAN FUNDS FUNDAMENTAL INVESTORS. As to the use of the term FUNDAMENTAL in the financial industry and the question of the effect of such third-party use on consumer perception, this record does not establish that the term FUNDAMENTAL is used in connection with similar services to such an extent that customers “have been educated to distinguish between different ... marks on the basis of minute distinctions,” *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 USPQ 383 (TTAB 1976); at least not to the extent that a highly similar mark with legally identical services is not likely to cause confusion. Thus, while the registration and use evidence does weigh in favor of Applicant by narrowing the scope of protection for the term FUNDAMENTAL in connection with financial services generally, based on this record it does not outweigh the factors of the similarity of the marks, relatedness of services and trade channels in this case.

The addition of other matter may serve to distinguish the marks where (1) the marks in their entirety convey different commercial impressions or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted. *General Mills Inc. v. Fage Dairy Processing Industry S.A.*, 100 USPQ2d 1584, 1601, (citing *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) (RITZ and THE RITZ KIDS create different commercial impressions); *Citigroup v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011) (CAPITAL CITY BANK held not likely to be confused with CITIBANK)), *judgment set aside on other grounds*, 110 USPQ2d 1679 (TTAB 2014) (non-precedential). In this case, the addition of the words CAPITAL and DASHBOARD do not convey such a different commercial impression to obviate confusion nor does the record establish that FUNDAMENTAL is so diluted to preclude confusion.

We find the marks to be similar in appearance, sound, meaning and overall commercial impression, and this similarity in the marks outweighs the dissimilarities. *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014) (confusing similarity found where the mark STONE LION CAPITAL incorporated the entirety of the registered marks LION CAPITAL and LION, and LION was dominant part of both parties' marks). This factor weighs in Opposer's favor.

Balancing the Factors

Because Applicant's standard character mark FUNDAMENTAL DASHBOARD is similar to Opposer's mark FUNDAMENTAL CAPITAL, the services are legally identical to the extent Applicant's services are encompassed by Opposer's services and otherwise closely related, and the channels of trade and classes of consumers overlap, confusion is likely between Applicant's mark FUNDAMENTAL DASHBOARD and Opposer's mark FUNDAMENTAL CAPITAL for the identified services. We acknowledge the narrower scope of protection for the word FUNDAMENTAL in the financial industry, however, we resolve doubt as we must against Applicant as the newcomer. *Century 21 Real Estate Corp. v. Century Life of America*, 23 USPQ2d at 1701 (citing *In re Hyper Shoppes (Ohio)*, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988)).

Decision: The opposition is sustained.