

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

Oral Hearing: October 3, 2019

Mailed: March 11, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Entertainment Content, Inc.

v.

*Cooper Holdings, Inc., by change of name from
Career Sports & Entertainment, Inc.*

—
Opposition No. 91223121
to Serial No. 86210901
—

David W. Grace and Andrew W. Degner of Loeb & Loeb LLP,
for Entertainment Content, Inc.

W. Scott Creasman and Amanda G. Hyland of Taylor English Duma LLP,
for Cooper Holdings, Inc. by change of name from Career Sports &
Entertainment, Inc.

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Before Rogers, Chief Administrative Trademark Judge, and Wellington and Kuczma,
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Career Sports & Entertainment, Inc.,¹ now known as Cooper Holdings, Inc.,
("Applicant") filed an intent to use application under Section 1(b) of the Trademark

¹ Applicant's First Notice of Reliance filed on July 20, 2018 states that Career Sports &

Act, 15 U.S.C. § 1051(b), to register the mark JUSTICE NETWORK in standard characters for:

Television programming services; dramatic, documentary, and news television programming services; multimedia entertainment services in the nature of recording, producing and post-production services in the fields of videos, music and films; entertainment services in the nature of production and distribution of television programs transmitted via various platforms across multiple forms of transmission media, in International Class 41.²

Entertainment Content, Inc. (“Opposer”) opposes the registration of Applicant’s mark on the ground of priority and likelihood of confusion under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), based on its ownership of Registration Nos. 4696228 and 4827258 for the standard character marks JUSTICE CENTRAL and JUSTICECENTRAL.TV for:

Broadcasting of video and audio programming through transmission of audio and/or video signals to any type of visual display device via cable, satellite, television, Internet, wireless devices, networks or any delivery mechanism; Internet broadcasting services; video broadcasting services via the Internet; streaming of audio, visual, and audiovisual material via the Internet; linear and video-on-demand transmission services via the Internet; webcasting services, in International Class 38; and,

Entertainment services, namely, ongoing television programs in the field of law and courtroom legal proceedings; ongoing entertainment programs in the field of law and courtroom legal proceedings accessible by cable,

Entertainment, Inc., is now known as Cooper Holdings, Inc. 32 TTABVUE 2. On March 9, 2019, Applicant filed a formal change of name with the Assignment branch of the USPTO.

² Application Serial No. 86210901 was filed on March 4, 2014, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). “Network” is disclaimed.

satellite, television, Internet, wireless devices, networks, and via various platforms across multiple forms of transmission media; providing ongoing entertainment programs in the field of law and courtroom legal proceedings accessible by cable, satellite, television, Internet, wireless networks, and via various platforms across multiple forms of transmission media; production and distribution of television shows, in International Class 41.

alleging dates of first use and first use in commerce on October 2014 for Class 38 and December 2012 for Class 41.³

In its Answer to Notice of Opposition Applicant denied the salient allegations and alleged affirmative defenses which are not true affirmative defenses but constitute amplifications of Applicant's denials of the allegations of likelihood of confusion.⁴ *See* Trademark Rule 2.106(b)(2), 37 CFR § 2.106(b)(2); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 311.02(b) (June 2019).

I. Evidentiary Objections

The parties have raised certain objections based on relevance or lack of probative value, as well as various witness testimony objections, which we do not separately address. TTAB proceedings are heard by Administrative Trademark Judges, not lay jurors who might easily be misled, confused, or prejudiced by irrelevant evidence. *Cf.*

³ Registration No. 4696228 issued on the Principal Register on March 3, 2015 and Registration No. 4827258 issued on the Principal Register on October 6, 2015. While only a portion of the services are shown in the printouts from the USPTO's TSDR website for Registration Nos. 4696228 and 4827258 shown in Exhibits 1 and 2 of Opposer's First Notice of Reliance (26 TTABVUE 5-13), and in Exhibits 1 and 2 to the Declaration of Janice Arouh (29 TTABVUE 4, 15-24), the complete identifications of services in International Classes 38 and 41 are recited in the second paragraph No. 1 of Ms. Arouh's Declaration (29 TTABVUE 3-4).

⁴ 4 TTABVUE 3-4.

Harris v. Rivera, 454 U.S. 339, 346 (1981) (“In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions.”).

We are well equipped to assess the testimony and the degree of accuracy of any subsequent characterization of it. We have not been misled or confused by the record, or prejudiced by irrelevant evidence and need not resort to striking testimony. In short, “the Board is capable of assessing the proper evidentiary weight to be accorded the testimony and evidence, taking into account the imperfections surrounding the admissibility of such testimony and evidence. With respect to the objections based on the lack of probative value or hearsay, the Board is able to weigh all evidence and testimony appropriately, and we see no need to exclude it outright. Thus, we have considered the evidence, keeping in mind the objections, and have accorded whatever probative value the testimony and evidence merits.” *United States Playing Card Co. v. Harbro, LLC*, 81 USPQ2d 1537, 1540 (TTAB 2006); *see also Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477, 1479 (TTAB 2017).

Also, we have disregarded any testimony regarding the conclusions of law in this case as such testimony goes to the ultimate issue of likelihood of confusion meriting little weight and is not binding on the Board. *Quaker Oats Co. v. St. Joe Processing Co.*, 232 F.2d 653, 109 USPQ 390, 391 (CCPA 1956) (“[W]e deem it necessary to comment on the weight to be given the witnesses’ opinions that the marks would be likely to cause confusion. In this respect it has been held that such testimony amounts to nothing more than an expression of opinion by the witness, which obviously is not binding upon either the tribunals of the Patent Office or the courts.”); *Alcatraz Media*,

Inc. v. Chesapeake Marine Tours, Inc., 107 USPQ2d 1750, 1755 (TTAB 2013), *aff'd mem.*, 565 Fed. Appx. 900 (Fed. Cir. 2014) (“we have disregarded any opinion testimony regarding the ultimate disposition of the claims asserted herein”) citing *Steiger Tractor, Inc. v. Steiner Corp.*, 221 USPQ 165, 169 (TTAB 1984) (opinion testimony, going to the ultimate issue of “likelihood of confusion” is not binding on the Board and, indeed, merits very little weight); *Mennen Co. v. Yamanouchi Pharmaceutical Co., Ltd.*, 203 USPQ 302, 305 (TTAB 1979) (“the opinions of witnesses, including those qualified as expert witnesses, on the question of likelihood of confusion are entitled to little if any weight and should not be substituted for the opinion of the tribunal charged with the responsibility for the ultimate opinion on the question”).

Therefore, we overrule objections to the testimony and exhibits, but will weigh their relevance, what foundation was laid for the testimony, and its strength or weakness, including any inherent limitations therein.

II. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the involved application. In addition, the parties submitted six stipulations as to the admissibility of certain evidence (42 TTABVUE), including explanations of the exhibits. The Board subsequently approved the Stipulation (43 TTABVUE). The stipulations, testimony and the parties’ evidentiary submissions are shown in the Appendix to this decision and are summarized below.

A. Stipulated Evidence

Pursuant to § 705 of the TBMP, Opposer and Applicant stipulated to the admissibility of evidence regarding websites maintained by Applicant and the nature and extent of the information a viewer or prospective viewer could obtain.

B. Opposer's Evidence

Opposer's First Notice of Reliance includes evidence of its registrations for JUSTICE CENTRAL and JUSTICECENTRAL.TV, and certain responses by Applicant to Opposer's discovery requests. Opposer also submitted declaration testimony from Eric Claytor, Vice President of Distribution at Entertainment Studios Network, an affiliate and licensee of Opposer,⁵ and Janice Arouh, President of Distribution and Marketing at Entertainment Studios Network, an affiliate and licensee of Opposer,⁶ and their associated respective exhibits. The exhibits include TSDR⁷ printouts for Opposer's registrations, marketing materials, website materials, press releases, emails and other documents.

C. Applicant's Evidence

Applicant's First Notice of Reliance introduces TSDR printouts of registered marks including the term JUSTICE and registered marks including the term

⁵ Declaration of Eric Claytor ¶ 1 (28 TTABVUE 3).

⁶ Declaration of Janice Arouh ¶ 1 (29 TTABVUE 3).

⁷ TSDR is an initialism for the "Trademark Status and Document Retrieval" system (at <http://tsdr.uspto.gov/>), an official database of the USPTO which provides detailed information about the status and prosecution history of trademark applications and registrations.

COMEDY. A declaration from Steve Schiffman, one of the founders and CEO of Justice Network,⁸ introduces two exhibits.

Both parties filed briefs and Opposer filed a reply brief; an oral hearing was held.

III. Standing and Priority

Opposer bears the burden of proving by a preponderance of the evidence both its standing to oppose and at least one valid ground for refusal of registration. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Sanyo Watch Co., Inc. v. Sanyo Electric Co., Ltd.*, 691 F.2d 1019, 215 USPQ 833, 834 (Fed. Cir. 1982). Because Opposer has properly made its pleaded Registrations for the JUSTICE CENTRAL and JUSTICECENTRAL.TV marks of record,⁹ Opposer has established standing to oppose registration of Applicant's mark. *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014). Additionally, Opposer's priority is not an issue as to those services covered by Opposer's Registrations. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). Also, Applicant does not contest Opposer's standing or priority.¹⁰

⁸ Declaration of Steve Schiffman ¶ 2 (33 TTABVUE 3).

⁹ *See* 26 TTABVUE 5-13; 29 TTABVUE 3-4, 15-24.

¹⁰ Applicant's Brief p. 10 fn. 1 (50 TTABVUE 12).

IV. Likelihood of Confusion

In determining the likelihood of confusion, we must analyze all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *see also Zheng Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1800 (Fed. Cir. 2018) (*DuPont* “articulated thirteen factors to consider when determining likelihood of confusion”). “Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered,” *id.* (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)); *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (even within the *DuPont* list, only factors that are “relevant and of record” need be considered).

Two key considerations are the similarities between the marks and the similarities between the goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Federated Foods, Inc. v. Fort Howard Paper Co.* 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). We have also considered other *DuPont* factors for which the parties have submitted evidence or argument, namely, the similarity of trade channels and conditions under which and buyers to whom sales are made, the number and nature of similar marks in use in connection with similar services, the nature and extent of actual confusion, and the

length of time of concurrent use of Opposer's and Applicant's marks without evidence of confusion. *DuPont*, 177 USPQ at 567.

For purposes of our likelihood of confusion analysis, we focus on pleaded Registration No. 4696228 for the mark JUSTICE CENTRAL. We find this mark to be the most pertinent for our *DuPont* analysis. If we find a likelihood of confusion as to this mark, we need not find it as to Opposer's other registered mark.¹¹ On the other hand, if we do not reach that conclusion as to this mark, we likewise would not find likelihood of confusion as to the other mark. *See Fiserv, Inc. v. Electronic Transaction Systems Corp.*, 113 USPQ2d 1913, 1917 (TTAB 2015); *Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1073 n.14 (TTAB 2011); *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

A. Similarity of the Services, Trade Channels and Class(es) of Customers

We first consider the second *DuPont* factor involving the "similarity or dissimilarity and nature of the goods or services as described in an application or registration." *DuPont*, 177 USPQ at 567. It is well-settled that the issue of likelihood of confusion between applied-for and registered marks must be determined on the basis of the services as they are identified in the involved application and assertedly conflicting registration. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987); *Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973).

¹¹ Opposer also introduced into evidence Registration No. 4827258 for its mark JUSTICECENTRAL.TV, Opposer's First Notice of Reliance, Exhibit 2 (26 TTABVUE 9-13).

Applicant's services in Class 41 include:

- television programming services;
- the production and distribution of television programs transmitted via various platforms across multiple forms of transmission media and other services.

Opposer's registered services in Classes 38 and 41 include:

- television programs in the field of law and courtroom legal proceedings;
- entertainment programs in the field of law and courtroom legal proceedings accessible by cable, satellite, television, Internet, wireless devices, networks and via various platforms across multiple forms of transmission media;
- providing programs in the field of law and courtroom legal proceedings accessible by cable, satellite, television, Internet, wireless networks and via various platforms across multiple forms of transmission media;
- production and distribution of television shows.

The services of Applicant and Opposer overlap and thus are legally identical in part. Opposer's television programming services, limited to "programs in the field of law and courtroom legal proceedings," are encompassed by Applicant's unrestricted identification of "television programming services." Similarly, Opposer's broader identified services of "production and distribution of television shows" encompass Applicant's "production and distribution of television programs transmitted via various platforms across multiple forms of transmission media and other services."¹²

¹² Applicant also acknowledges that the parties' services are similar. See Applicant's Brief p. 43 (50 TTABVUE 45).

We need not discuss the similarity of all of Applicant's services once relatedness is established for any item encompassed by the respective recitations of services in the application and the registration. *See e.g., Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014) (It is sufficient for a refusal based on likelihood of confusion that relatedness is established for a service in each class); *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (it is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of [services] within a particular class in the application).

We next move to the *DuPont* factor regarding whether Applicant's and Opposer's services travel in the same trade channels to the same class(es) of customers. This factor relates to whether Opposer's and Applicant's identified or presumptive trade channels and customers would result in a likelihood customers would consider the parties' identified services as "emanat[ing] from the same source." *Shen Mfg. Co., Inc. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1356-1357 (Fed. Cir. 2004).

Because there are no limitations as to trade channels or classes of customers in the parties' identifications of services, we must presume that those legally identical services move in the same normal or customary trade channels for such services, and target the same potential customers for such services. *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002) ("absent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers" citing *CBS Inc.*

v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983)); *Brown Shoe Co. v. Robbins*, 90 USPQ2d 1752 (TTAB 2009) (“Considering the channels of trade and classes of purchasers, because the goods are, in part, legally identical and otherwise closely related and because there are no limitations in either the registration or the subject application, we must presume that applicant’s and opposer’s goods will be sold in the same channels of trade and will be bought by the same classes of purchasers.”). Additionally, Applicant acknowledges the potential similarities between Opposer’s and Applicant’s services and, by derivation, channels of trade.¹³ This further weighs in favor of a finding of likelihood of confusion.

Therefore, Applicant’s and Opposer’s services are in part the same, must be presumed to travel in the same trade channels, and must be presumed to be sold to the same class(es) of customers, all supporting a likelihood of confusion under the second and third *DuPont* factors.

B. Similarity of the Marks

We next consider the *DuPont* factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *See Zheng Cai v. Diamond Hong*, 127 USPQ2d at 1800.

¹³ Applicant’s Brief p. 43 (50 TTABVUE 45). Applicant concedes that “there is a possibility the Application could be read to include Opposer’s identified services, namely the distinctive category of court programming”

Here, Applicant's mark is similar in sight, sound, and meaning to Opposer's mark. "Justice" is the dominant and first element of Applicant's JUSTICE NETWORK mark which is identical to the dominant first term in Opposer's JUSTICE CENTRAL mark. Consumers in general are inclined to focus on the first word or portion in a trademark. *Presto Prods., Inc. v. Nice-Pak Prods, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("[I]t is often the first part of a mark which is likely to be impressed upon the mind of a purchaser and remembered"); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). Moreover, the remaining portion of Applicant's mark, i.e., the word "Network" is highly descriptive, if not generic, of the type of services provided by Applicant and has been disclaimed.¹⁴ When a mark consists of two or more words, some of which are disclaimed, the word not disclaimed is generally regarded as the dominant or critical term. *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1257 (Fed. Cir. 2011); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (finding "delta" the dominant part of the mark THE DELTA CAFÉ because CAFÉ was disclaimed).

Thus, the second word in Applicant's mark has less source-identifying significance and is clearly subordinate to "JUSTICE" since "NETWORK" is descriptive of Applicant's services including television programming and the production and

¹⁴ Serial No. 86210901, June 10, 2014 Office Action at TSDR 13-14, definition of "network": 2.2 A group of broadcasting stations that connect for the simultaneous broadcast of a program: 'the introduction of a second TV network.' Oxford Dictionaries <<http://www.oxforddictionaries.com/us/definition/americanenglish/network>>, accessed 06/10/2014, © 2014 Oxford University Press.

distribution of television programs. Likewise, the second word in Opposer's mark is "CENTRAL," which due to its nondescript meaning reinforces the significance of the term "JUSTICE" in Opposer's mark.¹⁵ Inasmuch as prospective viewers of television programs frequently look for the names of shows or at least a suggestion of the nature of their content when selecting programs to watch, the dominant term "JUSTICE" serves as the point of distinction rather than either of the descriptive or nondescript second terms "NETWORK" or "CENTRAL."

Although we have considered the marks in their entirety, the term "Justice" is entitled to greater weight in our assessment of likelihood of confusion. Inasmuch as both marks begin with the identical first word followed by a descriptive or nondescript term, they have the same or similar meanings when used on overlapping services. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) ("[I]n 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 that the ultimate conclusion rests on consideration of the marks in their entirety.").

Relying on *Safer, Inc. v. Oms Invs. Inc.*, 94 USPQ2d 1031 (TTAB 2010) and *ProMark Brands, Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232 (TTAB 2015),

¹⁵ We take judicial notice of the definition of "central": 3. constituting something from which other related things proceed or upon which they depend: *a central office*. 4. principal; chief; dominant: *the play's central character*. Dictionary.com, <<https://www.dictionary.com/browse/central>>, 03/10/2020, based on The Random House Unabridged Dictionary, © Random House, Inc. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *See, e.g., Ricardo Media, Inc. v. Inventive Software, LLC*, 2019 USPQ2d 311355, *6 n.8 (TTAB 2019).

Applicant contends that the “highly suggestive meaning” of “Justice” in the parties’ marks means the common use of “JUSTICE,” alone, is “insufficient to support a likelihood of confusion.” This is so, Applicant maintains, because the distinctions between “CENTRAL” and “NETWORK” in Opposer’s and Applicant’s respective marks make them “otherwise differ in appearance and sound.”¹⁶ However, Applicant’s reliance on *Safer* and *ProMark Brands* in support of its argument is misplaced. Neither of those cases are “dispositive” of this issue, contrary to Applicant’s contention.¹⁷

Safer involved the applicant’s mark DEER-B-GON which the opposer alleged created a likelihood of confusion with its marks DEER AWAY and DEER AWAY PROFESSIONAL, all marks used for deer repellent. *Safer v. Oms Invs.*, 94 USPQ2d at 1033. Despite both parties’ marks beginning with the identical dominant portion “DEER,” and creating the overall exact same commercial impression of getting rid of deer, the Board found that the word “deer” had no source indicating significance because “deer” describes the subject that the products eliminate. *Id.* at 1044. The Board concluded that the marks’ overall “similar highly suggestive meaning [was] insufficient to support a likelihood of confusion finding” because the marks “differ in appearance and sound.” *Id.* at 1044. Here, in contrast to *Safer*, the common first word “JUSTICE” in Applicant’s and Opposer’s marks is the most distinctive portion of each mark, making the comparison with *Safer* inapposite.

¹⁶ Applicant’s Brief at p. 30 (50 TTABVUE 32).

¹⁷ See discussion on pp. 29-30 of Applicant’s Brief (50 TTABVUE 31-32).

In *ProMark*, the Board dismissed the opposition filed by the owner of the mark SMART ONES against applicant's mark SMART BALANCE, both used for food products. Based on the evidence including widespread registration and use of "smart" as well as the laudatory meaning of the word "smart," the Board found "smart" to be "commonly used in marketing food items to describe a product that is low in calories, low in fat, soy-based, vegetarian, heart-healthy, nutrient-rich, high in fiber, or otherwise contributes to a healthy lifestyle." *ProMark Brands v. GFA Brands*, 114 USPQ2d at 1244. The significant differences between the marketing emphasis of the parties' marks,¹⁸ particularly in light of the long history of conflict-free co-existence of the parties' marks, and the survey and expert testimony, outweighed any inference of likelihood of confusion raised by the overlap in goods and channels of trade and the weakness of the common term "smart."

Here, the additional terms "NETWORK" and "CENTRAL" contained in Applicant's and Opposer's marks do not result in marks having different overall connotations which distinguish the marks. Additionally, this case does not involve a long history of conflict-free co-existence of the parties' marks (as discussed below), nor is there survey and expert testimony in Applicant's favor. Therefore, the cases relied on by Applicant do not support its position.

¹⁸ The Board noted that opposer focused its marketing for the SMART ONES brand on people who want to live a healthy lifestyle. Although originally SMART ONES connoted a low-fat food item, it "now connotes the health-conscious consumer on a journey to a healthier lifestyle." On the other hand, SMART BALANCE "refers directly to the product and implicitly references not just its health benefits but also its taste. . . . the appropriate, right balance of great taste and good health, with primary emphasis on heart health." "Although both marks are applied to healthy food items, the parties' marketing emphasis differs, implying that the commercial impressions conveyed by the two marks differ as well." 114 USPQ2d at 1245.

Applicant's and Opposer's marks both include the suggestive term "JUSTICE" followed by either the descriptive term "NETWORK," or the nondescript term "CENTRAL," conveying similar themes in connection with their services. Thus, the marks are similar and this *DuPont* factor favors a finding of a likelihood of confusion.

C. Strength of Opposer's Mark in View of the Number and Nature of Similar Marks in Use in Connection with Similar Services

The sixth *DuPont* factor considers "[t]he number and nature of similar marks in use on similar goods," and "addresses marks similar to an opposer's registered mark, to demonstrate the strength or weakness of that mark." *Stoncor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1652 (Fed. Cir. 2014); *Palm Bay Imps., v. Veuve Clicquot*, 73 USPQ2d at 1693 (addressing significance of evidence of third-party use of marks similar to a registered mark to assess the strength of that mark). "The weaker [a registrant's] mark, the closer an applicant's mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection." *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015).

Applicant argues that the sixth *DuPont* factor weighs against a likelihood of confusion because the extensive presence of "Justice" in third-party registrations is "powerful on its face" for showing the descriptiveness and/or suggestiveness of Opposer's mark and its related weakness.¹⁹ In support, Applicant introduces 17 active third-party registrations for marks containing the term "Justice" to show the

¹⁹ Applicant's Brief p. 23 (50 TTABVUE 25).

weakness of “Justice” in Opposer’s and Applicant’s marks.²⁰ We accord no probative value to the five third-party registrations that have been cancelled and the registration listed in Applicant’s brief that is not of record.²¹ Additionally, five of the registrations submitted in evidence are not pertinent as they cover inapposite goods or services.²² Therefore, there are 12 registrations that are arguably probative

²⁰ See Applicant’s Brief pp. 24-26 (50 TTABVUE 26-28); Applicant’s Notice of Reliance, Exhibit Nos. 1-2, 5-8, 11-12, 15-16, 19-22, 27-30, 35-38, 43-44 (32 TTABVUE 9-14, 21-32, 39-44, 50-55, 62-73, 88-99, 113-124, 137-142).

²¹ Registration Nos. 2193923 for the mark JUSTICE FRIENDS; 2247294 for the mark BLIND JUSTICE; and 4235894 for the mark SCALES OF JUSTICE have been cancelled, Applicant’s Brief pp. 24-25 (50 TTABVUE 26-27), Applicant’s Notice of Reliance, Exhibit Nos. 3-4, 13-14, 17-18, 33-34 (32 TTABVUE 15-20, 45-49, 56-61, 106-112). Registration Nos. 3386557 and 4149948 for the marks TITANS OF JUSTICE and HOOD JUSTICE have also been cancelled. Applicant’s Notice of Reliance, Exhibit Nos. 13-14, 41-42, (32 TTABVUE 45-49, 131-136). These cancelled registrations are only evidence that the registrations issued, and are not evidence of use of the registered marks at any time. See, e.g., *Action Temp. Servs. Inc. v. Labor Force Inc.*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989) (“a canceled registration does not provide constructive notice of anything”).

The chart of registered marks in Applicant’s brief also identifies Registration No. 2618351 for the mark TEXAS JUSTICE for “entertainment services in the nature of a television series in the field of law.” Applicant’s Brief p. 24 (50 TTABVUE 26). This Registration does not appear to be in evidence.

²² These registered marks are distinguishable from Applicant’s and Opposer’s marks as they do not involve either television programming or production, Internet broadcasting services, broadcasting of video and audio programming through transmission of audio and/or video signals to any type of visual display device, or webcasting services: Registration Nos. 2821634 for the mark DISCOVERING JUSTICE for “educational and entertainment programs, namely, mock trials, concerts, seminars, and training programs, all for the purpose of teaching the public about history, democracy and the justice system; consulting and training services for helping others create their own programs about history, democracy and the justice system” and “printed publications, namely, brochures, books, pamphlets, school curricula, and scripts, all for the purpose of teaching children about democracy and the American justice system;” 2934494 for the mark ROCK JUSTICE for “entertainment services, namely live theatrical performances and musical theatre production;” 3200902 for the mark JUSTICEWORKS for “life skills training for delinquent and dependent youth” in Class 41 and “cognitive and behavior counseling for delinquent and dependent youth” in Class 44; 3667817 for the mark THINK JUSTICE for “educational services, namely, providing courses of instruction, lectures, workshops, seminars, and conferences at the college undergraduate level, and entertainment services, namely, arranging and conducting athletic competitions, public lectures, cultural exhibitions, and performing arts programs;”

evidence in support of Applicant's argument as they involve services delivered via television and/or the Internet or webcasting of audio/video content²³:

No. 2811651 for CELEBRITY JUSTICE for providing an on-line computer database in the field of general interest news, entertainment and educational information via a global computer network;

No. 2998011 for JUSTICE LEAGUE for entertainment services in the nature of comedy, drama and animated television series; production of comedy, drama and animated motion picture theatrical films;

No. 3107436 for LAW & JUSTICE for ongoing television programs in the field of news, current events and personalities; and television show production;

No. 3134285 for HARD JUSTICE for entertainment in the nature of ongoing television programs in the field of wrestling events;

No. 3267311 for WHEEL OF JUSTICE for entertainment services, namely, a continuing television news segment featuring identification of wanted criminals and specific information to aid in the capture of the identified criminals;

No. 3672326 for THE JUSTICE HOUR and Design for entertainment services, namely, an on-going series featuring legal and political commentary provided through webcast and radio broadcast;

No. 3855735 for MAIN JUSTICE for providing online electronic newsletters and research reports relating to the US Department of Justice; organizing cultural and arts events; arranging and conducting educational conferences; providing ongoing television programs, webcasts webinars, and radio programs covering the US Department of

and 4649424 for the mark LAW & JUSTICE COUNCIL for among other things "pre-recorded video tapes, compact discs, and digital video disks, on the subject of public interest law, constitutional freedoms with emphasis on first amendment rights, principles of justice, the protection of life and religious liberty, civil liberties, pro-family and pro-life issues, constitutional and limited government, and on the subjects of the rendering of legal services, advice, public and legal policy study and analysis and counseling others." See Applicant's Brief pp. 24-26 (50 TTABVUE 26-28); Applicant's Notice of Reliance, Exhibit Nos. 9-10, 23-26, 31-32, 39-40 (32 TTABVUE 33-38, 74-87, 100-105, 125-130).

²³ See Applicant's Brief pp. 24-26 (50 TTABVUE 26-28); Applicant's Notice of Reliance, Exhibit Nos. 1-2, 5-12, 15-16, 19-22, 25-32, 35-40, 43-44 (32 TTABVUE 9-14, 21-44, 50-55, 62-73, 80-105, 113-130, 137-142).

Justice; and printed publication and materials, namely, newsletters, educational materials and research reports, covering the US Department of Justice and related subjects;

No. 4203684 for CAJUN JUSTICE for multimedia goods, namely, pre-recorded digital video discs and DVDs featuring subjects of general human interest; digital media, namely, downloadable audio and video files featuring subjects of general human interest; downloadable on-line discussion boards and webcasts featuring subjects of general human interest; and entertainment services, namely, a multimedia program series featuring subjects of general human interest distributed via various platforms across multiple forms of transmission media; entertainment services, namely, an ongoing television program featuring subjects of general human interest; providing a website featuring information on fighting crime, criminal activities, and police activities for entertainment purposes only;

No. 4215303 for BIG EASY JUSTICE for entertainment services, namely, providing on-going television programs featuring live action, drama, comedy, animation, music, news, and general entertainment; providing online information in the entertainment concerning television programs;

No. 4310508 for JUSTICE WOMAN for entertainment, namely, a continuing serial comedy show broadcast over television and internet;

No. 4335218 for JUSTICE FOR ALL for providing ongoing entertainment programs in the field of law and courtroom legal proceedings accessible by satellite, television, cable, wireless networks, Internet, and through transmission of audio and/or video signals to any type of visual display device; ongoing television programs in the field of law and courtroom legal proceedings; production of television shows; entertainment services, name providing a continuing program accessible over the Internet in the field of law and courtroom legal proceedings; and

No. 4417837 for SIMPLE JUSTICE for online news reporting and expert legal commentary services in the field of legal news; and entertainment services, namely, personal appearances by a legal commentator; On-line journals, namely, blogs featuring legal analysis and commentary, political commentary, and career advice for members of the legal community; providing information, news and commentary in the field of current events relating to the law and legal professions.

Looking closer at the foregoing Registrations, we note that Registration No. 3855735 for MAIN JUSTICE incorporates “JUSTICE” to refer to a specific entity, i.e., the U.S. Department of Justice and does not have the vaguer, suggestive connotation of Applicant’s or Opposer’s marks, and Registration No. 4335218 for the mark JUSTICE FOR ALL is owned by Opposer – it is not a third party registration. Additionally, one of the other registered marks, JUSTICE WOMAN, is exclusively for comedy shows; JUSTICE LEAGUE is for comedy, drama and animated television series and motion picture programming; and HARD JUSTICE is for wrestling events. All of these are different in nature from the programs produced, broadcast and distributed by Applicant and Opposer. Thus, the third-party registrations that arguably support the position taken by Applicant number only seven.

“[E]xtensive evidence of third-party use and registrations is ‘powerful on its face,’ even where the specific extent and impact of the usage has not been established.” *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (at least fourteen examples of third-party registered marks used in commerce), citing to *Juice Generation v. GS Enters.*, 115 USPQ2d at 1674 (at least twenty-six relevant third-party uses or registrations of record). The Federal Circuit has acknowledged that evidence of third-party registrations is relevant to show that “some segment that is common to both parties’ marks may have ‘a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Jack Wolfskin v. New Millennium Sports*, 116 USPQ2d at 1136

quoting *Juice Generation v. GS Enters.*, 115 USPQ2d at 1675. “The weaker an opposer’s mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Juice Generation v. GS Enters.*, 115 USPQ2d at 1674.

Unlike *Juice Generation* and *Jack Wolfskin*, in this case, there is no evidence of third-party uses of marks containing the term “Justice.” Nonetheless, the seven third-party registrations for “Justice” marks for services in the fields of television programs and delivery of content over the Internet, shows some suggestiveness of “Justice” and is probative evidence of some weakness of both parties’ marks. Evidence of third-party registrations is relevant to show that the “Justice” “segment that is common to both parties’ marks may have a ‘normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak,’ ...” *Jack Wolfskin*, 116 USPQ2d at 1136, quoting *Juice Generation*, 115 USPQ2d at 1675. However, for reasons discussed above, the marks in some of the proffered third-party registrations even when used for services arguably similar to those of Applicant and Opposer in terms of the technology used to deliver content, would have inapposite connotations because of the nature of the content. Thus, the evidence of suggestiveness of the term “Justice” used in connection with Opposer’s and Applicant’s services though somewhat limited slightly favors a finding of no likelihood of confusion.

D. Nature and Extent of Any Actual Confusion; Length of Time and Conditions of Concurrent Use Without Actual Confusion

The seventh and eighth *DuPont* factors consider the nature and extent of any actual confusion in light of the length of time and conditions under which there has been contemporaneous use of the parties' subject marks. *DuPont*, 177 USPQ at 567. Evidence of actual confusion, where it exists, would of course be highly probative of a likelihood of confusion. *See Edom Labs, Inc. v. Lichter*, 102 USPQ2d 1546, 1553 (TTAB 2012) ("The existence of actual confusion is normally very persuasive evidence of likelihood of confusion and undercuts any possible claim that the marks are so dissimilar that there can be no likelihood of confusion."). The opposite, however, is not true; an absence of evidence of actual confusion carries little weight. *See In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003); *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 144 USPQ 435, 438 (CCPA 1965). Furthermore, it has often been recognized that such evidence is difficult to obtain. *Lebanon Seaboard Corp. v. R&R Turf Supply Inc.*, 101 USPQ2d 1826, 1834 (TTAB 2012).

Opposer submitted evidence that it argues shows the extent, nature, and harm resulting from Applicant's use of its mark JUSTICE NETWORK. Eric Claytor, the Vice President of Distribution at Entertainment Studios Network, an affiliate and licensee of Opposer,²⁴ testifies to unidentified conversations with unnamed "carriers and affiliates who have mistakenly believed that they already carried Justice Central

²⁴ Claytor Decl. ¶ 1 (28 TTABVUE 3).

on their network, by virtue of carrying Justice Network, or have otherwise assumed that Justice Central and Justice Network are one and the same”²⁵ and “numerous inquiries reflecting confusion between EC’s ‘Justice Central’ network and the ‘Justice Network.’ Because of the substantially similar names and substantially similar themed television programming.”²⁶ Claytor, however, does not identify any of the carriers and affiliates, but merely provides non-detailed conclusory testimony regarding the putative beliefs of such third-parties. His testimony does little, if anything, to establish or support actual confusion between JUSTICE CENTRAL and JUSTICE NETWORK. He also testified that “several affiliates reached out for inquiry when Gannett Broadcasting became a distribution partner for The Justice Network,” concluding that “[t]he mix-up between Justice Central and Justice Network happens very frequently and causes significant conflict in Justice Central’s ability to manage carriers, affiliates, and develop business.”²⁷ Again, the affiliates are not identified. More importantly, that they “reach[ed] out for inquiry” does not necessarily support that they were confused. Finally, there is no support for his conclusory statement that any mix-up between Justice Central and Justice Network

²⁵ Claytor Decl. ¶ 4 (28 TTABVUE 4).

²⁶ Claytor Decl. ¶ 2 (28 TTABVUE 4).

²⁷ Claytor Decl. ¶ 4 (28 TTABVUE 4).

Pointing to the Claytor Declaration and its Exhibits 1 and 2 (see Claytor Decl. ¶ 2, 28 TTABVUE 3, 5-9) Opposer argues that both Opposer’s JUSTICE CENTRAL network and Applicant’s JUSTICE NETWORK network have been referred to as “Justice.TV,” causing “numerous instances of confusion.” According to Opposer, this suggests confusion with respect to the use of the JUSTICE CENTRAL and JUSTICE NETWORK marks. Opposer’s Reply Brief p. 17 (54 TTABVUE 23). However, any confusion of Applicant’s and Opposer’s marks with “Justice.TV” is a different issue that is unrelated to the issue of likelihood of confusion between Opposer’s mark and Applicant’s mark in this case.

either “happens frequently” or “causes significant conflict in Justice Central’s ability to manage carriers, affiliates, and develop business.”²⁸

Opposer also relies on evidence consisting of conclusory testimony and emails. Claytor testifies that “numerous instances of confusion have included misdirected carrier communications intended for Justice Network (See 3/9/15 email), affiliates mistakenly referring to Justice Central as ‘Justice Network’ (See 3/13/16 and 4/1/16 emails), as well as mistaken carriage reports labeling Justice Network carriage agreements as Justice Central carriage (See June 10, 2016 email), and affiliate meetings scheduled under the name ‘Justice Network,’” attached as Exhibits 3-6 to his Declaration.²⁹

Similarly, in the Declaration of Janice Arouh, President of Distribution and Marketing at Entertainment Studios Network, an affiliate and licensee of Opposer, Ms. Arouh testifies, foregoing any details, that her company “has received numerous inquiries reflecting confusion between [the] ‘Justice Central’ network and the ‘Justice Network’ because of the substantially similar names and substantially similar themed television programming,” identifying only a March 13, 2016 email, *see* Exhibit 31 to the Arouh Declaration, which she testifies refers to Justice Central as “Justice Network.”³⁰

²⁸ *Id.*

²⁹ Claytor Decl. ¶¶ 3-4 and Exhibits 3-6 (28 TTABVUE 3-4, 10-21).

³⁰ Arouh Decl. ¶¶ 1, 27 and Exhibit 31 (29 TTABVUE 3, 12, 147-149); this Exhibit is identical to Claytor Exhibit 4 (28 TTABVUE 12-14).

We have reviewed Opposer's testimony and misdirected communication evidence closely. At the outset, we note that none of the purportedly confused parties – Opposer's carriers and affiliates – testified to their confusion. Rather there is only Claytor's and Arouh's conclusory testimony which falls short of proving actual confusion. Without direct testimony from the confused individuals, there is insufficient information to ascertain what they were thinking, or what caused their purported confusion. *See Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1475 (TTAB 2016); *see also Georgia-Pacific Corp. v. Great Plains Bag Co.*, 614 F.2d 757, 204 USPQ 697, 701 (CCPA 1980) (statements offered to prove the state of mind of a third-party concerning confusion between two marks is hearsay: "Actual confusion is entitled to great weight but only if properly proven ... Such is not the case here."). Thus, Opposer's evidence falls short of showing actual confusion.

Therefore, the seventh *DuPont* factor is neutral. We hasten to add, however, that since the issue before us is the likelihood of confusion, not actual confusion, it is not necessary for Opposer to show instances of actual confusion to establish likelihood of confusion. *Herbko Int'l. v. Kappa Books*, 64 USPQ2d at 1380; *Weiss Assocs., Inc. v. HRL Assocs., Inc.*, 902 F.2d 1546, 14 USPQ2d 1840, 1843 (Fed. Cir. 1990).

The eighth *DuPont* factor considers the length of time during and conditions under which there has been concurrent use without evidence of actual confusion. Applicant contends that the lack of evidence establishing actual confusion weighs against finding a likelihood of confusion where, as here, the marks have been in use, on

related services, for “a lengthy period of time.”³¹ According to Mr. Schiffman, CEO and a founder of Applicant Justice Network,³² Applicant never experienced any instances of confusion relating to the parties’ services either on behalf of consumers or industry professionals.³³ However, the record is unclear how long Applicant has used its mark in the same demographic markets as those served by Opposer.³⁴ Applicant acknowledges there is a possibility its application “could be read to include Opposer’s identified services, namely the distinctive category of court programming,” but argues, “the underlying evidence shows this ‘possible...scope for expansion’ into Opposer’s distinct trade channel would not be ‘natural’ and does not favor a likelihood of confusion.”³⁵ The absence of reported instances of confusion is meaningful only if the record establishes appreciable and continuous use by Applicant of its marks for a significant period of time in the same markets as those served by Opposer under its mark. *See Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992).

³¹ Applicant’s Brief pp. 42-43 (50 TTABVUE 44-45). Applicant argues that “the marks have been in use, on related services, for a lengthy period of time,” and that the Board needs to take into account the “similarities between the Parties’ services and channels of trade.” Applicant’s Brief p. 43 (50 TTABVUE 45).

³² According to his Declaration, the statements set forth therein are based on Mr. Schiffman’s personal knowledge and his review of the business records of Applicant Career Sports & Entertainment, Inc., n/k/a Cooper Holdings, Inc., which is the managing Member of Cooper Media, LLC, the operator of the Justice Network. Schiffman Decl. ¶ 1 (33 TTABVUE 3).

³³ Schiffman Decl. ¶¶ 13-14 (33 TTABVUE 6).

³⁴ *See* Applicant’s Brief p. 43 (50 TTABVUE 45) “Moreover, while cable markets constitute a small minority of Applicant’s overall viewership, Opposer correctly notes there remains overlap in these markets. . . . Thus, the overlapping areas and the manner in which the marks have been used provided more than a ‘reasonable opportunity’ for actual consumer confusion to occur if it were likely to.”

³⁵ Applicant’s Brief p. 23 (50 TTABVUE 25) citing *Embarcadero Techs., Inc. v. RStudio, Inc.*, 105 USPQ2d 1825, 1838-39 (TTAB 2013).

The lack of any instance of actual confusion, therefore, is not indicative of an absence of a likelihood of confusion.

The evidence of Applicant's and Opposer's respective uses of their marks is imprecise. Therefore, even if Applicant started broadcasting in January 2015, slightly more than 3 years before Opposer's trial testimony period closed,³⁶ it is not possible to determine the length of time and conditions under which there has been concurrent use without evidence of actual confusion. Thus, the eighth factor is neutral. *DuPont*, 177 USPQ at 567.

V. Conclusion

Applicant's mark JUSTICE NETWORK for television networks and programming services creates the same overall commercial impression as Opposer's mark JUSTICE CENTRAL for television networks and programming in the field of law and courtroom legal proceedings. Based on the parties' overlapping services offered in the same trade channels to the same classes of customers, the *DuPont* factors of the similarity of the services, trade channels and customers also support a finding of likelihood of confusion. Although the term "Justice" as used in Applicant's and Opposer's marks is suggestive, its significance as the dominant first word in both marks which are used for the same (and related) services supports the likelihood of confusion. Lastly, the absence of actual confusion is not sufficient to outweigh the factors supporting a finding of likelihood of confusion. Therefore, Applicant's mark so

³⁶ Opposer's testimony period closed on April 30, 2018.

resembles Opposer's registered mark as to be likely to cause confusion or to cause mistake or to deceive.

Decision: The opposition to Application Serial No. 86210901 is sustained and registration to Applicant is refused.

APPENDIX OF STIPULATIONS AND EVIDENCE

Stipulated Evidence

Pursuant to § 705 of the TBMP, Opposer and Applicant stipulated to the admissibility of the following evidence which was approved by the Board. (42, 43 TTABVUE):

1. Justice Network maintains a publicly available website, advertising its programming, located at <http://www.justicenetworktv.com>. The website homepage contains a “FIND JUSTICE” button on the top right, a “LEARN MORE” button on the “WATCH JUSTICE” advertisement, and a zip code entry box in the “FIND JUSTICE NETWORK IN YOUR AREA” banner. A screen shot of Applicant’s website as of September 12, 2018 is submitted as Exhibit 1. (42 TTABVUE 2-3, 6-7);
2. If a web visitor clicks the “FIND JUSTICE” button, the “LEARN MORE” button on the “WATCH JUSTICE” ad, or enters a zip code in the zip code entry box in the “FIND JUSTICE NETWORK IN YOUR AREA” banner on the Justice Network’s website homepage, the visitor will be taken to <http://www.justicenetworktv.com/find-justice>, which displays a map of the United States indicating locations where Justice Network is aired. A screenshot of the “find-justice” map page as of September 12, 2018, is submitted as Exhibit 2. (42 TTABVUE 3, 8-9);
3. If a web visitor selects one of the locations on the “find-justice” map page (located at <http://www.justicenetworktv.com/find-justice>) the resulting pop-up bubble shows both the over-the-air and cable channels airing Justice Network in that location. An exemplar screenshot showing the selection of Orlando, Florida on the “find-justice” map page, as of September 12, 2018, is submitted as Exhibit 3. (42 TTABVUE 3-4, 10-11);
4. The “find-justice” map page shows multiple locations where Justice Network is provided by at least one, if not multiple, cable carriers, including, but not limited to: Atlanta, Georgia; Boise, Idaho; Cleveland, Ohio; Houston, Texas; Miami, Florida; Orlando, Florida; New Orleans, Louisiana; Portland, Oregon; Sacramento, California; Seattle, Washington, and Washington, D.C. Screenshots of Justice Network’s “find-justice” map page, as of September 12, 2018, where the locations described above have been selected, are submitted as Exhibits 3-13. (42 TTABVUE 3-4, 10-31);

5. CenturyLink Prism, one of the cable carriers listed on Justice Network's "find-justice" map page for Orlando, Florida, maintains a publicly available website located at <http://www.centurylink.com/prismtv/existing/>. A screenshot of CenturyLink Prism's website, as of September 21, 2018, is submitted as Exhibit 14. (42 TTABVUE 4, 32-33);
6. If a web visitor selects the "Channel Lineup" Quick Link on the right side of the page, the visitor is taken to <http://www.centurylink.com/prismtv/channelLineupTable.html> where the visitor can select "Central Florida" from the "Choose Your Location" drop down menu. The visitor is then taken to <http://www.centurylink.com/prismtv/channelLineupTable.html?marketName=orlando-florida> where they can select "Full Channel Lineup" from the "Print Channel Lineup" drop down menu on the top right of the page. An annotated printout of the CenturyLink Prism Orlando, Florida channel lineup, as of September 12, 2018, is submitted as Exhibit 15. (42 TTABVUE 4, 34-39).

Opposer's Evidence

Opposer's First Notice of Reliance:

Exhibit 1: TSDR status printout of Reg. No. 4696228 for the mark JUSTICE CENTRAL (26 TTABVUE 4-8);

Exhibit 2: TSDR status printout of Reg. No. 4827258 for the mark JUSTICECENTRAL.TV (26 TTABVUE 9-13);

Exhibit 3: Applicant's Response to Opposer's Interrogatory No. 2 (certain portions expurgated) (26 TTABVUE 14-19);

Exhibit 4: Excerpt of Applicant's Response to Opposer's Interrogatory No. 11 (certain portions expurgated) (26 TTABVUE 20-23);

Declaration of Eric Claytor with Exhibits 1-6 consisting of copies of emails, with portions redacted (27 TTABVUE 3-21, 28 TTABVUE 3-21);

Declaration of Janice Arouh with Exhibits 1-31 (29 TTABVUE):

- Exhibits 1-2: TSDR printouts for Reg. Nos. 4696228 and 4827258 (29 TTABVUE 15-24);
- Exhibit 3: page from Justice Central website (29 TTABVUE 25-26);
- Exhibits 4-7: copies of articles from Hollywood Reporter, Deadline, Bloomberg newswire and Entertainment Studios press release announcing launch of Justice Central.TV on AT&T U-verse TV (29 TTABVUE 27-38);
- Exhibit 8: Entertainment Studios Newsroom press release regarding internet based distribution of Justice Central.TV (29 TTABVUE 39-41);
- Exhibits 9-11: Hollywood Reporter article, Entertainment Studios press release and January 13, 2015 internal news article regarding AT&T U-verse roll-out to “TV Everywhere” (29 TTABVUE 42-49);
- Exhibits 12-14: February 19, 2013 Multichannel article, Entertainment Studios press release, internal news article regarding FAVE TV launch (29 TTABVUE 50-56);
- Exhibit 15: February 26, 2013 Entertainment Studios press release regarding Caribbean cable Cooperative launch (29 TTABVUE 57-59);
- Exhibits 16-17: August 27, 2015 Entertainment Studios press release and Deadline article regarding Verizon FiOS launch (29 TTABVUE 60-65);
- Exhibits 18-19: March 23, 2017 Entertainment Studios press release and March 24, 2017 bizjournals.com article regarding Dish Network launch (29 TTABVUE 66-71);
- Exhibits 20-21: March, 2016 and April, 2018 presentations describing Nielsen ratings for Justice Central programs (29 TTABVUE 72-87);
- Exhibits 22-26: FIOS, DTV, Dish, U-Verse, and CenturyLink channel lineups (29 TTABVUE 88-135);

- Exhibits 27-30: marketing document describing Emmy awards and nominations for Justice Central programming (29 TTABVUE 136-146);
- Exhibit 31: March 13, 2016 email received by ESN referring to Justice Central as “Justice Network” (29 TTABVUE 147-149).

Applicant’s Evidence

Applicant’s First Notice of Reliance:

Exhibits 1 and 2: TSDR printout and status printout of Reg. No. 4215303 for the mark BIG EASY JUSTICE (32 TTABVUE 9-10, 11-14);

Exhibits 3 and 4: TSDR printout and status printout of Reg. No. 2247294 for the mark BLIND JUSTICE (32 TTABVUE 15-20);

Exhibits 5 and 6: TSDR printout and status printout of Reg. No. 4203684 for the mark CAJUN JUSTICE (32 TTABVUE 21-26);

Exhibits 7 and 8: TSDR printout and status printout of Reg. No. 2811651 for the mark CELEBRITY JUSTICE (32 TTABVUE 27-32);

Exhibits 9 and 10: TSDR printout and status printout of Reg. No. 2821634 for the mark DISCOVERING JUSTICE (32 TTABVUE 33-38);

Exhibits 11 and 12: TSDR printout and status printout of Reg. No. 3134285 for the mark HARD JUSTICE (32 TTABVUE 39-44);

Exhibits 13 and 14: TSDR printout and status printout of Reg. No. 4149948 for the mark HOOD JUSTICE (32 TTABVUE 45-40);

Exhibits 15 and 16: TSDR printout and status printout of Registration No. 4335218 for the mark JUSTICE FOR ALL (32 TTABVUE 50-55);

Exhibits 17 and 18: TSDR printout and status printout of Reg. No. 2193923 for the mark JUSTICE FRIENDS (32 TTABVUE 56-61);

Exhibits 19 and 20: TSDR printout and status print out of Reg. No. 2998011 for the mark JUSTICE LEAGUE (32 TTABVUE 62-67);

Exhibits 21 and 22: TSDR printout and status printout of Reg. No. 4310508 for the mark JUSTICE WOMAN (32 TTABVUE 68-73);

Exhibits 23 and 24: TSDR printout and status printout of Reg. No. 3200902 for the mark JUSTICEWORKS (32 TTABVUE 74-79);

Exhibits 25 and 26: TSDR printout and status printout of Reg. No. 4649424 for the mark LAW & JUSTICE COUNCIL (32 TTABVUE 80-87);

Exhibits 27 and 28: TSDR printout and status printout of Reg. No. 3107436 for the mark LAW & JUSTICE (32 TTABVUE 88-93);

Exhibits 29 and 30: TSDR printout and status printout of Reg. No. 3855735 for the mark MAIN JUSTICE (32 TTABVUE 94-99);

Exhibits 31 and 32: TSDR printout and status printout of Reg. No. 2934494 for the mark ROCK JUSTICE (32 TTABVUE 100-105);

Exhibits 33 and 34: TSDR printout and status printout of Reg. No. 4235894 for the mark SCALES OF JUSTICE (32 TTABVUE 106-112);

Exhibits 35 and 36: TSDR printout and status printout of Reg. No. 4417837 for the mark SIMPLE JUSTICE (32 TTABVUE 113-118);

Exhibits 37 and 38: TSDR printout and status printout of Reg. No. 3672326 for the mark THE JUSTICE HOUR (32 TTABVUE 119-124);

Exhibits 39 and 40: TSDR printout and status printout of Reg. No. 3667817 for the mark THINKJUSTICE (32 TTABVUE 125-130);

Exhibits 41 and 42: TSDR printout and status printout of Reg. No. 3386557 for the mark TITANS OF JUSTICE (32 TTABVUE 131-136);

Exhibits 43 and 44: TSDR printout and status printout of Reg. No. 3267311 for the mark WHEEL OF JUSTICE (32 TTABVUE 137-142);

Exhibit 45: TSDR status printout of Reg. No. 4891186 for the mark COMEDY.TV (32 TTABVUE 143-146);

Exhibit 46: TSDR status printout of Reg. No. 4112737 for the mark COMEDY CENTRAL (32 TTABVUE 147-150);

Exhibit 47: TSDR status printout of Reg. No. 4112736 for the mark COMEDY CENTRAL (32 TTABVUE 151-154);

Exhibit 48: TSDR status printout of Reg. No. 3156892 for the mark THE COMEDY CHANNEL (32 TTABVUE 155-158);

Exhibit 49: TSDR status printout of Reg. No. 2247117 for the mark THE COMEDY CHANNEL (32 TTABVUE 159-162);

Exhibit 50: TSDR status printout of Reg. No. 1745015 for the mark COMEDY CENTRAL (32 TTABVUE 163-166);

Declaration of Steve Schiffman with Exhibits 1-2 (33 TTABVUE):

- Exhibit 1 printouts from Justice Network website regarding its programs (33 TTABVUE 8-41);
- Exhibit 2 graph summarizing Scarborough survey showing mystery/suspense/crime category of programming versus “court shows” category (33 TTABVUE 42-43).