

This Opinion Is Not a  
Precedent of the TTAB

Mailed: August 9, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Eric J. Figueroa*  
*v.*  
*Suzanne Evans Coaching of SC, LLC*

Opposition No. 91216695  
—

*Eric J. Figueroa*  
*v.*  
*Suzanne Evans Coaching of South Carolina, LLC*<sup>1</sup>

Cancellation No. 92060070  
—

*Suzanne Evans Coaching of South Carolina, LLC*  
*v.*  
*Eric J. Figueroa*

Cancellation No. 92063341  
—

Wendy Peterson of Not Just Patents LLC for Eric J. Figueroa.

Thomas L. Moses of Southeast IP Group, LLC,  
for Suzanne Evans Coaching of SC, LLC.

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<sup>1</sup> We presume that Suzanne Evans Coaching of SC, LLC and Suzanne Evans Coaching of South Carolina, LLC are the same entity, which is identified as “Suzanne Evans Coaching of SC, LLC” or “Applicant” in this order. Applicant should file in TEAS the appropriate request to correct its clerical error in the appropriate application or registration file – whichever is incorrect.

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Before Bergsman, Coggins and Dunn, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Suzanne Evans Coaching of SC, LLC (Applicant) filed an application on the Principal Register for the mark the mark HELL YEAH (in standard characters) for the services listed below:

Advertising and marketing; Promoting the goods and services of others by arranging for businesses to affiliate their goods and services with the goods and services of third parties by means of sponsorship relationships, in Class 35; and

Educational and entertainment services, namely, providing motivational and educational speakers in the field of self- and personal improvement, in Class 41.<sup>2</sup>

Applicant is also the owner of the registered mark HELL YEAH STUDIOS (in standard characters) for the services listed below:

Film and video production of business marketing videos excluding the field of music; Production of webinars and business marketing videos for business or commercial purposes for others; Film and video production consulting services relating to business marketing videos; Film editing of business marketing videos; Film studios for producing business marketing videos; Photography services relating to business marketing, in Class 41.<sup>3</sup>

Applicant disclaimed the exclusive right to use the word “Studios.”

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<sup>2</sup> Application Serial No. 85768262, filed October 31, 2012, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and first use in commerce as of March 2011 for both classes.

<sup>3</sup> Registration No. 4593280, registered August 26, 2014, based on an application filed February 9, 2012.

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Eric J. Figueroa (Opposer) filed a Notice of Opposition against the registration of Applicant's mark HELL YEAH and a Petition to Cancel the registration for Applicant's mark HELL YEAH STUDIOS under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Opposer claimed ownership of the registered marks listed below:<sup>4</sup>

1. Registration No. 4193922 for the mark YEAH BABY (in standard characters) for "advertising agencies; advertising and marketing; advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium," in Class 35;<sup>5</sup>
2. Registration No. 4180641 for the mark YEAH (in standard characters) for "advertising and marketing; advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium," in Class 35;<sup>6</sup>
3. Registration No. 4165146 for the mark YEAH BABY (in standard characters) for "advertising and marketing services, namely, promoting the goods and services of third parties through print, audio, video, digital and on-line medium in the agricultural, aircraft, airline, apparel, appliance, automobile, banking, book, business, computer, construction, cosmetic, educational, electrical, electronics, energy, engineering, environmental, financial, food, hardware, health, insurance, internet, investment, legal, machinery, management, manufacturing, media, medical, news, office, pharmaceutical, real estate, retail, shipping, software, technology, telecommunications, textile, transportation and travel fields, not including any baby products or services," in Class 35;<sup>7</sup> and

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<sup>4</sup> In addition, Opposer claimed ownership of Registration No. 4083983. However, that registration was cancelled August 17, 2018 for failure to file a Section 8 declaration of use. This registration will be given no further consideration.

<sup>5</sup> Registered August 21, 2012; Section 8 declaration accepted. This registration is based on an application filed December 23, 2011.

<sup>6</sup> Registered July 24, 2012; Section 8 declaration accepted. This registration is based on an application filed June 5, 2011.

<sup>7</sup> Registered June 26, 2012; Section 8 declaration accepted. This registration is based on an application filed August 22, 2010.

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4. Registration No. 4513265 for the mark YEAH BABY (in standard characters) for “audio broadcasting; video broadcasting,” in Class 38.<sup>8</sup>

Applicant, in its Answers, denied the salient allegations in the Notice of Opposition and Petition to Cancel and filed in the opposition proceeding a Counterclaim to cancel Opposer’s pleaded registrations on the ground of fraud because Opposer purportedly did not use his marks on all of the services listed in the underlying applications for registration.<sup>9</sup> Subsequently, Applicant filed an Amended Counterclaim to cancel Opposer’s pleaded registrations on the grounds of abandonment and nonuse.<sup>10</sup>

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<sup>8</sup> Registered April 15, 2014. This registration is based on an application filed April 4, 2012. When the Notice of Opposition was filed, August 21, 2013, Opposer claimed ownership of the underlying application for this registration (Serial No. 85589533). A plaintiff which pleads ownership of an application in its complaint does not have to amend its pleading to assert the resultant registration, so long as it issues before the plaintiff’s testimony period closes, as it did in this case. *See Edom Labs. Inc. v. Lichter*, 102 USPQ2d 1546, 1547 (TTAB 2012); *UMG Recordings Inc. v. O’Rourke*, 92 USPQ2d 1042, 1045 (TTAB 2009). The pleading of an application is viewed as providing sufficient notice to the defendant of the plaintiff’s intention to rely on any registration that issues from the pleaded application. *See United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1040 n.3 (TTAB 2014) (opposer that pleads ownership of the underlying applications in the notice of opposition may make the registrations which issue during the opposition of record without having to amend the notice of opposition to assert reliance on the registrations ); *UMG Recordings Inc. v. O’Rourke*, 92 USPQ2d at 1045 n.12 (opposer that pleads ownership of application would have to make any subsequently issued registration of record but would not have to amend notice of opposition prior to doing so).

<sup>9</sup> The Board consolidated the opposition and cancellation proceedings in its February 11, 2015 Order (9 TTABVUE).

<sup>10</sup> 23 TTABVUE. Applicant filed the Amended Counterclaim on March 14, 2016 and included Registration No. 4513265. Nevertheless, on March 15, 2016, Applicant filed a separate Petition to Cancel Registration No. 4513265 (Cancellation No. 92063341). That cancellation was consolidated with Opposition No. 91216695 in the Board’s April 21, 2016 Order. 26 TTABVUE.

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Opposer, in his Answer, denied the salient allegations in the Amended Counterclaim.<sup>11</sup>

### **I. The Record**

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), Applicant's application file, Applicant's registration file, and the registration files of Opposer's pleaded registrations which Applicant counterclaimed to cancel. Only Opposer introduced any testimony and evidence, which is listed below:

- A. Notice of reliance on Opposer's pleaded registrations printed from the USPTO's electronic database showing the current status of and title to the registrations;<sup>12</sup> and
- B. Testimony declaration of Applicant.<sup>13</sup>

Similarly, only Opposer filed a brief.

### **II. Applicant's Counterclaim in Opposition No. 91216695 and Petition in Cancellation No. 92063341**

#### **A. Standing**

Applicant, by virtue of its position as defendant in the opposition, has standing to seek cancellation of the pleaded registrations. *See Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1293 (TTAB 1999).

#### **B. Findings of Fact**

Applicant failed to introduce any testimony or evidence to prove the claims in its Counterclaim and separate Petition to Cancel Opposer's pleaded registrations and,

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<sup>11</sup> 24 TTABVUE.

<sup>12</sup> 47 TTABVUE.

<sup>13</sup> 49 TTABVUE.

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therefore, failed to meet its burden of proof in proving abandonment or nonuse. Accordingly, Applicant's Counterclaim and separate Petition to Cancel Opposer's pleaded registrations is denied.

### **III. Opposer's Likelihood of Confusion Claims in Opposition No. 91216695 and Cancellation No. 92060070**

#### **A. Standing**

Standing is a threshold issue in every inter partes case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *John W. Carson Found. v. Toilets.com Inc.*, 94 USPQ2d 1942, 1945 (TTAB 2010). To establish standing in an opposition or cancellation proceeding, a plaintiff must prove that it has a "real interest" in the proceeding and a "reasonable" basis for its belief of damage. *See Empresa Cubana*, 111 USPQ2d at 1062; *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (TTAB 1982).

Opposer has established his standing in both proceedings for his likelihood of confusion claims by properly introducing into evidence his pleaded registrations.<sup>14</sup> *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (plaintiff's two prior registrations suffice to establish plaintiff's direct commercial interest and its standing); *N.Y. Yankees P'ship v. IET Prods. & Servs., Inc.*, 114 USPQ2d 1497, 1501 (TTAB 2015).

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<sup>14</sup> 53 TTABVUE 12-26, 182-196, 306-323 and 58 TTABVUE 3-20 and 145-157.

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B. Priority

Because Opposer's pleaded registrations are of record, priority in the opposition proceeding is not at issue with respect to the services identified therein. *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1469 (TTAB 2016) (citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974)).

With respect to Applicant's registration, a presumption of validity attaches to Applicant's involved registration, and Opposer, the alleged prior user, bears the burden of proving its claim of priority by a preponderance of the evidence. *W. Florida Seafood, Inc. v. Jet Rests., Inc.*, 31 F.3d 1122, 31 USPQ2d 1660, 1662 (Fed. Cir. 1994); *Cerveceria Centroamericana S.A. v. Cerveceria India Inc.*, 892 F.2d 1021, 13 USPQ2d 1307, 1309 (Fed. Cir. 1989); *Kohler Co. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1105-06 (TTAB 2007).

"To establish priority, the petitioner must show proprietary rights in the mark that produce a likelihood of confusion.... These proprietary rights may arise from a prior registration, prior trademark or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights." *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1378 (Fed. Cir. 2002) [internal citations omitted]; *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 1320, 209 USPQ 40, 43 (CCPA 1981).

In the absence of evidence establishing earlier use of its mark, a party may rely for priority purposes on the filing date of the application that matured into its

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registration. Section 7(c) of the Trademark Act, 15 U.S.C. § 1057(c); *see also Brewski Beer Co. v. Brewski Bros. Inc.*, 47 USPQ2d 1281, 1283-84 (TTAB 1998); *Am. Standard Inc. v. AQM Corp.*, 208 USPQ 840, 842 (TTAB 1980). Because Applicant did not introduce any testimony or other evidence, the earliest date on which it may rely for priority is February 9, 2012, the filing date for the application underlying the registration at issue.

Opposer testified that he “continuously used the marks, YEAH and YEAH BABY, since the use in commerce dates.”<sup>15</sup> In Registration No. 4180641 and for the mark YEAH, Opposer claimed first use anywhere as of January 24, 2012. In Registration Nos. 4193922, 4165146, and 4513265 for the mark YEAH BABY, Opposer claimed first use anywhere as of August 22, 2010. Opposer’s testimony is based on personal knowledge and it is clear, convincing and it has not been contradicted. *See Nat’l Bank Book Co. v. Leather Crafted Prods., Inc.*, 218 USPQ 826, 828 (TTAB 1993) (oral testimony may be sufficient to prove the first use of a party’s mark when it is based on personal knowledge, it is clear and convincing, and it has not be contradicted); *Liquacon Corp. v. Browning-Ferris Indus., Inc.*, 203 USPQ 305, 316 (TTAB 1979) (oral testimony may be sufficient to establish both prior use and continuous use when the testimony is proffered by a witness with knowledge of the facts and the testimony is clear, convincing, consistent, and sufficiently circumstantial to convince the Board of its probative value); *GAF Corp. v. Anatox Analytical Servs., Inc.*, 192 USPQ 576,

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<sup>15</sup> Applicant’s Testimony Decl. ¶2 (49 TTABVUE 5).



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577 (TTAB 1976) (oral testimony may establish prior use when the testimony is clear, consistent, convincing, and uncontradicted). Further, Opposer corroborated his testimony regarding priority by introducing archived webpages showing use of YEAH BABY as of February 7, 2011.<sup>16</sup>

Opposer has proven priority of use for his registered marks with respect to both Applicant's pending application and registration.

### C. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. \_\_\_, 135 S. Ct. 1293, 113 USPQ2d 2045, 2049 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *DuPont* factor that is relevant or for which there is evidence of record. See *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). “[E]ach case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973) (internal citations

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<sup>16</sup> Applicant's Testimony Decl. ¶2 and Exhibit A (49 TTABVUE 5 and 7).

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removed). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

1. Applicant’s mark HELL YEAH for “advertising and marketing; promoting the goods and services of others by arranging for businesses to affiliate their goods and services with the goods and services of third parties by means of sponsorship relationships.” (Application Serial No. 85768262, Class 35)

- a. Similarity or dissimilarity and nature of the services.

Applicant is seeking to register the mark HELL YEAH for “advertising and marketing; promoting the goods and services of others by arranging for businesses to affiliate their goods and services with the goods and services of third parties by means of sponsorship relationships.” Opposer is the owner of Registration No. 4193922 for the mark YEAH BABY and Registration No. 4180641 for the mark YEAH both for, inter alia, “advertising and marketing.” Thus, the services are in part identical.

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Under this *DuPont* factor, the Opposer need not prove, and we need not find, similarity as to each and every activity listed in the description of services. It is sufficient for an opposition refusal based on likelihood of confusion that relatedness is established for any activity encompassed by the description of services in a particular class in the application or Opposer's pleaded registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) ("it 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.").

b. Established, likely-to-continue channels of trade and classes of consumers.

Because the services described in the application and Opposer's registrations are in part identical, we presume that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1745 (TTAB 2018) ("Because the services described in the application and the cited registration are identical, we presume that the channels of trade and classes of purchasers are the same."); *United Glob. Media Grp., Inc. v.*

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*Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

- c. The similarity or dissimilarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

Applicant is seeking to register the mark HELL YEAH and the marks in Opposer's pleaded registrations are YEAH and YEAH BABY. "Yeah" is defined as an informal form of "yes;" "yes" is defined as "a function word to express assent or agreement"; "baby" is defined as a noun and slang "often used in address", and "hell" is defined as a "noun used as an intensive."<sup>17</sup> The terms "Yeah," "Yeah Baby," and "Hell Yeah" are all affirmances, with "Yeah Baby" indicating to whom the affirmation is addressed, and "Hell Yeah" indicating a more intense degree of assent. Applicant has added a term to Opposer's mark which does not alter its commercial impression. The marks YEAH, YEAH BABY and HELL YEAH share a common term, look alike, sound alike, have the same meaning, and engender the same commercial impression. The peripheral differences between Applicant's HELL YEAH and Opposer's YEAH and YEAH BABY do not distinguish the marks.

We find that Applicant's mark HELL YEAH is similar to Opposer's marks YEAH in terms of appearance, sound, meaning and commercial impression.

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<sup>17</sup> MERRIAM-WEBSTER ONLINE DICTIONARY (2019). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

d. Conclusion

Because the marks are similar, the services are in part identical and there is a presumption that the services are offered in the same channels of trade to the same classes of consumers, we find that Applicant's mark HELL YEAH for "advertising and marketing; promoting the goods and services of others by arranging for businesses to affiliate their goods and services with the goods and services of third parties by means of sponsorship relationships" is likely to cause confusion with Opposer's registered marks YEAH and YEAH BABY both for "advertising and marketing."

2. Applicant's mark HELL YEAH for "educational and entertainment services, namely, providing motivational and educational speakers in the field of self- and personal improvement." (Application Serial No. 85768262, Class 41)
  - a. The similarity or dissimilarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

For the reasons discussed above, we find that Applicant's mark HELL YEAH is similar to Opposer's marks YEAH and YEAH BABY.

- b. The similarity or dissimilarity and nature of the services.

Applicant is seeking to register the mark HELL YEAH for "educational and entertainment services, namely, providing motivational and educational speakers in the field of self- and personal improvement." Opposer's closest pleaded registration is Registration No. 4513265 for the mark YEAH BABY for "audio broadcasting; video broadcasting." Opposer did not introduce any testimony or evidence regarding the relationship between these two activities, or any of Opposer's other services. While it

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is theoretically possible that Opposer's audio and video broadcast services encompass or are otherwise related to Applicant's "providing motivational and educational speakers in the field of self- and personal improvement," Opposer has the burden of proving his likelihood of confusion claim by a preponderance of the evidence. Without any evidence regarding the relationship between Applicant's services and Opposer's services, we see Opposer's likelihood of confusion claim as amounting to only a speculative, theoretical possibility, notwithstanding that similar marks are involved. Language from the Court of Appeals for the Federal Circuit is helpful in resolving whether the services in this case are related:

We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.

*Elec. Design & Sales Inc. v. Elec. Data Sys. Corp.*, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), *citing* *Witco Chem. Co. v. Whitfield Chem. Co., Inc.*, 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g* 153 USPQ 412 (TTAB 1967). Because Opposer failed to introduce any testimony or evidence regarding the similarity and nature of the services, Opposer failed to meet his burden of proof and, we find that this *DuPont* factor weighs against finding that there is a likelihood of confusion.

c. Established, likely-to-continue channels of trade and classes of consumers.

Opposer failed to introduce any testimony or evidence regarding the channels of trade or classes of consumers and, therefore, Opposer failed to meet his burden of

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proof. Because there is no testimony or evidence regarding the channels of trade and classes of consumers, we find that this *DuPont* factor weighs against finding that there is a likelihood of confusion.

d. Conclusion

Despite the fact that the marks are similar, because there are no overlapping services, and there is no testimony or evidence regarding the similarity and nature of the services or channels of trade and classes of consumers, Opposer has failed to show by a preponderance of the evidence that there is a likelihood of confusion between Applicant's mark HELL YEAH for "educational and entertainment services, namely, providing motivational and educational speakers in the field of self- and personal improvement" and Opposer's registered mark YEAH and YEAH BABY for the listed services.

3. Applicant's mark HELL YEAH STUDIOS for "film and video production of business marketing videos excluding the field of music; production of webinars and business marketing videos for business or commercial purposes for others; film and video production consulting services relating to business marketing videos; film editing of business marketing videos; film studios for producing business marketing videos; photography services relating to business marketing." (Registration No. 4593280, Class 41)

- a. The similarity or dissimilarity and nature of the services.

Applicant is seeking to register HELL YEAH STUDIOS for "film and video production of business marketing videos excluding the field of music; production of webinars and business marketing videos for business or commercial purposes for others; film and video production consulting services relating to business marketing videos; film editing of business marketing videos; film studios for producing business

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marketing videos; photography services relating to business marketing.” Opposer has registered YEAH and YEAH BABY both for, inter alia, “advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium.” While worded differently, on their face, Opposer’s and Applicant’s registrations involve services which create video promotional materials. While Opposer did not introduce any testimony or evidence regarding the similarity or relatedness of the services, the registrations themselves provide the nexus between Opposer’s services promoting the goods, services, brand identity of others through, among other means, video media and Applicant’s video production services for business marketing. In other words, promotional or marketing services inherently are closely related to producing marketing materials. We find that the services of the parties are related.

b. Established, likely-to-continue channels of trade and classes of consumers.

Likewise, because of the inherently close relationship of the services, and because there is no limitation in Opposer’s registrations as to the channels of trade or classes of consumers, it is logical that Opposer would offer his “advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium” in the same channels of trade and to the same classes of consumers as Applicant’s “film and video production of business marketing videos excluding the field of music; production of webinars and business marketing videos for business or



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commercial purposes for others; film and video production consulting services relating to business marketing videos.”

- c. The similarity or dissimilarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

The addition of the descriptive word “studios” to Applicant’s mark does not serve to distinguish Applicant’s mark HELL YEAH STUDIOS from Opposer’s marks YEAH and YEAH BABY. It is well-settled that disclaimed, descriptive matter may have less significance in likelihood of confusion determinations. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”). There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entirety. *In re Nat’l Data Corp.*, 224 USPQ at 751; *see also In re Viterra Inc.*, 101 USPQ2d at 1908.

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For the reasons discussed above, we find that Applicant's mark HELL YEAH STUDIOS is similar to Opposer's marks YEAH and YEAH BABY in appearance, sound, connotation and commercial impression.

d. Conclusion

Because the marks are similar, the services are related and the services are offered in the same channels of trade to the same classes of consumers, we find that Applicant's mark HELL YEAH STUDIOS for "film and video production of business marketing videos excluding the field of music; production of webinars and business marketing videos for business or commercial purposes for others; film and video production consulting services relating to business marketing videos; film editing of business marketing videos; film studios for producing business marketing videos; photography services relating to business marketing" is likely to cause confusion with Opposer's registered marks YEAH and YEAH BABY for, inter alia, "advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium."

**Decision:** Applicant's counterclaim to cancel Opposer's pleaded registrations is denied.

Applicant's petition to cancel Opposer's Registration No. 4513265 for the mark YEAH BABY is denied.

Opposition No. 91216695  
Cancellation No. 92060070  
Cancellation No. 92063341

Opposer's opposition to Applicant's application (Serial No. 85768262) for the mark HELL YEAH for the activities listed in Class 35 is sustained.

Opposer's opposition to Applicant's application (Serial No. 85768262) for the mark HELL YEAH for the activities listed in Class 41 is dismissed.

Opposer's petition to cancel Applicant's registration for the mark HELL YEAH STUDIOS is granted.