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Precedent of the TTAB

Mailed: November 21, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Herbert, Rowland & Grubic, Inc.

Serial Nos. 97698576 & 97698586

Joseph R. Falcon III, of Barley Snyder,
for Herbert, Rowland & Grubic, Inc.

Kelly Neal, Trademark Examining Attorney, Law Office 105,
Jennifer L. Williston, Managing Attorney.

Before Wellington, Greenbaum, and Heasley
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant Herbert, Rowland & Grubic, Inc., seeks registration on the Principal Register of the standard character mark HRG,[1] and the composite mark

[1] Application Serial No. 97698576 was filed on November 30, 2022 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claim of first use anywhere and in commerce since at least as early as 1989—construed as December 31, 1989. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 903.06 (May 2025) ("When only a year is given, the date presumed for purposes of examination is the last day of the year.").

,[2] both for "engineering services focusing on the coordination and design of civil infrastructure systems; structural engineering design services; site design services, namely, engineering design services for commercial buildings; land surveying services" in International Class 42.

The Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's marks, as used in connection with these services, so resemble the registered composite mark

for "professional engineering services for the design and construction of facilities in the transportation, water, governmental services, senior living and energy markets," in International Class 42, as to be likely to cause confusion, to cause mistake, or to deceive.[3]

When the refusals were made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the requests for

[2] Application Serial No. 97698586 was filed on November 30, 2022, based on a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The applied-for mark "consists of the stylized dark blue wording 'HRG' and a schematic box to the left of the word element. The box is made up of four corners in the colors burgundy, dark blue, blue, and light blue. The color(s) burgundy, dark blue, blue and light blue is/are claimed as a feature of the mark."

[3] Registration No. 4062671 issued on the Principal Register on November 29, 2011, and has been renewed. The registered mark "consists of the letters 'HRG' within a solid rectangular background with 'HRGreen' underneath." Color is not claimed as a feature of the mark.

reconsideration, the appeals proceeded. On the Examining Attorney's motion, the two appeals have been consolidated.[4] TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (2025). We affirm the refusals to register.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark may be refused registration if it:

> [c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive….

15 U.S.C. § 1052(d).

The fundamental purposes underlying Section 2(d) are to prevent consumer confusion as to source and to protect trademark owners from damage caused by registration of confusingly similar marks. *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.,* 469 U.S. 189, 193 (1985); *Qualitex Co. v. Jacobson Prods. Co.,* 514 U.S. 159, 163-64 (1995).

"'Whether a likelihood of confusion exists' is 'aided by application of the thirteen *DuPont* factors.' *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co*., 908 F.3d 1315, 1319 (Fed. Cir. 2018) (citing *In re E. I. DuPont DeNemours & Co*., 476 F.2d

[4] 8, 9 TTABVUE. This opinion will cite to the briefs in ex parte appeal No. 97698576 unless otherwise indicated.

Citations to the briefs and other materials in the appeal record refer to the Board's TTABVUE online docket system. Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system and identify the documents by title, date, and page in the downloadable .pdf version.

1357, 1361 (C.C.P.A. 1973))." *Bullshine Distillery LLC v. Sazerac Brands, LLC*, 130 F.4th 1025, 1031 (Fed. Cir. 2025). "'The likelihood of confusion analysis considers all *DuPont* factors for which there is evidence of record but "may focus . . . on dispositive factors, such as similarity of the marks and relatedness of the [services]."' *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265 (Fed. Cir. 2002) (quoting *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336 (Fed. Cir. 2001))." *Sunkist Growers, Inc. v. Intrastate Distributors, Inc.*, 144 F.4th 1376, 1379 (Fed. Cir. 2025).

A. Similarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 476 F.2d at 1361. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, No. 87075988, 2018 WL 2734893, *5 (TTAB 2018) *aff'd* 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, No. 85497617, 2014 WL 2531200, *2 (TTAB 2014)). "[T]he 'similarity or dissimilarity of the marks in their entireties' is a predominant inquiry." *Heil v. Tripleye*, No. 91277359, 2024 WL 4925901, *29 (TTAB 2024) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.,* 308 F.3d 1156, 1165 (Fed. Cir. 2002)).

The marks, once again, are Applicant's HRG and 

, and

Registrant's 

.

Applicant argues that "[a]lthough the marks HRG and HRG HRGREEN share some phonetic elements," they differ in sight and connotation, yielding distinguishable commercial impressions.[5]

We find, however, that the marks are similar in sight as well as sound. All three have the identical initials HRG. The initials comprise the entire literal part of Applicant's marks and the first part of Registrant's mark—its most prominent, dominant portion. *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1119 (Fed. Cir. 2024); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, No. 9174797, 1988 WL 252340, *3 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed in the mind of a purchaser and remembered"). Registrant's mark thus incorporates the entirety of Applicant's standard character mark and the literal part of Applicant's composite mark, thereby increasing the marks' similarity. *See, e.g., In re Mighty Leaf Tea,* 601 F.3d 1342, 1347-48 (Fed. Cir. 2010) (applicant's mark ML is similar to registrant's mark ML MARK LEES).

Registrant's addition of HRGreen will likely be understood as an abbreviated reference to Registrant's full name, HR Green, Inc., which does very little to differentiate the marks. *Id.* Even if consumers are familiar with Registrant's mark and its abbreviation's significance, these same consumers may mistakenly believe

[5] Applicant's brief, 6 TTABVUE 8.

that Applicant's mark is also an abbreviation of Registrant's corporate name. The marks thus appear to be variants of one another, emanating from a single source. *In re Mucky Duck Mustard Co.*, No. 603019, 1988 WL 252484, *1 (TTAB 1988); *see In re Fiesta Palms, LLC*, 2007 WL 950952, *4 (TTAB 2007) ("It has long been held that the addition of a trade name or house mark to a registered mark does not generally avoid confusion") (CLUB PALMS MVP found similar to MVP).

The fonts and rectangular design element in Registrant's mark do not visually differentiate it from Applicant's marks in a way likely to avert purchaser confusion. First, Applicant's standard character mark may display HRG in the same font, color, and size as in Registrant's mark, which does not claim color as a feature. *Look Cycle Int'l v. Kunshan Qiyue Outdoor Sports Goods Co.*, No. 92079409, 2024 WL 3739358, *9 (TTAB 2024).

Second, the slight differences in Applicant's composite mark are not sufficient to distinguish it from Registrant's mark. Both contain block letters—with Applicant's HRG subsumed in Registrant's HRGreen. Both have rectangular designs—fairly common geometric shapes that would not be taken as source-indicating. *See In re Hughes Furniture Indus.*, Ser. No. 85627379, 2015 WL 1734918, *6 (TTAB 2015) ("[C]ommon design elements (consisting of a rectangle enclosing the literal elements and two horizontal lines) . . . merely serve as carriers for the wording and do not include a distinctive element with strong source-identifying characteristics."). In any event, "when a mark consists of a literal portion and a design portion, the literal portion is usually more likely to be impressed upon a purchaser's memory and to be

used in calling for the goods or services; therefore, the literal portion is normally accorded greater weight in determining whether marks are confusingly similar." *Id.* That especially holds true here, where the parties offer similar services.

The respective marks are thus similar in sight and sound--at least in part.

With respect to the marks' connotation and commercial impression, Applicant argues:

> Applicant's Mark, with its straightforward combination of "H" "R" and "G," emphasizes an association with surveying, coordination and design. In contrast, HRG HRGREEN 's spelling, including the distinct "HRGREEN" component, provides a distinction and provides specialized services focusing on the design and construction of facilities.
> …
> Additionally, Applicant's Mark signifies a distinct relation of services where the application is for coordination and design, whereas HRG HRGREEN implies services for design and construction of facilities.[6]

The Examining Attorney responds that "Applicant provides no explanation or support for how consumers would perceive these purported differences in meaning in applicant's and registrant's marks. … There is no evidence that the additional wording in registrant's mark provides a commercial impression of specialized services…."[7]

We agree with the Examining Attorney. The initialism HRG, the suffix HRGREEN, and the design elements do nothing to specify or distinguish Applicant's and Registrant's services. If anything, Applicant's argument concedes that the respective engineering design services overlap—an issue we discuss next.

[6] Applicant's brief, 6 TTABVUE 8-9.

[7] Examining Attorney's brief, 13 TTABVUE 4.

For our present purposes, we find that the marks are similar in sight and sound, as well as connotation and commercial impression, and that the first *DuPont* factor weighs in favor of finding a likelihood of confusion.

B. Relatedness of the Services

The second *DuPont* factor concerns the "similarity or dissimilarity and nature of the goods or services as described in an application or registration…," *DuPont*, 476 F.2d at 1361. A proper comparison "considers whether 'the consuming public may perceive [the respective goods or services of the parties] as related enough to cause confusion about the source or origin of the goods and services.'" *In re St. Helena Hosp.,* 774 F.3d 747, 752 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press Inc.,* 281 F.3d 1261, 1267 (Fed. Cir. 2002)).

The respective services, once again, are Applicant's

> Engineering services focusing on the coordination and design of civil infrastructure systems; structural engineering design services; site design services, namely, engineering design services for commercial buildings; land surveying services

and Registrant's

> Professional engineering services for the design and construction of facilities in the transportation, water, governmental services, senior living and energy markets.

"The relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration." *In re Charger Ventures LLC*, 64 F.4th 1375, 1383 (Fed. Cir. 2023). And the application and registration themselves may provide evidence of the relationship between the services. *Monster Energy Co. v. Lo*, No. 91225050, 2023 WL 417620, *7 (TTAB 2023). Here, as the Examining Attorney

points out,[8] Applicant's "engineering services focusing on the coordination and design of civil infrastructure systems; structural engineering design services; site design services, namely, engineering design services for commercial buildings" encompass Registrant's "professional engineering services for the design … of facilities in the transportation, water, governmental services, senior living and energy markets."

The Examining Attorney provides definitions of the relevant terms:

- "Structural engineering" is "the branch of civil engineering dealing with the design and planning of large structures."[9]
- "Civil infrastructure systems" involve "the design, analysis and management of infrastructure that supports human activities, such as electric power, oil and gas, water and wastewater, communications, transportation and the buildings that make up urban and rural communities."[10]

Applicant's engineering design services for structures, infrastructure, and commercial buildings thus encompass and are legally identical to Registrant's engineering design services of facilities in various markets. Since the respective services overlap and are legally identical in part, that suffices to establish their relatedness. *In re Detroit Athletic Co.,* 903 F.3d 1297, 1306 (Fed. Cir. 2018) (goods and services substantially overlap); *see In re Hitachi High-Techs.* Corp., No. 79110412, 2014 WL 879500, *4 (TTAB 2014) (where goods [or services] "overlap in part," they are "legally identical"). "It is sufficient for a finding of likelihood of

[8] Examining Attorney's brief, 13 TTABVUE 5.

[9] CollinsDictionary.com, March 12, 2025 Office Action at 16.

[10] CCee.UDel.edu, March 12, 2025 Office Action at 30-31.

confusion if relatedness is established for any one of the identified goods or services within the class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981)." *DowntownDC Business Improvement District v. Clarke*, No. 91275100, 2024 WL 4449409, *21 (TTAB 2024).

Applicant argues that "[h]ere, the marks can coexist as Applicant[] provides coordination, design and surveying services [that] target the general consumers in need of back-end consumer engineering services, whereas design and construction services serve a front-end consumer, [so] the marks can coexist as they are intended for different purposes and thereby reflect distinct consumer expectations."[11]

The respective recitations of service contain no such restrictions at either end, and "[i]t is well established that the Board may not read limitations into an unrestricted registration or application." *In re Country Oven, Inc.*, No. 87354443, 2019 WL 6170483, *3 (TTAB 2019). If anything, Applicant's "land surveying services" would by their very nature precede the design services Applicant and Registrant offer, and those design services would, in turn, precede Registrant's "construction of facilities" based on the designs. These sequential services are complementary in function and purpose, having as their common goal the development of various sites with structures and infrastructure. *See, e.g., In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567 (Fed.Cir.1984) (complementary); *In re Iolo Techs.,* No. 77399654, 95 USPQ2d 1498, 1500 (TTAB 2010) (finding likelihood of confusion where "based on the

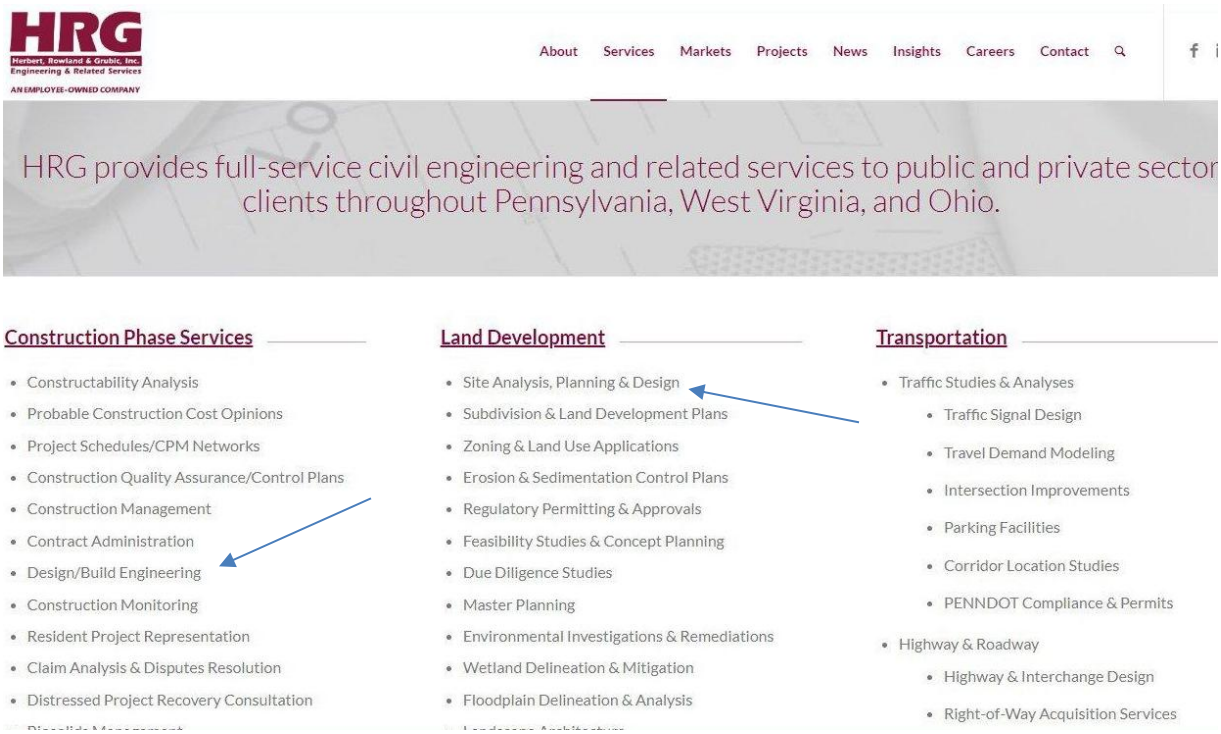
[11] Applicant's brief, 6 TTABVUE 9-10.

identifications themselves" the goods or services are "complementary in function and purpose").

To show that the respective services commonly emanate from a single source, the Examining Attorney adduces over a dozen third-party webpages of firms providing the land surveying, design and construction services, including Michael Baker International, AECOM, Stantec, Jacobs Surveying and Engineering, and Gordon.[12] *Charger Ventures*, 64 F.4th at 1382 ("Because the record shows that companies are known to offer both residential and commercial services under the same mark and, often, on the same website, we find that substantial evidence supports the Board's finding on these factors [including similarity of services]").

Indeed, Applicant's own website, offered as a specimen, shows how the sequence of related services may emanate from a single source:

[12] Examining Attorney's brief, 13 TTABVUE 6-8. Sept. 13, 2023 Office Action at 9-34, April 27, 2024 Office Action at 7-27, March 12, 2025 Office Action at 52-269.



13

See Octocom Sys., Inc. v. Hous. Comput. Servs., 918 F.2d 937, 941 Fed. Cir. 1990) (the fact "that such goods might come from a single source is shown by [applicant's] original application, which indicates [the applicant] itself used the mark OCTOCOM for both modems and computer programs.").

We find, in sum, that Applicant's and Registrant's services are legally identical in part and otherwise related, such that the third *DuPont* factor weighs heavily in favor of a likelihood of confusion.

C. Similarity of the Channels of Trade and Classes of Customers

The third *DuPont* factor concerns the "similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 476 F.2d at 1361; *Stone Lion Cap.*

[13] Applicant's specimen, Nov. 30, 2022.

Partners, L.P. v. Lion Cap. LLP, 746 F.3d 1317, 1322-23 (Fed. Cir. 2014).

Applicant attempts to distinguish its channels of trade from Registrant's, arguing that its:

> "design and coordination" focuses on the collaborative planning and integration of designs from different disciplines to ensure they work together seamlessly, preventing clashes and errors. "[D]esign and construction", on the other hand, refers to the two distinct phases of a project, where design involves creating the plans and construction involves building the project according to those plans. The respective trade channels for Applicant's goods and Registrant's goods thus further mitigate any potential for confusion.[14]

As the Examining Attorney correctly points out, though, Applicant's and Registrant's legally identical design services are presumed to travel through the same channels of trade.[15] *In re Information Builders Inc.,* No. 87753964, 2020 WL 2094122, *4 (TTAB 2020); *In re Solid State Design Inc.,* No. 87269041, *7 (TTAB 2018) (both citing *In re Viterra Inc*., 671 F.3d 1358, 1362 (Fed. Cir. 2012) (Board entitled to rely on this legal presumption); *In re Yawata Iron & Steel Co*., 403 F.2d 752, 754 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same)). Moreover, the third-party website evidence shows that these design services are typically offered in conjunction with surveying and construction services,[16] all of which would tend to flow through the same channels of trade to the same or overlapping classes of purchasers: in this case, private, commercial, and governmental landowners. *Charger Ventures*, 64 F.4th at

[14] Applicant's brief, 6 TTABVUE 10.

[15] Examining Attorney's brief, 13 TTABVUE 8.

[16] Sept. 13, 2023 Office Action at 9-34, April 27, 2024 Office Action at 7-27, March 12, 2025 Office Action at 52-269.

1382.

The third *DuPont* factor therefore favors a finding of likelihood of confusion.

D. Customer Sophistication and Care

Under the fourth *DuPont* factor, we consider "[t]he conditions under which and buyers to whom sales are made, i.e., 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361.

Applicant maintains that "the conditions of services between Applicant's Mark and Registrant's Mark are characterized by a high level of attention and consideration on the part of the consumer, particularly within professional contexts for example, Architects vs General Contractors. … Here, purchasers of both Applicant's coordination and design services and Registrant's design and construction services display a heightened level of sophistication, given that these services directly impact personal and public infrastructure."[17]

The Examining Attorney counters that "Neither applicant's nor registrant's services limit potential consumers or audiences and the use of the wording 'professional engineering services' in registrant's services indicates that their engineering services are **provided by** professionals…."[18]

We find that the inherent nature of the subject services—surveying, design, and construction—would tend to engender an elevated level of sophistication and care among purchasers. "[I]n light of the inherent nature of the goods and services

[17] Applicant's brief, 6 TTABVUE 11.

[18] Examining Attorney's brief, 13 TTABVUE 9 (emphasis added).

involved, some degree of purchasing care may be exercised by Applicant's potential or actual consumers." *Heil v. Tripleye*, 2024 WL 4925901, at *36 (quoting *Info. Builders*, 2020 WL 2094122, at *6). The commercial and governmental clients would tend to negotiate terms at great length and select their service providers from a field of bidders. And given the inherently high cost of such services, even private landowners would exercise a heightened level of care. *Weiss Assocs. v. HRL Assocs.,* 902 F.2d 1546, 1548 (Fed. Cir. 1990) ("In making purchasing decisions regarding 'expensive' goods, the reasonably prudent person standard is elevated to the standard of the 'discriminating purchaser.'")

On the other hand, even careful and sophisticated purchasers are not immune from source confusion. *Charger Ventures,* 64 F.4th at 1383. The natural care and sophistication that attend services of this sort could be vitiated to some extent by other factors, such as the similarity of the marks and the relatedness of the services. *In re Samsung Display Co., Ltd*., 2024 WL 3451873, *10 n. 31 (TTAB 2024). In this case, as noted, Registrant's mark subsumes Applicant's HRG wording, yielding the appearance that Registrant's suffix, HRGREEN, merely elaborates on the initialism preceding it. "In other words, even careful purchasers who do notice the difference in the marks will not ascribe it to differences in the source of the [services], but will see the marks as variations of each other, pointing to a single source." *In re I-Coat Co., LLC,* 2018 WL 2753196, *11 (TTAB 2018). As we have further noted, the services here are legally identical in part, and travel through the same or similar channels of trade to the same or similar classes of customers. "[T]he [services] are so closely

related that purchasers of the respective [services] could reasonably expect them to have a common source in view of a similarity of the marks." *WinchargerCorp. v. Rhino Inc.*, 297 F.2d 261, 264 (CCPA 1962).

On balance, taking these considerations into account, we find that the fourth *DuPont* factor weighs somewhat against a likelihood of confusion.

II. Conclusion

Based on careful review of the evidence and law, as well as the briefs and arguments, we weigh and balance the applicable *DuPont* factors as follows. The fourth *DuPont* factor weighs somewhat against a likelihood of confusion, but its effect is ultimately outweighed by the similarity of the marks, the relatedness of the services, and the attendant channels of trade and classes of customers.

On the whole, then, we find that confusion is likely under Section 2(d) of the Trademark Act. 15 U.S.C. § 1052(d).

Decision: The refusals to register Applicant's marks are affirmed.