This Opinion is Not a Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Part of the Solution

Serial No. 97791804
Serial No. 97791806
(Consolidated)

Lisa Li of Greenberg Traurig, LLP for Part of the Solution.

Khanh M. Le, Trademark Examining Attorney, Law Office 116,
Elizabeth Jackson, Managing Attorney.

Before Larkin, Dunn, and Allard,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Part of the Solution ("Applicant") seeks registration on the Principal Register of the standard-character mark POTS and the composite word-and-design mark shown below

for "Distributorship services in the field of food; Procurement, namely, purchasing food for others; Charitable services in the nature of coordination of the procurement and distribution of food donations from the general public to needy persons; Charitable services, namely, organizing and conducting volunteer programs and community service projects; Charitable services, namely, organizing and developing projects that aim to improve the lives of underprivileged and impoverished people" in International Class 35.[1]

The Trademark Examining Attorney has refused registration of both marks under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that each mark so resembles the standard-character mark POTS, registered on the Principal Register for, among many other things,

- "recorded computer software for use in . . . fundraising services and financial sponsorship; downloadable mobile application software for use in . . . fundraising services and financial sponsorship" in International Class 9;
- "the bringing together, for the benefit of others, of a variety of services, namely, . . . fundraising services and financial sponsorship, . . . enabling consumers to conveniently view and purchase those services" in International Class 35;

[1] Application Serial No. 97791804 (the "'804 Application") to register the standard-character mark was filed on February 13, 2023 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claim of first use of the mark and first use of the mark in commerce in connection with the Class 35 services at least as early as January 6, 1982.

Application Serial No. 97791806 (the "'806 Application") to register the composite mark was also filed on February 13, 2023 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claim of first use of the mark and first use of the mark in commerce in connection with the Class 35 services at least as early as January 1, 2008. The composite mark is described as "consist[ing] of the stylized letters 'POTS' with two curved lines on either side all inside a circle." Color is not claimed as a feature of the mark. Both applications originally also covered services in Class 45, but were subsequently divided.

- "fundraising for and financial sponsorship of cultural, business, charitable and sporting events; information, consultancy, and advisory services in connection with all of the aforesaid" in International Class 36; and

- "Platform as a Service (PaaS) featuring software for use in the provision of . . . fundraising services and financial sponsorship, . . .; Infrastructure as a Services [sic] featuring software for use in the provision of . . . fundraising services and financial sponsorship; hosting of websites for the provision of . . . fundraising services and financial sponsorship" in International Class 42,[2]

as to be likely, when used in connection with the services identified in the application, to cause confusion, to cause mistake, or to deceive.

When the Examining Attorney made the refusals final, Applicant requested reconsideration in both cases, which was denied, and subsequently appealed both refusals. After Applicant filed its appeal briefs, the Examining Attorney moved to consolidate the appeals on the ground that they involved common questions of law and fact. 8 TTABVUE 1 ('804 and '806 Applications). The Board granted the motion and consolidated the two cases. 9 TTABVUE 1 ('804 and '806 Applications). Both appeals are fully briefed.[3] We reverse both refusals to register.

[2] The cited Registration No. 7357860 (the "'860 Registration") issued on April 16, 2024 to Monzo Bank Limited ("Registrant," "Monzo," or "Monzo Bank"), a United Kingdom company, from an application filed under Sections 1(b) and 44(e) of the Trademark Act, 15 U.S.C. §§ 1051(b), 1126(e). The identifications of goods and services in Classes 9, 35, 36, and 42 in the '860 Registration are eight pages long and cover numerous goods and services in each of the respective classes.

[3] Citations in this opinion to the briefs refer to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. In both appeals, Applicant's appeal brief appears at 6 TTABVUE and its reply brief appears at 11 TTABVUE, and the Examining Attorney's brief appears at 10 TTABVUE. The briefs are substantively the same except to the extent that they discuss the two different applied-for marks, and unless otherwise indicated, we will cite the briefs in the appeal in the '804 Application.

I. Prosecution and Procedural Histories, and Records on Appeal[4]

We summarize below the virtually identical prosecution histories of the applications, and the virtually identical records on appeal.

As noted above, Applicant originally filed to register both of its marks in Classes 35 and 45 based on specimens of use consisting of a screenshot from its website in Class 35 and a newsletter in Class 45.[5] The '804 and '806 Applications were assigned to the same Examining Attorney and proceeded in parallel.

The '804 Application was initially suspended based on a prospective citation of the mark shown in the application that ultimately matured into the '860 Registration.[6] When the '860 Registration issued, the Examining Attorney issued an Office Action in the '804 Application refusing registration of Applicant's mark under Section 2(d) in both classes,[7] making of record USPTO electronic records regarding the cited registration and third-party webpages that allegedly "establishe[d] that the same entity commonly manufactures, produces, or provides the relevant goods and/or services and markets the goods and/or services under the same mark."[8] Applicant responded to the Office Action by arguing against the refusal,[9] and making of record

[4] Citations in this opinion to the application records are to pages in the downloadable .pdf version of the Trademark Status & Document Retrieval ("TSDR") database of the United States Patent and Trademark Office ("USPTO").

[5] February 13, 2023 '804 Application at TSDR 9-14; February 13, 2023 '806 Application at TSDR 1-29.

[6] November 14, 2023 Suspension Notice at TSDR 1-2.

[7] June 4, 2024 Office Action at TSDR 2-4 ('804 Application).

[8] *Id.* at TSDR 3, 5-82.

[9] September 3, 2024 Response to Office Action at TSDR 9-33 ('804 Application).

pages from Registrant's website;[10] USPTO electronic records regarding third-party registrations that Applicant claimed showed identical marks used for both sets of involved services and identical or near-identical marks both used for charitable services;[11] pages from Applicant's website;[12] and a Wikipedia entry regarding Registrant.[13]

In the '806 Application, the Examining Attorney initially issued an Office Action noting the pendency of the application that matured into the '860 Registration and the possible citation of that prior-pending application, and addressing some informalities.[14] Applicant responded to the Office Action and elected to argue against the prospective Section 2(d) refusal,[15] making of record the pages from its website, the pages from Registrant's website and the Wikipedia entry discussed above in connection with the '804 Application.[16] The Examining Attorney then suspended examination of the '806 Application pending the disposition of the prior-pending application.[17]

[10] *Id.* at TSDR 34-51.

[11] *Id.* at TSDR 10-17, 52-136.

[12] *Id.* at TSDR 137-56.

[13] *Id.* at TSDR 157-66.

[14] November 14, 2023 Office Action at TSDR 1-3 ('804 Application).

[15] November 20, 2023 Response to Office Action at TSDR 39-54 ('806 Application).

[16] *Id.* at TSDR 6-38.

[17] December 12, 2023 Suspension Notice at TSDR 1-2 ('806 Application).

In the '804 Application, the Examining Attorney next issued an Office Action making final the Section 2(d) refusal as to Class 35 only.[18] The Examining Attorney again made of record USPTO electronic records regarding the '860 Registration,[19] and third-party webpages that allegedly "establish[ed] that the same entity commonly manufactures, produces, or provides the relevant goods and/or services and markets the goods and/or services under the same mark."[20]

In the '806 Application, the Examining Attorney next issued a non-final Office Action refusing registration under Section 2(d) based on the '860 Registration.[21] The Examining Attorney made of record the USPTO electronic records regarding the '860 Registration and the third-party webpages discussed above in connection with the first Office Action in the '804 Application.[22]

Applicant requested reconsideration of the final refusal in the '804 Application.[23] In its Request for Reconsideration, Applicant made of record pages from Registrant's website;[24] third-party webpages that Applicant claimed showed that the involved services were not related;[25] USPTO electronic records regarding third-party registrations that Applicant claimed showed that identical or near-identical marks

[18] October 11, 2024 Final Office Action at TSDR 2-6 ('804 Application).

[19] *Id.* at TSDR 7-15. It was unnecessary for the Examining Attorney to submit these records again.

[20] *Id.* at TSDR 4, 16-193.

[21] August 27, 2024 Office Action at TSDR 1-4 ('806 Application).

[22] *Id.* at TSDR 5-82.

[23] November 20, 2024 Request for Reconsideration at TSDR 8-18 ('804 Application).

[24] *Id.* at TSDR 19-36, 113-15.

[25] *Id.* at TSDR 37-61.

coexist on the Register for the involved services;[26] and the Wikipedia entry regarding Registrant.[27] The Examining Attorney denied the Request for Reconsideration.[28]

A few days later, Applicant requested that the '804 Application be divided,[29] filed an appeal, and simultaneously filed a second Request for Reconsideration addressed to Class 35 only that referenced evidence made of record on Applicant's first Request for Reconsideration.[30] The USPTO granted Applicant's request to divide,[31] and the Examining Attorney subsequently denied Applicant's second Request for Reconsideration.[32]

In the '806 Application, Applicant argued against the non-final refusal to register,[33] and made of record the pages from its website and Registrant's website, the USPTO electronic records regarding the third-party registrations, and the Wikipedia entry regarding Registrant discussed above in connection with the '804 Application.[34] The Examining Attorney then issued an Office Action making final the Section 2(d) refusal to register as to Class 35 only.[35] The Examining Attorney made

[26] *Id.* at TSDR 62-112.

[27] *Id.* at TSDR 116-27. It was unnecessary for Applicant to make the same Wikipedia entry of record again.

[28] January 2, 2025 Denial of Request for Reconsideration at TSDR 1-5 ('804 Application).

[29] January 7, 2025 Request to Divide at TSDR 1-3 ('804 Application).

[30] January 8, 2025 Request for Reconsideration at TSDR 1-9 ('804 Application).

[31] January 15, 2025 Notice That Processing of Request to Divide Application is Completed at TSDR 1-3 ('804 Application).

[32] March 27, 2025 Denial of Request for Reconsideration at TSDR 1-2.

[33] September 3, 2024 Response to Office Action at TSDR 9-35 ('806 Application).

[34] *Id.* at TSDR 36-168.

[35] October 11, 2024 Final Office Action at TSDR 1-7 ('806 Application).

of record USPTO electronic records regarding the '860 Registration and third-party webpages that the Examining Attorney claimed showed that the involved services are related.[36] The remainder of the prosecution of the '806 Application followed the course of the '804 Application, with Applicant twice seeking, and being denied, reconsideration of the final refusal,[37] and dividing its application.

As discussed above, after Applicant filed its appeal briefs in both appeals, the Examining Attorney moved to consolidate the appeals, and the appeals were consolidated and are now ready for decision in this single opinion.

II. Preliminary Matter

In the appeal in the '804 Application, Applicant attached to its appeal brief a plain copy of the certificate of registration of Registration No. 7782012 for the POTS standard-character mark for the Class 45 services originally identified in the '804 Application, which registration issued to Applicant on May 6, 2025 from Application Serial No. 97979542, the "child" application following division of the '804 Application. 6 TTABVUE 27-29 ('804 Application). In the appeal in the '806 Application, Applicant attached to its appeal brief a plain copy of the certificate of registration of Registration No. 7782013 for the POTS composite mark for the Class 45 services originally identified in the '804 Application, which registration also issued to Applicant on May 6, 2025 from Application Serial No. 97979585, the "child"

[36] *Id.* at TSDR 8-194.

[37] November 20, 2024 Request for Reconsideration; January 2, 2025 Denial of Request for Reconsideration; January 8, 2025 Request for Reconsideration; March 27, 2025 Denial of Request for Reconsideration ('806 Application).

application following division of the '806 Application. 6 TTABVUE 27-29 ('806 Application).

In both cases, Applicant states that "[t]his mark was registered on May 6, 2025, after the March 11, 2025, deadline to submit argument/evidence in this matter and thus Applicant respectfully requests that the registration certificate be allowed in evidence herein." 6 TTABVUE 18 n.22 ('804 Application); 6 TTABVUE 19 n.22 ('806 Application). The Examining Attorney does not address Applicant's request in either of her briefs. Under the circumstances, we will deem the two Class 45 registrations to be of record in the respective Applications.

III. Analysis of Likelihood of Confusion Refusals

"The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive." *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination of the likelihood of confusion under Section 2(d) of the Trademark Act is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"). *Charger Ventures*, 64 F.4th at 1379. We consider each *DuPont* factor for which there is evidence and argument. *See, e.g.*, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

"Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because 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." *DC Comics v. Cellular Nerd LLC*, Opp. No. 91246950, 2022 WL 17832492, at *10 (TTAB 2022) (internal quotations and quotation marks omitted). In both appeals, Applicant and the Examining Attorney focus on these two key factors. 6 TTABVUE 5-13; 10 TTABVUE 3-9. Applicant also discusses the third, fourth, fifth, seventh, eighth, twelfth, and thirteenth *DuPont* factors. 6 TTABVUE 13-26.

A. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, "we consider the 'similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.'" *In re Ye Mystic Krewe of Gasparilla*, Ser. No. 90522364, 2025 WL 2953731, at *4 (TTAB 2025) (quoting *DuPont*, 476 F.2d at 1361). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *Sage Therapeutics, Inc. v. Sageforth Psych. Servs., LLC*, Opp. No. 91270181, 2024 WL 1638376, at *5 (TTAB 2024) (quoting *In re Inn at St. John's LLC*, Ser. No. 87075988, 2018 WL 2734893, at *5 (TTAB 2018) (citation omitted), *aff'd per curiam*, 777 F. App'x 516 (Fed. Cir. 2019)); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted).

"The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection

between the parties." *Sage Therapeutics*, 2024 WL 1638376, at *5 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012)). "The focus is on the recollection of the average purchaser, who normally 'retains a general rather than a specific impression of marks.'" *Id.* (quoting *In re i.am.symbolic, llc*, Ser. No. 85916778, 2018 WL 3993582, at *4 (TTAB 2018) (citations omitted)). In identifying the "average purchasers" of the services identified in the '804 and '806 Applications, we note that the Applications cover the five distinct sets of services listed above and discussed in detail below. The three services that are the focus of the Examining Attorney's arguments contain preambles characterizing them as "Charitable services" that are rendered to, or on behalf of, volunteers and other persons involved in community service, and persons in need, and they do not appear to have "purchasers" per se, but rather recipients or beneficiaries of the services.

1. The '804 Application

The marks shown in the '804 Application and in the cited '860 Registration are both POTS in standard characters. Applicant concedes in its reply brief that the POTS marks are "identical in sound and appearance," 11 TTABVUE 9, but "vigorously disputes that they are identical, or even similar, in connotation and commercial impression . . . ." *In re Embiid*, Ser. No. 88202890, 2021 WL 2285576, at *4 (TTAB 2021). According to Applicant, "the connotation and commercial impression of the two marks is clearly different." 6 TTABVUE 10.

Applicant argues that

> [t]he letters P, O, T, and S in Applicant's Mark do not literally mean "pots" as in "containers", but rather are the abbreviation of Applicant's name, Part Of The Solution.

> This is apparent in the specimen of use submitted for Applicant's Mark which shows the mark next to Applicant's name:
>
> 
>
>
> In contrast, the letters P, O, T, and S in Monzo's Mark, POTS, literally do combine to mean "pots" as in "containers", virtual containers that is, in that they refer to "pots" of money earmarked for different purposes, e.g., an expenses "pot", emergency fund "pot", credit card "pot", etc. As explained on Monzo Bank's website, "[a] 'Pot' is a place in your account where you can keep your money separate from your main balance. 'Regular Pots' are really useful for separating money for your bills, or trying to stick to a budget. You can stash money away so that you don't spend it from your main balance, kind of like a piggy bank. 'Savings Pots' are very similar, but pay you interest on the money in your Pot."

Id. at 10-11 (record citation omitted).

In support of this argument, Applicant rounds up the usual suspects in its brief, citing

> *In re Best Prods. Co.*, 231 USPQ 988, 989-90 (TTAB 1986) (holding BEST JEWELRY and design for retail jewelry store services and JEWELERS' BEST for bracelets not likely to cause confusion); *In re Sears, Roebuck & Co.*, 2 USPQ2d 1312, 1314 (TTAB 1987) (holding CROSSOVER for bras not likely to be confused with CROSSOVER for ladies' sportswear); *In re British Bulldog, Ltd.*, 224 USPQ 854, 856 (TTAB 1984) (holding PLAYERS for men's underwear and PLAYERS for shoes not likely to cause confusion, as the term "PLAYERS" implies a fit, style, color, and durability suitable for outdoor activities when applied to shoes, but "'implies something else, primarily indoors in nature'" when applied to men's underwear); and, *In re Sydel Lingerie Co.*, 197 USPQ 629, 630 (TTAB 1977) (holding BOTTOMS UP for ladies' and children's underwear and BOTTOMS UP for men's clothing not likely

> to cause confusion as the wording connotes the drinking phrase "Drink Up" when applied to men's clothing, but does not have this connotation when applied to ladies' and children's underwear).

Id. at 11-12.[38]

Applicant concludes that

> the connotative differences between the marks herein combine to create different commercial impressions such that there is no likelihood of confusion between them. Applicant's Mark creates the commercial impression of the organization, Part Of The Solution, working to improve the lives of the underprivileged and impoverished whereas Monzo's Mark creates the commercial impression of banking and money and managing one's money by separating it into virtual "pots" for different spending or saving purposes. Again, individuals seeing Applicant's Mark will understand the nature of Applicant's services and will not be confused by Monzo's Mark covering Monzo Bank's software goods and services, and vice versa, despite both marks including the letters P, O, T, and S.

Id. at 12.

The Examining Attorney responds that "[w]hen viewed in relation to the goods and services in the application, the meaning of the word 'pots' is its ordinary dictionary definition, which is the same in the application and registration." 10 TTABVUE 4. The Examining Attorney argues that Applicant's reliance on the cited

[38] Applicant cites additional cases in its reply brief in which it claims that "identical marks project[ed] different meanings and commercial impressions when they [were] applied to different goods or services and no likelihood of confusion was found . . . ." 11 TTABVUE 8-9 (citations omitted). Applicant argues in its reply brief that the commercial meanings of the POTS marks "differ due to the nature of the goods and services with which they are used. The context in which each mark is presented to consumers leads to distinct perceptions and associations and, as a result, the marks do not convey the same meaning or source indication in relation to the respective covered services similar to the term 'APPLE' for computers versus 'APPLE' for fruit." *Id.* at 9.

cases is "misplaced because the meanings [of POTS] are not derived in relation to the goods and services in the application and registration but in relation to applicant's name and registrant's website pages," and in the cited cases, "the different meanings of these marks were derived in relation to the goods in the applications, not how they are used in commerce." *Id.*

We agree with the Examining Attorney. Applicant's corporate name "Part of the Solution" does not appear in the drawing in the '804 Application, and the cited portions of Registrant's website do not appear in the drawing in the '860 Registration. "[W]e do not consider how Applicant and Registrant actually use their marks in the marketplace, but rather how they appear in the registration and the application. We must compare the marks as they appear in the drawings, and not on any [materials] that may have additional wording or information." *In re Aquitaine Wine USA, LLC*, Ser. No. 86928469, 2018 WL 1620989, at *4 (TTAB 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1324 (Fed. Cir. 2017) ("To the extent that Symbolic is advocating that we consider another mark, will.i.am, that is not part of the applied-for mark in analyzing the similarity of the marks, we decline to do so. The correct inquiry requires comparison of the applied-for mark, which only includes the words 'I AM,' to the registrants' marks.") (internal citation omitted)). The two POTS standard-character marks "have the potential to be used . . . in exactly the same manner." *In re i.am.symbolic, llc*, Ser. No. 85044494, 2015 WL 6746543, at *5 (TTAB 2015), *aff'd*, 866 F.3d 1315 (Fed. Cir. 2017).

There is also nothing on the face of Applicant's standard-character POTS mark to suggest that it abbreviates Applicant's corporate name. *See In re Max Cap. Grp. Ltd.*, Ser. No. 77186166, 2010 WL 22358, at *5 (TTAB 2010) (the word MAX in the applicant's composite mark "would be perceived as the word MAX, rather than as an abbreviation for applicant's company name, because it is not depicted with periods or anything that would indicate that MAX stands for the initials of 'Mutual' and 'Aid' and an abbreviation for 'Exchange'").

Finally, unlike in the cases cited by Applicant, there is "no evidence here, or other reason to find, that the mark [POTS] has one meaning when used with [the services identified in the '804 Application], and a second and different meaning when used with [the goods and services identified in the '860 Registration], based on the nature of the respective [goods and services]." *Embiid*, 2021 WL 2285576, at *9.

Applicant "'does not, and cannot, dispute that the mark [POTS] in standard character form, and [Registrant's mark POTS] in standard character . . . form, are pronounced the same way," *id.* (quoting *i.am.symbolic*, 866 F.3d at 1324), and Applicant "did not establish . . . that [POTS] when applied to [Applicant's services] 'brings to mind' something different from [POTS] when applied to [Registrant's] mark[ ]." *Id.* (quoting *i.am.symbolic*, 866 F.3d at 1325).

The involved POTS standard-character marks are thus identical in appearance, sound, and connotation and commercial impression. Because "the marks are identical . . . this factor weighs heavily in favor of a likelihood of confusion" with respect to the

'804 Application. *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022).

2. The '806 Application

The composite mark shown in the '806 Application is reproduced again below:

Applicant implicitly concedes that the POTS word mark shown in the '860 Registration and the composite mark shown in the '806 Application would sound the same when the marks are verbalized by arguing only for dissimilarity in appearance and meaning. 6 TTABVUE 10 ('806 Application) (arguing that Applicant's mark "**is visually and connotatively distinct from Monzo's Mark and creates a different commercial impression**" (emphasis supplied by Applicant)).

Applicant argues that its composite mark "is a distinctive design mark whereas Monzo's Mark [POTS] is simply a word mark without the eye-catching graphic elements of Applicant's Mark" and that "[c]ontrary to the Examiner's assertions, the design elements in Applicant's Mark clearly dominate Applicant's Mark and distinguish it from Monzo's Mark." *Id.* Applicant makes the same arguments that it made in the '804 Application with respect to the connotations of the word POTS that appears in the drawings in the '806 Application and in the '860 Registration. *Id.* at 10-12.

Applicant concludes that its composite mark "is distinguishable from the Monzo Mark in terms of the respective marks' visual, connotative, and commercial impressions such that there is no likelihood of confusion between them." *Id.* at 13.

The Examining Attorney responds to Applicant's arguments regarding the impact of the design element of its mark on the dissimilarity of the marks in appearance as follows:

> The registrant's mark is "POTS" in standard characters. The literal and dominant portion of applicant's mark is identical to the registrant's mark in sound, meaning and commercial impression. Further, the registered mark is in standard characters and may be presented in any stylization. Thus, the marks are highly similar or identical in appearance, sound, meaning and commercial impression.

10 TTABVUE 3-4 ('806 Application). The Examining Attorney's arguments in response to Applicant's arguments regarding the dissimilarity of the marks in meaning echo those that she made with respect to the standard-character mark shown in the '804 Application. *Id.* at 5.

We begin our analysis by identifying the dominant portion of Applicant's composite mark. Marks must be considered in their entireties, but "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties." *In re Jimenez*, Ser. No. 97551823, 2025 WL 3126703, at *5 (TTAB 2025) (citing *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018) (quoting *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)).

"In marks 'consisting of words and a design, the words are normally accorded greater weight because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the goods.'" *Sabhnani v. Mirage Brands, LLC*, Canc. No. 92068086, 2021 WL 6072822, at *16 (TTAB 2021) (quoting *Aquitaine Wine USA*, 2018 WL 1620989, at *2 (citing *In re Viterra, Inc.*, 671 F.3d 1358, 1366 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F.2d 1579, 1580-82 (Fed. Cir. 1983))). "The verbal portion of a word and design mark 'likely will appear alone when used in text and will be spoken when requested by consumers.'" *Id.* (quoting *Viterra*, 671 F.3d at 1366 (internal citation omitted)).[39]

In the '806 Application, Applicant states that its composite mark "consists of the stylized letters 'POTS' with two curved lines on either side all inside a circle."[40] The circle element of Applicant's composite mark is merely a "non-descript 'carrier'" for the word POTS, *id.*, and the "two curved lines on either side" of the word POTS have no source-identifying significance. *See, e.g., In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) ("Neither the design element nor the generic term 'café' offers sufficient distinctiveness to create a different commercial impression. Indeed, as the board found, the design is an ordinary geometric shape that serves as a background for the word mark."); *In re Ocean Tech., Inc.*, Ser. No. 87405211, 2019 WL 6245131, at *4 (TTAB 2019) ("the circular design around the wording '100% REAL CALLINECTES CRAB' on the right side of the proposed marks is a common

[39] Applicant's specimen of use of the mark shown in the '806 Application frequently uses the word POTS alone in text. February 13, 2023 '806 Application at TSDR 11-29.

[40] As noted above, color is not claimed as a feature of the mark.

geometric shape that consumers likely would perceive as a background design or carrier to the enclosed wording, rather than as a separable design element with trademark significance."). We find that the word POTS is the dominant portion of the mark because of its "size, position, and emphasis" within the mark. *Aquitaine Wine USA*, 2018 WL 1620989, at *2. In comparing the involved marks in their entireties, we will give greater weight to the word POTS in Applicant's mark than to the modest design elements.

The cited POTS mark is a standard-character mark and "'may be used in 'any particular font style, size, or color', including 'the same font, size and color as the literal portions of [Applicant's] mark.'" *In re OSF Healthcare Sys.*, Ser. No. 88706809, 2023 WL 6140427, at *3 (TTAB 2023) (quoting *Aquitaine Wine USA*, 2018 WL 1620989, at *5 (quoting Trademark Rule 2.52(a), 37 C.F.R. § 2.52(a))). Accordingly, we must assume that the cited POTS mark could be depicted in the same size and font in which the dominant word POTS appears in Applicant's mark.

Although there are some visual differences between the marks due to the presence of the modest design elements in Applicant's mark, they are outweighed by the similarities owing to the presence of the identical word POTS in both marks, particularly when we assume the depiction of the cited mark in the same font and size as the dominant word POTS in Applicant's mark.

Applicant's arguments for dissimilarity in connotation and commercial impression fare no better here than they do in the appeal in the '804 Application. As discussed above, we must consider the marks as shown in the respective drawings and not as

they may actually be used, and there is again nothing on the face of Applicant's composite mark indicating that the word POTS is an abbreviation, and no evidence supporting Applicant's claim that POTS means one thing in Applicant's mark, and an entirely different thing in the cited mark, in the context of the respective goods and services.

"Similarity is not a binary factor but is a matter of degree." *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (citation omitted). The marks are identical in sound when verbalized, and very similar in appearance, and connotation and commercial impression. The first *DuPont* factor weighs heavily in favor of a conclusion that confusion is likely with respect to the '806 Application. *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1119 (Fed. Cir. 2024).

B. Similarity or Dissimilarity of the Services[41]

"The second *DuPont* factor considers '[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration . . . .'" *Detroit Athletic Co.*, 903 F.3d at 1306 (quoting *DuPont*, 476 F.2d at 1361). "This factor considers whether 'the consuming public may perceive [the goods or services] as related enough to cause confusion about the source or origin of the goods or services.'" *St. Helena Hosp.*, 774 F.3d at 752 (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002)).

[41] The services identified in the '804 and '806 Applications are identical, and we will address the second *DuPont* factor as to both Applications in this section.

"The 'services need not be identical or even competitive to find a likelihood of confusion.'" *OSF Healthcare*, 2023 WL 6140427, at *4 (quoting *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 WL 6170483, at *2 (TTAB 2019)).[42] "They need only be related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [they] emanate from the same source." *Id.* (quoting *Country Oven*, 2019 WL 6170483, at *2 (quoting *Coach Servs.*, 668 F.3d at 1369) (internal quotation and quotation marks omitted)). With respect to the identical standard-character POTS marks in the appeal in the '804 Application, "[i]n assessing the relatedness of the services, we are mindful that 'the degree of 'relatedness' must be viewed in the context of all the factors" and that "even when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source.'" *Id.* (quoting *In re Shell Oil Co.*, 992 F.2d 1204, 1207 (Fed. Cir. 1993) (citing *Philip Morris Inc. v. K2 Corp.*, 555 F.2d 815, 816 (CCPA 1977)). The identity of the involved marks in the '804 Application reduces the degree of similarity of the involved goods and services required for confusion to be likely. *Embiid*, 2021 WL 2285576, at *10.

We "begin with the identifications of . . . services in the registration and application[s] under consideration." *Country Oven*, 2019 WL 6170483, at *3. As noted

[42] The "Examining Attorney need not prove, and we need not find, similarity as to each [service] listed in the description of [services]" in the '804 and '806 Applications. *OSF Healthcare*, 2023 WL 6140427, at *5 (citation omitted). "[I]t is sufficient for finding a likelihood of confusion if relatedness is established for any [service] encompassed by the identification of [services] within a particular class in the application." *Id.* (citations omitted).

above, the cited '860 Registration covers dozens of goods and services, but the Examining Attorney bases the refusals on the following ones:

- "recorded computer software for use in . . . fundraising services and financial sponsorship; downloadable mobile application software for use in . . . fundraising services and financial sponsorship" in Class 9;
- "the bringing together, for the benefit of others, of a variety of services, namely, . . . fundraising services and financial sponsorship, . . . enabling consumers to conveniently view and purchase those services" in Class 35;
- "fundraising for and financial sponsorship of cultural, business, charitable and sporting events; information, consultancy, and advisory services in connection with all of the aforesaid" in Class 36; and
- Platform as a Service (PaaS) featuring software for use in the provision of . . . fundraising services and financial sponsorship, . . .; Infrastructure as a Services [sic] featuring software for use in the provision of . . . fundraising services and financial sponsorship; hosting of websites for the provision of . . . fundraising services and financial sponsorship" in Class 42.

10 TTABVUE 2-3, 5. The common thread in the identifications of these goods and services is language pertaining to "fundraising."

"[W]e must construe the [goods and] services identified in the cited registration as broadly as reasonably possible to include all [goods and services] of the nature and type described therein," *OSF Healthcare*, 2023 WL 6140427, at *5 (internal quotation and quotation marks omitted), and "we must resolve any ambiguities regarding their coverage in favor of the cited registrant 'given the presumptions afforded the registration under Section 7(b)' of the Trademark Act." *Id.* (quoting *In re C.H. Hanson Co.*, Ser. No. 77983232, 2015 WL 6121759, at *5 (TTAB 2015) (citing 15 U.S.C. § 1057(b))).

The '804 and '806 Applications cover five distinct sets of services: "Distributorship services in the field of food; Procurement, namely, purchasing food for others;

Charitable services in the nature of coordination of the procurement and distribution of food donations from the general public to needy persons; Charitable services, namely, organizing and conducting volunteer programs and community service projects; Charitable services, namely, organizing and developing projects that aim to improve the lives of underprivileged and impoverished people." As with the goods and services identified in the '860 Registration, we must give the identifications of these services "their full scope in our analysis of the second *DuPont* factor." *Id.* (citing *Country Oven*, 2019 WL 6170483, at *5). In giving these identifications their full scope, we must bear in mind that "[t]o be a service, an activity must be primarily for the benefit of someone other than the applicant . . . ." TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") Section 1301.01(a)(ii) (Nov. 2025).

The relatedness of goods or services may be established based on (1) the language of the involved identifications of goods or services, which may show, on the face of the identifications, that the goods or services are literally or legally identical, or otherwise intrinsically related, and (2) extrinsic evidence, including third-party uses and registrations, which may show that the identified goods or services are commonly offered by the same entity under the same mark. *OSF Healthcare*, 2023 WL 6140427, at *4 ("Evidence of relatedness may include news articles or evidence from computer databases showing that the relevant goods [or services] are used together or used by the same purchasers; advertisements showing that the relevant goods [or services] are advertised together or sold by the same manufacturer or dealer; or copies of prior use-based registrations of the same mark for both applicant's goods [or services] and

the goods [or services] listed in the cited registration [and] [t]he application and registration themselves may provide evidence of the relationship between the [goods or] services.") (quotations and citations omitted).

The Examining Attorney relies here solely on extrinsic evidence in the form of third-party websites.[43] 10 TTABVUE 5-7. In *OSF Healthcare*, the Board explained that "[w]ith respect to Internet evidence, in determining exactly what services are offered through the respective websites, we acknowledge that services may not be explicitly described at all, or may be described in colloquial language that does not track the technical language of acceptable identifications of goods and services in applications and registrations, including those involved here." *OSF Healthcare*, 2023 WL 6140427, at *10 (citation omitted). "In such instances, we must determine the nature of the services that are offered, and decide whether they fall within the full scope of the language in the involved identifications." *Id.* (citation omitted).[44]

[43] Applicant argues that "[n]o extrinsic evidence is needed to understand the respective services," that a "simple reading of Applicant's services clearly shows them to be charitable services for the hungry and impoverished," and that a "reading of the plethora of goods and services under the Monzo Mark shows them to be clearly related to banking and finance and they do not include ***any*** charitable services." 6 TTABVUE 9 (emphasis supplied by Applicant). According to Applicant, "the straightforward reading of the parties' respective goods and services required by the Examiner does not reveal any likelihood of confusion nor that they are related let alone closely related and no extrinsic evidence is required to come to that conclusion." *Id.* Applicant's last point is incorrect to the extent that it suggests that if goods and services are not intrinsically related based on their identifications, they cannot be found to be related based on extrinsic evidence.

[44] Citing the Board's non-precedential decision in *In re Namchak Found.*, Ser. No. 97150350, 2025 WL 914462 (TTAB Mar. 6, 2025), Applicant accuses the Examining Attorney of "incorrectly conflat[ing] third-party website evidence with third-party registration evidence." 6 TTABVUE 8. Applicant's argument is unavailing. Although we are not bound by the non-precedential *Namchak Found.* decision, *see*, *e.g.*, *In re Fiat Grp. Mktg. & Corp. Commc'ns S.P.A.*, Ser. No. 71099154, 2014 WL 721511, at *3 n.6 (TTAB 2014), the Board's analysis in that case is consistent with the approach that we must take under the binding *OSF Healthcare* precedent. The Board stated in *Namchak Found.* that "[w]hile we can expand and

The Examining Attorney discusses two websites, of Arlington Food Assistance Center (AFC) (Arlington, Virginia),[45] and Find Food Bank (Indio, California),[46] as "illustrative examples" of relatedness. 10 TTABVUE 6. The record also contains pages from the websites of Capital Area Food Bank (Washington, D.C. and Lorton, Virginia);[47] Allied People Offering Year-Round Outreach (APOYO) (Ellensburg, Washington);[48] Second Harvest Food Bank (Irvine, California);[49] Community Food Bank of New Jersey (Hillside, New Jersey);[50] Community Services Agency (Mountain View, California);[51] and Healing Meals Community Project (Weatogue, Connecticut).[52]

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give full scope to any services identified in a third-party registration, the same does not hold true for third-party website evidence, [and] the fact that websites of various religious organizations offer charitable services as well is insufficient to demonstrate that each religious organization provides [the identified services of] 'gatherings and retreats to develop and enhance the spiritual lives of individuals interested in the teachings and practices of individuals interested in the teachings and practices of the Namchak Tibetan Buddhist Fellowship' on the one hand, and 'meals for indigent people, residential care for homeless men, gifts for elderly shut-ins, gifts for patients in hospitals, rest homes and infirmaries, gifts for imprisoned persons, and gift packages to members of the armed forces' on the other, under the same mark." *Namchak Found.*, 2025 WL 914462 , at *5. Under *OSF Healthcare*, we must review the Internet evidence and determine what services are offered, and then determine whether they fall within the full scopes of the involved identifications and, as discussed below, the Examining Attorney must show that the services offered on the websites fit within the actual language of the identifications, not broadened, generalized, or paraphrased descriptions of the identified goods or services.

[45] October 11, 2024 Final Office Action at TSDR 16-33.

[46] *Id.* at TSDR 173-93.

[47] *Id.* at TSDR 34-52.

[48] *Id.* at TSDR 53-71.

[49] *Id.* at TSDR 72-92.

[50] *Id.* at TSDR 93-129.

[51] *Id.* at TSDR 131-57.

[52] *Id.* at TSDR 158-72.

The Examining Attorney argues that these websites "establish[ ] that the same entity commonly manufactures, produces, or provides the relevant goods and/or services and markets the goods and/or services under the same mark." 10 TTABVUE 5. According to the Examining Attorney,

> [t]he website evidence shows that charitable organizations that distribute food, also conduct and solicit sponsorship of fundraising events. Further, the evidence shows that charitable organizations commonly use software as a means for fundraising. As indicated in the identification, registrant's services include "fundraising for and financial sponsorship of cultural, business, charitable and sporting events" and software for use in fundraising. Thus, the relevant consumers, in this case would be people who are participating in fundraising events or looking to donate to charitable organizations either via events or online software. Contrary to applicant's argument, the intended audience of applicant's and registrant's services are the same, rather than "impoverished people who seek food and social services" and people "seeking fundraising services or fundraising software."

Id. at 6.

The Examining Attorney's Internet evidence is insufficient in quantity and quality to establish relatedness. The Examining Attorney made of record eight websites of charitable organizations. In *Namchak Found.*, the Board held that "the submission of only six religious organization websites is unconvincing for purposes of showing that Applicant's and Registrant's services are sufficiently related such that consumers expect them to emanate from the same source . . . ." *Namchak Found.*, 2025 WL 914462, at *4. Federal Circuit and Board cases have not fixed a minimum number of third-party websites or registrations that must be submitted by the USTPO to establish that goods or services "commonly" come from the same source

under the same mark, and the number of such third-party marks sufficient to make that showing will necessarily depend on various factors, such as the number of producers or sellers of the involved goods and services.

Here, Applicant's specimens and the third-party websites show that food insecurity and related problems unfortunately afflict millions of people throughout the United States, and the record suggests, on a more positive note, that there are numerous charitable organizations throughout the United States that provide goods and render services to those in need. Against that backdrop, eight websites strike us as too few in number to show that "the same entity **commonly** manufactures, produces, or provides the relevant goods and/or services and markets the goods and/or services under the same mark," 10 TTABVUE 5 (emphasis added), even if the websites were probative of that issue.

The websites here are not probative of that issue, however, because they do not show that the same entities offer both the services actually identified in the '804 and '806 Applications and the goods or services actually identified in the '860 Registration. As the Board explained in *OSF Healthcare*, under the second *DuPont* factor, examining attorneys must focus on the actual language in the identification of goods or services in an application, rather than on broadened or generalized descriptions of the identified goods or services. *OSF Healthcare*, 2023 WL 6140427, at *12.[53]

[53] The actual language of an application must be considered because "the services recited in the application determine the scope of the post-grant benefit of registration." *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1324 (Fed. Cir. 2014). The same principle applies to the language in the identifications in registrations, which define the "benefit of

The Examining Attorney did not heed that instruction in these cases,[54] as she quotes only snippets of the Class 36 identification in the '860 Registration,[55] and otherwise paraphrases the involved identifications of goods and services. Her argument that "[t]he website evidence shows that charitable organizations that distribute food, also conduct and solicit sponsorship of fundraising events," 10 TTABVUE 6, paraphrases and generalizes the services identified in the '804 and '806 Applications as "Charitable services in the nature of coordination of the procurement and distribution of food donations from the general public to needy persons," the Class 35 services identified in the '860 Registration as "the bringing together, for the benefit of others, of a variety of services, namely, . . . fundraising services and financial sponsorship, . . . enabling consumers to conveniently view and purchase those services," and the Class 36 services identified in the '860 Registration as "fundraising for and financial sponsorship of cultural, business, charitable and sporting events;

registration." Although we must construe the language in the identifications in the '860 Registration as broadly as reasonably possible and resolve any ambiguities in its coverage in favor of Registrant, relatedness must be based on the actual language of the identifications in the '860 Registration, not paraphrased versions of that language.

[54] The Examining Attorney's references to "charitable organizations," 10 TTABVUE 6, indicate that she is focusing on the services identified in the '804 and '806 Applications as "Charitable services in the nature of coordination of the procurement and distribution of food donations from the general public to needy persons," "Charitable services, namely, organizing and conducting volunteer programs and community service projects," and "Charitable services, namely, organizing and developing projects that aim to improve the lives of underprivileged and impoverished people." We will focus on those services in our analysis.

[55] The Class 36 identification in the '860 Registration includes "fundraising for and financial sponsorship of cultural, business, charitable and sporting events." There is no comparable language in the identification of services in the '804 and '806 Applications.

information, consultancy, and advisory services in connection with all of the aforesaid."

The Examining Attorney's argument that "the evidence shows that charitable organizations commonly use software as a means for fundraising," 10 TTABVUE 6, similarly paraphrases and generalizes the Class 9 goods identified in the '860 Registration as "recorded computer software for use in . . . fundraising services and financial sponsorship; downloadable mobile application software for use in . . . fundraising services and financial sponsorship," and the Class 42 services identified in the '860 Registration as "Platform as a Service (PaaS) featuring software for use in the provision of . . . fundraising services and financial sponsorship, . . .; Infrastructure as a Services [sic] featuring software for use in the provision of . . . fundraising services and financial sponsorship; hosting of websites for the provision of . . . fundraising services and financial sponsorship."

Whether charitable organizations "that distribute food, also conduct and solicit sponsorship of fundraising events," or whether charitable organizations "commonly use software as a means for fundraising," 10 TTABVUE 6, "is not the issue." *OSF Healthcare*, 2023 WL 6140427, at *12. We must determine instead whether the services identified in the '804 and '806 Applications as "Charitable services in the nature of coordination of the procurement and distribution of food donations from the general public to needy persons," "Charitable services, namely, organizing and conducting volunteer programs and community service projects," and "Charitable services, namely, organizing and developing projects that aim to improve the lives of

underprivileged and impoverished people" are commonly provided by entities that also offer the goods and services identified in the '860 Registration as "recorded computer software for use in . . . fundraising services and financial sponsorship; downloadable mobile application software for use in . . . fundraising services and financial sponsorship," "the bringing together, for the benefit of others, of a variety of services, namely, . . . fundraising services and financial sponsorship, . . . enabling consumers to conveniently view and purchase those services," "fundraising for and financial sponsorship of cultural, business, charitable and sporting events; information, consultancy, and advisory services in connection with all of the aforesaid," or "Platform as a Service (PaaS) featuring software for use in the provision of . . . fundraising services and financial sponsorship, . . .; Infrastructure as a Services [sic] featuring software for use in the provision of . . . fundraising services and financial sponsorship; hosting of websites for the provision of . . . fundraising services and financial sponsorship."

The website evidence shows that charitable organizations offer services that fall within the full scope of the "Charitable services" identified in the '804 and '806 Applications, and there is no doubt that these charitable organizations, like virtually all entities in modern society, use software in their operations. But the website evidence does not show that charitable organizations also sell "recorded computer software for use in . . . fundraising services and financial sponsorship; downloadable mobile application software for use in . . . fundraising services and financial sponsorship," or render the services of "the bringing together, for the benefit of others,

of a variety of services, namely, . . . fundraising services and financial sponsorship, . . . enabling consumers to conveniently view and purchase those services;" "fundraising for and financial sponsorship of cultural, business, charitable and sporting events; information, consultancy, and advisory services in connection with all of the aforesaid," or "Platform as a Service (PaaS) featuring software for use in the provision of . . . fundraising services and financial sponsorship, . . .; Infrastructure as a Services [sic] featuring software for use in the provision of . . . fundraising services and financial sponsorship; hosting of websites for the provision of . . . fundraising services and financial sponsorship."

We agree with the Examining Attorney that the evidence shows that charitable organizations such as Applicant engage in fundraising; indeed, money or in-kind donations raised through such efforts are the lifeblood of those organizations. But unlike the fundraising-related goods and services identified in the '860 Registration, which are necessarily provided to, and for the benefit of, entities other than Registrant, the fundraising activities of Applicant and other charitable organizations are for the benefit of the organizations themselves and are not provided to, and for the benefit of, other entities. As a result, those fundraising activities are not "services" for purposes of the second *DuPont* factor.

We find that the goods and services identified in the '860 Registration and the services identified in the '804 and '806 Applications are not related, and the second *DuPont* factor strongly supports a conclusion that confusion is not likely with respect to the '804 and '806 Applications.

C. Similarity or Dissimilarity of the Channels of Trade and Classes of Consumers

"The third *DuPont* factor considers the 'similarity or dissimilarity of established, likely-to-continue trade channels,' and the fourth factor concerns the 'conditions under which and buyers to whom sales are made, i.e. 'impulse' v[s]. careful, sophisticated purchasing.'" *In re Samsung Display Co.*, Ser. No. 90502617, 2024 WL 3451873, at *7 (TTAB 2024) (quoting *DuPont*, 476 F.2d at 1361).

"Because the relevant goods [and services] in the cited registration are unrestricted as to trade channels and classes of purchasers, we must presume that they travel in the ordinary trade and distribution channels for the goods [and services] and to all usual classes of consumers." *Id.* (citation omitted).[56] The same presumption would apply with respect to the charitable services identified in the '804 and '806 Applications in the absence of any limitations on the face of the identifications, *id.*, but two of the identifications contain express limitations, and the third identification is limited by definition.

With respect to classes of consumers, the services identified as "Charitable services in the nature of coordination of the procurement and distribution of food donations from the general public to needy persons" expressly identify members of the general public who donate food and "needy persons" as the beneficiaries of the "procurement and distribution of food donations from the general public." The services identified as "Charitable services, namely, organizing and developing

[56] The Examining Attorney asserts this principle, 10 TTABVUE 7, but as discussed below, she provides no evidence establishing the ordinary trade channels or usual consumers.

projects that aim to improve the lives of underprivileged and impoverished people" expressly identify "underprivileged and impoverished people" as the end beneficiaries of the projects to improve their lives. The services identified as "Charitable services, namely, organizing and conducting volunteer programs and community service projects" are, by definition, directed to volunteers and persons involved in the community service projects.

With respect to trade channels, the identifications and the website evidence, including Applicant's specimens, combine to show that the first identified charitable services, to which the Examining Attorney alludes in her arguments regarding "charitable organizations that distribute food," 10 TTABVUE 6, are ultimately rendered directly to food donors and the needy, that the second identified charitable services of "organizing and developing projects that aim to improve the lives of underprivileged and impoverished people" yield projects that ultimately directly "improve the lives of" the needy, and that the third identified charitable services of "organizing and conducting volunteer programs and community service projects" are rendered directly to volunteers and persons involved in the identified community service projects.

The Examining Attorney made of record no evidence regarding the channels of trade and classes of consumers of the goods and services identified in the '860 Registration, so we must try to determine them from the language of the identifications alone. Construing the identifications as broadly as reasonably possible, the Class 9 goods identified as "recorded computer software for use in . . .

fundraising services and financial sponsorship; downloadable mobile application software for use in . . . fundraising services and financial sponsorship" and the Class 36 services identified as "Platform as a Service (PaaS) featuring software for use in the provision of . . . fundraising services and financial sponsorship, . . .; Infrastructure as a Services [sic] featuring software for use in the provision of . . . fundraising services and financial sponsorship; hosting of websites for the provision of . . . fundraising services and financial sponsorship" by definition would be sold to, or provided online to, persons providing "fundraising services." Although Applicant and other charitable organizations themselves might purchase these goods and services for use in their own fundraising, there is no evidence that these fundraising-related and financial sponsorship-related goods and services would be purchased by participants in, or recipients or beneficiaries of, the charitable services identified in the '804 and '806 Applications.

The channels of trade and classes of consumers are unclear for the Class 35 services identified as "the bringing together, for the benefit of others, of a variety of services, namely, . . . fundraising services and financial sponsorship, . . . enabling consumers to conveniently view and purchase those services" and the Class 36 services identified as "fundraising for and financial sponsorship of cultural, business, charitable and sporting events; information, consultancy, and advisory services in connection with all of the aforesaid," but their purchasers could also include charitable organizations engaged in fundraising. There is no again evidence,

however, that the beneficiaries of the charitable services identified in the '804 and '806 Applications would also be consumers of those services.

The record, which does not establish that the goods and services are related, "also does not establish that the channels of trade or classes of consumers for these [goods and] services overlap." *OSF Healthcare*, 2023 WL 6140427, at *13. *Cf. Elec. Design & Sales, Inc. v. Elec. Data Sys. Corp.*, 954 F.2d 713, 716-18 (Fed. Cir. 1992) (the fact that goods were sold to the same large corporation, but were purchased by different departments within the corporations, did not establish overlapping channels of trade or classes of consumers). The third *DuPont* factor and the portion of the fourth *DuPont* factor regarding the identification of "buyers to whom sales are made," *DuPont*, 476 F.2d at 1361, strongly support a conclusion that confusion is not likely with respect to the '804 and '806 Applications.

D. Other *DuPont* Factors

As noted above, Applicant also invokes the fifth, seventh, eighth, twelfth, and thirteenth *DuPont* factors. We address these factors in turn.

1. Fifth *DuPont* Factor

The fifth *DuPont* factor considers "[t]he fame of the prior mark (sales, advertising, length of use)." *DuPont*, 476 F.2d at 1361. Applicant essentially argues that its POTS mark is the "prior mark," *id.*, claiming that it has been used longer than the cited POTS mark, 6 TTABVUE 15-16, and that "any fame associated with the "POTS" mark is associated with Applicant and not Monzo Bank." *Id.* at 16.

This argument misses the mark. "This *du Pont* factor requires us to consider the fame of the mark in the cited registration." *In re Mr. Recipe, LLC*, Ser. No. 86040643, 2016 WL 1380730, at *2 (TTAB 2016). In that regard, the Board explained in *Mr. Recipe* that

> [b]ecause of the nature of the evidence required to establish the fame of a registered mark, the Board does not expect Trademark Examining Attorneys to submit evidence as to the fame of the cited mark in an *ex parte* proceeding, and they do not usually do so. . . . Rather, in an *ex parte* appeal the "fame of the mark" factor is normally treated as neutral because the record generally includes no evidence as to fame.

Mr. Recipe, 2016 WL 1380730, at *2. Consistent with this general practice, the Examining Attorney did not submit evidence of the fame of the cited mark, and the fifth *DuPont* factor is neutral in our analysis of the likelihood of confusion.

2. Eighth *DuPont* Factor[57]

The eighth *DuPont* factor considers "[t]he length of time during and conditions under which there has been concurrent use without evidence of actual confusion." *DuPont*, 476 F.2d at 1361. Generally, this factor is "not that important in ex parte cases unless the applicant provides us with contextual evidence that allows us to meaningfully assess the length of time and degree to which the applicant's and registrant's commercial activities would have provided an opportunity for confusion to have manifested itself if it were likely." *Embiid*, 2021 WL 2285576, at *19 (citing

[57] Although Applicant also mentions the seventh *DuPont* factor, the "nature and extent of any actual confusion," *DuPont*, 476 F.2d at 1361, this factor is typically used "offensively" to argue that confusion is likely because actual confusion has occurred. Applicant's arguments invoke the eighth factor regarding the absence, not presence, of evidence of actual confusion.

In re Guild Mortg. Co., Ser. No. 86709944, 2020 WL 1639916, at *8 (TTAB 2020) ("our analysis as to the second, third, and fourth *du Pont* factors, discussing the similarity or dissimilarity of the services, channels of trade, and relevant consumers, is based, as dictated by precedent from the Federal Circuit, on the identifications **as set forth** in the application and the cited registration . . . [but] the eighth *duPont* factor, by contrast . . . requires us to look at **actual market conditions**, to the extent there is evidence of such conditions of record.") (emphasis in original; citations omitted)).

In *Guild Mortg.*, the applicant provided evidence of those "actual market conditions" in the form of a declaration from a corporate executive establishing facts regarding the applicant's use of its mark, as well as evidence regarding the use of the cited registered mark. *Guild Mortg.*, 2020 WL 1639916, at *8-9. The record here is devoid of such evidence. Applicant instead argues that it "has been offering its services under the POTS mark for over a quarter of a century," 6 TTABVUE 16, based solely on the dates of first use claimed in the '804 and '806 Applications, *id.* at 4 n.4, that "Monzo Bank has been offering its services under the mark apparently since 2022," and that "[d]uring this period of concurrent use, there has been no actual confusion between the marks." *Id.* at 16.

Applicant's arguments are meritless. The claimed dates of use in the '804 and '806 Applications, and in the '860 Registration, are not evidence of use of the involved marks, *cf. DowntownDC Bus. Improvement Dist. v. Clarke*, Opp. No. 91275100, 2024 WL 4449409, at *8 n.75 (TTAB 2024), and neither is attorney argument. *Ye Mystic Krewe of Gasparilla*, 2025 WL 2953731, at *6 n.15 (citing *Cai v. Diamond Hong, Inc.*,

901 F.3d 1367, 1371 (Fed. Cir. 2018) (internal citation omitted)). Moreover, "in this ex parte context, there has been no opportunity to hear from Registrant about whether it is aware of any reported instances of confusion. We therefore are getting only half the story." *Guild Mortg.*, 2020 WL 1639916, at *9 (citations omitted). Finally, Applicant acknowledges that the absence of evidence of actual confusion "is not surprising given the disparate services offered under the respective marks, the channels of trade, and the customers," 6 TTABVUE 16, and we have found above that the goods and services, channels of trade, and classes of consumers are dissimilar. As a result, there is been no meaningful opportunity for confusion to have occurred. The eighth *DuPont* factor is neutral in our analysis of the likelihood of confusion.

3. Twelfth *DuPont* Factor

The twelfth *DuPont* factor discusses "[t]he extent of potential confusion, i.e., whether *de minimis* or substantial." *DuPont*, 476 F.2d at 1361. Applicant argues under this factor that "Monzo Bank no longer uses the POTS mark," 6 TTABVUE 16, and "now uses 'Jars' as the moniker of its virtual containers instead of 'Pots' . . . ." *Id.* at 17. Applicant concludes that "there is no potential confusion because Monzo Bank no longer uses the POTS mark." *Id.*

Applicant's claim that Registrant is no longer using the registered mark "is an impermissible collateral attack on the validity of the cited registration and may not be asserted in an ex parte proceeding." *Ye Mystic Krewe of Gasparilla*, 2025 WL 2953731, at *10 n.22 (citing *Detroit Athletic Co.*, 903 F.3d at 1309). We cannot entertain such a collateral attack "on this appeal because of the statutory presumptions that we must accord the ['860] [R]egistration under Section 7(b) of the

Trademark Act." *In re Solid State Design Inc.*, Ser. No. 87269041, 2018 WL 287909, at *1 (TTAB 2018) (citing *Dixie Rests.*, 105 F.3d at 1408). The twelfth *DuPont* factor is neutral in our analysis of the likelihood of confusion.

4. Thirteenth *DuPont* Factor

"The thirteenth, 'catchall' *DuPont* factor 'pertains to 'any other established fact probative of the effect of use . . . .'" *Embiid*, 2021 WL 2285576, at *20 (quoting *Country Oven*, 2019 WL 6170483, at *8). In its reply brief, Applicant offers a laundry list of reasons why the thirteenth factor supports a conclusion that confusion is not likely:

> (i) there will be no adverse commercial impact to Monzo Bank if Applicant's Mark is registered as the respective services are completely unrelated, especially since Monzo Bank is no longer using POTS; (ii) Monzo Bank did not oppose Applicant's POTS application covering related Class 45 services that has since registered; (iii) Applicant's food distribution and procurement services in Class 35 are in no way related to Monzo Bank's fundraising software services; (iv) various third-party registrations of identical or highly similar marks on the same or highly similar goods or services have been allowed to coexist on the register despite having more "closely related" goods and services than those herein; (v) any perceived confusion between Applicant's Mark and Monzo's Mark is merely theoretical or *de minimis;* and (vi) any lingering doubts must be resolved in Applicant's favor.

11 TTABVUE 11. We have addressed most of these claims in our analysis of other *DuPont* factors.[58] Here, we discuss the "third-party registrations of identical or highly similar marks on the same or highly similar goods or services" that coexist on the

[58] The fact that Registrant did not oppose the issuance of registrations of Applicant's word and composite marks for the Class 45 services identified in the "child" applications is irrelevant to the issue of whether confusion is likely with respect to the Class 35 services remaining in the "parent" '804 and '806 Applications.

Register, 11 TTABVUE 11, and Applicant's claim that doubt must be resolved in its favor. *Id.*

Applicant's appeal brief contains a list of 15 "coexisting registrations for identical marks used both on charitable services and non-charitable services . . . ." 6 TTABVUE 21-26. Applicant acknowledges that "each case does stand on its own merits," *id.* at 21, but claims that the third-party registrations show that its marks "should also be allowed to coexist with the Monzo Mark on the register." *Id.*

Pairs of third-party registrations of marks for the involved goods and services can be used under the second *DuPont* factor to show that the involved goods and services are not related, *Embiid*, 2021 WL 2285576, at *18, but the paired registrations here do not cover the services identified in the '804 and '806 Applications, and the goods or services identified in the '860 Registration. They have no probative value under either the second or the thirteenth factors.

Applicant's argument that "any lingering doubts must be resolved in Applicant's favor," 11 TTABVUE 11, misstates the law. In Section 2(d) cases, doubt regarding the existence of a likelihood of confusion must be resolved against the applicant and in favor of the cited registrant. *See*, *e.g.*, *In re G.B.I. Tile & Stone Inc.*, Ser. No. 77369073, 2009 WL 3491050, at *8 (TTAB 2009) (citing *In re Chatham Int'l Inc.*, 380 F.3d 1340, 1345 (Fed. Cir. 2004); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65 (Fed. Cir. 1988)). As discussed below, however, we have no doubt that confusion is not likely.

E. Balancing the *DuPont* Factors

In determining whether confusion is likely, we must "weigh the *DuPont* factors used in [our] analysis **and** explain the results of that weighing," and "provide a reasonable explanation for [our] findings, explaining the weight [we] assigned to the relevant factors." *Charger Ventures*, 64 F.4th at 1384 (citations omitted; emphasis in bold here in italics in the original). "No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark." *Heil Co. v. Tripleye GmbH*, Opp. No. 91277359, 2024 WL 4925901, at *37 (TTAB 2024) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346 (Fed. Cir. 2010)). "[A]ny one of the factors may control a particular case," *Tiger Lily Ventures*, 35 F.4th at 1362 (quoting *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1355 (Fed. Cir. 2011)), and "be dispositive of the likelihood of confusion analysis." *Charger Ventures*, 64 F.4th at 1381.

Here, the key first and second *DuPont* factors, and the third factor and a portion of the fourth factor, point toward different conclusions regarding the likelihood of confusion, while the other *DuPont* factors are neutral. Under the first factor, the POTS word mark shown in the '804 Application is identical to the POTS word mark shown in the '860 Registration, and the POTS-dominated composite mark shown in the '806 Application is very similar to the POTS word mark shown in the '860 Registration. The identity and close similarity of the involved marks "go a long way toward causing confusion among consumers," *Detroit Athletic Co.*, 903 F.3d at 1303

(citations omitted), but, as discussed below, not quite far enough to affirm the refusals to register.

Under the second, third, and fourth factors, the goods and services, channels of trade, and classes of consumers are quite dissimilar, even taking into account the reduced degree of similarity required for confusion to be likely between the involved identical and very similar marks. As discussed above, on the basis of the language in the involved identifications and the extrinsic evidence in the record, the charitable services in the '804 and '806 Applications and the various fundraising-related goods and services in the '860 Registration referenced by the Examining Attorney have different sources, trade channels, and classes of consumers. The record as a whole does not show that the POTS word mark for the fundraising-related goods and services identified in the '860 Registration and the POTS word and composite marks for the charitable services identified in the '804 and '806 Applications are likely to be exposed to the same purchasers or end users of the respective goods and services through the same or overlapping channels of trade. The differences in the goods and services, channels of trade, and classes of consumers outweigh the identity and similarity of the marks, and make confusion unlikely. *See OSF Healthcare*, 2023 WL 6140427, at *17 ("the evidence made of record by the Examining Attorney is insufficient to show that the Class 44 and Class 45 services identified in the application are related to either of the services identified in the cited registration. Accordingly, we conclude that confusion is unlikely as to the services in those classes notwithstanding the identity of the marks.").

Decision: The refusals to register the word mark shown in the ’804 Application and the composite mark shown in the ’806 Application are reversed.