Mailed: September 15, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Driven P.S.C.

Serial Nos. 98113736, 98113783, and 98113816[1]

Maristella Collazo-Soto of Ferraiuoli LLC,
for Driven P.S.C.

Lisa McCrary, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Managing Attorney.

Before Lebow, Allard, and Stanley,
Administrative Trademark Judges.

Opinion by Stanley, Administrative Trademark Judge:

On August 2, 2023, Driven P.S.C. ("Applicant") filed three applications under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), to register the following marks on the Principal Register, each for "account auditing; accounting consultation;

[1] The Board consolidated the appeals for the above-listed applications on January 15, 2025. 9 TTABVUE.

Citations to the appeal record are to TTABVUE, the Board's online docketing system. Citations to the prosecution file are to the USPTO's TRADEMARK STATUS & DOCUMENT RETRIEVAL ("TSDR") system in .pdf format. Unless otherwise noted, all citations are to the appeal record for Application Serial No. 98113736.

accounting services; advice and information concerning commercial business management; business auditing; business risk management services; preparing financial reports for others; tax advisory services; tax consultation," in International Class 35:

- DRIVEN (in standard characters);[2]
-  ;[3] and
-  .[4]

The Trademark Examining Attorney refused registration of each mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), due to a likelihood of confusion with two marks registered on the Principal Register, both owned by Celdara Medical, LLC ("Registrant"): DRIVEN (in standard characters)[5] and  ,[6] both for "business support services, namely, business consulting to freelancers, start-ups, existing businesses and non-profit organizations," in International Class 35.

---

[2] Application Serial No. 98113736.

[3] Application Serial No. 98113783. The application includes the following description of the mark: "The mark consists of the word 'DRIVEN' in small caps in blue block-stylized font. The color(s) black, white, and/or gray represent background, outlining, shading, and/or transparent area and is/are not part of the mark." The color blue is claimed as a feature of the mark.

[4] Application Serial No. 98113816. The application includes the following description of the mark: "The mark consists of the word 'DRIVEN' in small caps in block-stylized font." Color is not claimed as a feature of the mark.

[5] Registration No. 7079651; issued June 13, 2023.

[6] Registration No. 6823611; issued August 23, 2022. The registration includes the following description of the mark: "The mark consists of 'DRIVEN:' all letters are uppercase and blue, ':' is yellow." The colors blue and yellow are claimed as a feature of the mark.

After the Examining Attorney issued a final refusal for each application, Applicant filed an appeal of each refusal. Applicant addressed the refusal of the three applications in the same brief.[7] Applicant attached to its appeal brief a number of third-party registrations.[8] The Examining Attorney next filed a motion to consolidate the appeals,[9] which was granted by the Board.[10] The Examining Attorney then filed her appeal brief, wherein she, among other things, objected to Applicant's submission of the third-party registrations attached to Applicant's brief.[11] In response, Applicant requested that the applications subject to these consolidated appeals be remanded to the Examining Attorney for consideration of the third-party registration evidence.[12]

On January 22, 2025, the Board granted Applicant's request to remand the applications to the Examining Attorney and suspended these consolidated appeals.[13] On February 14, 2025, the Examining Attorney issued a subsequent final office action maintaining the prior refusals under Section 2(d) of the Trademark Act.[14] On February 19, 2025, the Board resumed the consolidated appeals and allowed time for

[7] 6 TTABVUE in each proceeding. Applicant's initial appeal brief (4 TTABVUE) exceeded the page limit for appeal briefs, and pursuant to the Board's November 19, 2024 order giving Applicant time to file a substitute brief (5 TTABVUE), Applicant filed a substitute brief that same day (6 TTABVUE).

[8] 6 TTABVUE 27-54.

[9] 8 TTABVUE.

[10] 9 TTABVUE.

[11] 10 TTABVUE 2-3.

[12] 11 TTABVUE.

[13] 12 TTABVUE.

[14] 13 TTABVUE.

Applicant to file a supplemental brief, if it so wished.[15] Applicant filed a supplemental brief, followed by another submission from the Examining Attorney, and a reply brief from Applicant.[16] The consolidated appeals are now fully briefed. We affirm the refusal to register all three applications.

I. Likelihood of Confusion

Section 2(d) of 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, mistake, or deception. 15 U.S.C. § 1052(d). *See also In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023). Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). When analyzing the likelihood of confusion factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods and services, but also to protect registrants and senior users from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207-08 (Fed. Cir. 1993).

In any likelihood of confusion analysis, different *DuPont* factors may play a dominant role and some factors may not be relevant. *Naterra Int'l, Inc. v. Bensalem*,

[15] 15 TTABVUE.

[16] 16 TTABVUE (Applicant's Supplemental Br.); 18 TTABVUE (Examining Attorney's Answer to Applicant's Supplemental Br.); 21 TTABVUE (Applicant's Reply Br.). Applicant's initial reply brief (19 TTABVUE) exceeded the page limit for reply briefs, and pursuant to the Board's July 17, 2025 order giving Applicant time to file a substitute reply brief (20 TTABVUE), Applicant filed a substitute reply brief that same day (21 TTABVUE).

92 F.4th 1113, 1116 (Fed. Cir. 2024) (quoting *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022)). In addition, varying weight may be assigned to each factor depending on the evidence presented, and "any one of the factors may control a particular case." *Id.*; *see also Charger Ventures*, 64 F.4th at 1381. Although we consider each *DuPont* factor for which there is evidence and argument, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019), two key considerations are the similarities between the marks and the similarities between the goods and services. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)). These factors, and others, are discussed below.

We focus on the Examining Attorney's refusal based on Registration No. 7079651 for the standard-character mark DRIVEN for services in Class 35 (hereafter, the "Cited Mark" or "the '651 Registration") because the mark in that registration is closest to Applicant's marks. If we conclude there is a likelihood of confusion with respect to the Cited Mark, we need not address the Examining Attorney's likelihood of confusion refusals with regard to the registered DRIVEN! mark for the same services. *See Sock It To Me, Inc. v. Fan*, Opp. No. 91230554, 2020 TTAB LEXIS 201, at *20-21 (TTAB 2020) (confining Section 2(d) analysis to most similar pleaded mark); *In re Max Cap. Grp. Ltd.*, Ser. No. 77186166, 2010 TTAB LEXIS 1, at *4-5 (TTAB 2010) (same).

A. The Marks

We begin with the first *DuPont* factor, which involves an analysis of the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. *Palm Bay Imps. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005); *see also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1319 (Fed. Cir. 2014). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, Ser. No. 87075988, 2018 TTAB LEXIS 170, at *13 (TTAB 2018) (quoting *In re Davia*, Ser. No. 85497617, 2014 TTAB LEXIS 214, at *4 (TTAB 2014)), *aff'd mem.*, 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 Cited Mark is in standard characters, and therefore the Cited Mark may be displayed in the same font, color, and size as Applicant's marks. *Look Cycle Int'l v. Kunshan Qiyue Outdoor Sports Goods Co.*, Can. No. 92079409, 2024 TTAB LEXIS 289, at *21 (TTAB 2024). Applicant's DRIVEN (standard characters),  , and  marks and the Cited Mark (DRIVEN in standard characters) are therefore identical.

Accordingly, the first *DuPont* factor weighs in support of finding a likelihood of confusion.

B. The Services and Trade Channels

We turn now to the second *DuPont* factor, which considers the "similarity or dissimilarity and nature of the goods and services as described in an application or registration," and the third *DuPont* factor, which considers "[t]he similarity or dissimilarity of established, likely-to-continue trade channels." *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306, 1308 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361). It is "not necessary that the products [or services] be similar or even competitive to support a finding of a likelihood of confusion." *Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting 7-*Eleven, Inc. v. Wechsler*, Opp. No. 91117739, 2007 TTAB LEXIS 58, at *28 (TTAB 2007)). "[L]ikelihood of confusion can be found 'if the respective products [or services] are 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.* "[I]t is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods [or services] within a particular class in the application." *In re Aquamar, Inc.*, Ser. No. 85861533, 2015 TTAB LEXIS 178, at *9 n.5 (TTAB 2015). Additionally, whereas here, the parties' marks are identical, "the degree of similarity between the goods or services required for confusion to be likely declines." *DeVivo v. Ortiz*, Opp. No. 91242863, 2020 TTAB LEXIS 15, at *36 (TTAB 2020); *see also Shell Oil*, 992 F.2d at 1207 ("even when 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").

Evidence of relatedness might include news articles or evidence from computer databases showing that the relevant goods and services are used together or used by the same purchasers; advertisements showing that the relevant goods and services are advertised together or sold by the same manufacturer or dealer; and copies of prior use-based registrations of the same mark for both an applicant's goods and services (or similar goods and services) and the goods and services listed in the cited registration (or similar goods and services). *See, e.g.*, *Davia*, 2014 TTAB LEXIS 214, at *21-24 (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

As noted above, the Class 35 services in the subject applications include "advice and information concerning commercial business management," and the Class 35 services in the '651 Registration are "business support services, namely, business consulting to freelancers, start-ups, existing businesses and non-profit organizations." "Business consulting to freelancers, start-ups, existing businesses and non-profit organizations" encompasses "advice and information concerning commercial business management," which is a form of "business consulting" and Applicant's services may be provided to "freelancers, start-ups, existing businesses and non-profit organizations."[17] When an applicant's services are fully encompassed

[17] We take judicial notice that the definition of "consulting" includes "providing professional or expert advice." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/consulting (accessed September 12, 2025). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, Opp. No. 61847, 1982 TTAB LEXIS 146, at *7 (TTAB 1982), *aff'd*, 703 F.2d 1372 (Fed. Cir. 1983),

within the wording of a cited registration, they are considered legally identical. *See In re Medline Indus.*, Ser. No. 87680078, 2020 TTAB LEXIS 16, at *13 (TTAB 2020) (goods legally identical in part where "gloves for medical use" and "protective gloves for medical use" encompass "medical examination gloves"); *In re Info. Builders Inc.*, Ser. No. 87753964, 2020 TTAB LEXIS 20, at *9-11 (TTAB 2020) (services legally identical in part where registrant's services encompassed by applicant's services).

Furthermore, the record supports the Examining Attorney's finding that Applicant's services and Registrant's "accounting," "tax planning," and "auditing" services are of a type which may emanate from a single source under the same mark. More specifically, the record includes website screenshots from several third-parties, including TBS Tax and Business Solutions, YHB CPAs & Consultants, Cook CPA Group, SVA, Savant Wealth, Wright Ford Young & Co., Lima & Associates LLC, and T&M Business Consulting & Accounting/CPAs, each of which provides both "business consulting" services on the one hand and "accounting," "tax planning," and/or "auditing" on the other.[18] *See, e.g.*, *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463,

---

including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, Ser. No. 75788830, 2006 TTAB LEXIS 136, at *6-7 (TTAB 2006).

[18] *See* August 23, 2024 Final Office Action, TSDR at 8-13 (website advertising "business consulting, tax planning, and business management consulting for small to medium sized businesses" under the mark TBS TAX & BUSINESS SOLUTIONS (and design)); 14-30 (website advertising services of company's "business consultants" and "tax advisors," including "tax planning and consulting" under the mark YHB CPAS & CONSULTANTS (and design)); 31-50 (website advertising "business consulting services" and "tax accountant services," including "tax audits" and "tax planning," under the mark COOK CPA GROUP (and design)); 51-63 (website advertising "business consulting," "audit & assurance," and "business tax" services to a variety of industries, including manufacturing, government, financial services, and healthcare, under the mark SVA (and design)); 64-70 (website advertising "tax, accounting, payroll, and business consulting services" under the mark SAVANT (and design)); 71-80 (website advertising "business consulting services," "audit and

464-65 (Fed. Cir. 1988) (BIGGS for retail grocery and general merchandise store services likely to be confused with BIGGS for furniture).

Based on this evidence and discussion, we find that Applicant's services and Registrant's services are in-part legally identical and otherwise related.

Turning to the trade channels, because Applicant's services are in-part legally identical to the services in the '651 Registration, we must presume that the channels of trade are the same for such services. *See In re Fat Boys Water Sports LLC*, Ser. No. 86490930, 2016 TTAB LEXIS 150, at *26 (TTAB 2016) ("Because the goods at issue are legally identical, we must presume that the goods of Applicant and Registrant move in the same channels of trade and are offered to the same classes of consumers."); *see also In re Viterra Inc.,* 671 F.3d 1358, 1362 (Fed. Cir. 2012) (finding Board entitled to rely on this legal presumption in determining likelihood of confusion). Additionally, the Internet evidence demonstrating that Applicant's services are related to Registrant's services also supports a finding that those services are rendered in the same channels of trade because they are offered by the same entities and are shown on the same websites. *See, e.g.*, *Stone Lion*, 746 F.3d at 1323.

Applicant argues that its services and Registrant's services are not related and the trade channels are different because, among other things: (1) Registrant's services are targeted to a specific audience (i.e., freelancers, start-ups, existing businesses and

---

assurance services," and "tax planning & compliance services" under the mark WRIGHT FORD YOUNG & Co.); 81-84 (website advertising "business and financial consulting services," including "tax services," under the mark LIMA & ASSOCIATES LLC (and design)); 85-88 (website advertising "business consulting," including "taxes" and "IRS audits," under the mark T&M BUSINESS CONSULTING & ACCOUNTING/CPAS (and design)).

non-profit organizations) and to a specific industry (i.e., the "medical industry" and those in the "fields of science and health"), whereas Applicant's services are "financial-focused" and provided "to a wide range of industries such as healthcare (hospitals, private medical clinics), insurance (health insurance companies, business insurance companies), education, non-profit organizations, hospitality and leisure, employee benefit plans, and natural resources, among many others";[19] and (2) the Examining Attorney's evidence of relatedness only demonstrates that third-parties "commonly provide[] business consulting services"; they do not show third-parties providing both Registrant's services and Applicant's services.[20]

Applicant's arguments are unpersuasive. As we have explained in innumerable decisions, the Board may not consider arguments "about how the parties' actual goods, services, customers, trade channels, and conditions of sale are narrower or different from the goods and services identified in the applications and registrations." *In re FCA US LLC*, Ser. No. 85650654, 2018 TTAB LEXIS 116, at *12 n.18 (TTAB 2018); *see also, e.g.*, *i.am.symbolic*, 866 F.3d at 1327 ("[T]he Board properly declined

[19] Applicant's Br., 6 TTABVUE 10-15, 18-19; *see also* Applicant's Supplemental Br. 16 TTABVUE 12. In its Supplemental Brief, Applicant includes a hyperlink to Registrant's website to support its contention that Registrant targets the medical industry. *Id.* The Board does not consider hyperlinks embedded in briefs. *In re ADCO Indus. - Techs., L.P.*, Ser. No. 87545258, 2020 TTAB LEXIS 7, at *4 (TTAB 2020) (web addresses or hyperlinks are insufficient to make the underlying webpages of record); *In re Aquitaine Wine USA, LLC*, Ser. No. 86928469, 2018 TTAB LEXIS 108, at *27 n.21 (TTAB 2018) (Board does not consider websites for which only links are provided). Further, it is too late to introduce evidence at the briefing stage. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) ("The record should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal."). Accordingly, we give no further consideration to the hyperlink in Applicant's Supplemental Brief.

[20] Applicant's Br., 6 TTABVUE 16.

to import restrictions into the identification of goods based on alleged real world conditions."); *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013) ("The [US]PTO proceedings are 'based on the content of the registration application' and not upon any specific use of the challenged mark in commerce.") (quoting *Mayer/Berkshire Corp. v. Berkshire Fashions, Inc.*, 424 F.3d 1229, 1232 (Fed. Cir. 2005)); *Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F.2d 901, 902 (CCPA 1973) (Board must "give full sweep" to an identification of services regardless of the registrant's actual business); *In re Thor Tech, Inc.*, Ser. No. 78634024, 2009 TTAB LEXIS 253, at *15 (TTAB 2009) ("We have no authority to read any restrictions or limitations into the registrant's description of goods."). It is the manner in which the Applicant and Registrant have identified their services in their respective identifications that is controlling. *See Nat'l Football League v. Jasper Alliance Corp.*, Opp. No. 91077966, 1990 TTAB LEXIS 37, at *10-11 & n.5 (TTAB 1990).

Neither Applicant's services nor Registrant's services include any restrictions on trade channels. While Registrant's services are specifically limited to being provided to "freelancers, start-ups, existing businesses and non-profit organizations," there are no restrictions on Registrant providing such services to any specific industry, and Applicant's services are not restricted at all.

Furthermore, we disagree with Applicant's critique that the Examining Attorney only considered that Applicant's and Registrant's services are in the "same international class" and provided in the "same broad industry," and as a result, only

identified third-parties that provide general business consulting services, not services of both Applicant and Registrant.[21] To the contrary, the third-party Internet evidence discussed above demonstrates that both business consulting services (Registrant's services) and accounting, tax planning, and auditing services (services within the scope of Applicant's services) commonly emanate from the same source under the same mark.[22]

Because the Examining Attorney has demonstrated that the services are in-part legally identical and otherwise related, we presume that the trade channels are the

[21] Applicant's Br., 6 TTABVUE 11-12. *See also* Applicant's Reply Br., 21 TTABVUE 6 ("[T]he Examining Attorney relies solely on the fact that both parties' services fall under Class 035.").

[22] In its reply brief, Applicant relies heavily on a non-precedential decision, cited as: "*In re Namchak Found.*, No. 97150350, 2025 WL 914462, at *4 (TTAB Mar. 6, 2025)." Applicant's Reply Br., 21 TTABVUE 6-7. Applicant cites to this case (and other non-precedential cases, referenced below) without clearly identifying them as such, in violation of TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03(a)(2) (2025) ("Any nonprecedential cases must be clearly identified as nonprecedential."). The Board discourages the citation of non-precedential decisions, which are not binding on the Board. *In re tapio GmbH*, Ser. No. 87941532, 2020 TTAB LEXIS 483, at *28 n.30 ("Generally, the practice of citing non-precedential opinions is not encouraged."). Each case must be decided on its own merits on the particular facts of record. *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001). In any event, the facts here differ from those in *Namchak* where Applicant's services were limited to "religious and spiritual services, namely, providing gatherings and retreats to develop and enhance the spiritual lives of individuals interested in the teachings and practices of the Namchak Tibetan Buddhist Fellowship." *Namchak*, 2025 TTAB LEXIS 133, at *1. The Examining Attorney in that case relied upon six websites from various religious organizations to demonstrate that the applicant's religious services and registrant's charitable services were related, but none of the websites were related to the Namchak Tibetan Buddhist religion. *Id.* at *7. The Board noted that, unlike third-party registration evidence, for which the Board can consider the full scope of recited services, the same does not hold true for third-party website evidence. *Id.* at *9-10. The Board explained: "The fact that websites of various religious organizations offer charitable services as well is insufficient to demonstrate that each religious organization provides '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 [charitable services] on the other, under the same mark." *Id.* at *10-11. Here, neither Applicant's nor Registrant's services are so limited.

same for the legally identical services. The Examining Attorney has also demonstrated that the trade channels overlap for the related services.

Accordingly, the second and third *DuPont* factors favor a likelihood of confusion.

C. Purchasing Conditions

DuPont also tells us to consider the "conditions under which … sales are made, i.e. 'impulse' v. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361. Purchaser sophistication or degree of care may tend to minimize likelihood of confusion. *See, e.g.*, *Magnaflux Corp. v. Sonoflux Corp*., 231 F.2d 669, 671 (CCPA 1956) ("confusion is less likely where goods are expensive and are purchased after careful consideration than where they are inexpensive and are purchased casually") (citations omitted). Conversely, impulse purchases of inexpensive goods or services may tend to have the opposite effect. *Palm Bay Imps.*, 396 F.3d at 1376. However, "that the relevant class of buyers may exercise care does not necessarily impose on that class the responsibility of distinguishing between similar trademarks for similar goods [or services]." *In re Rsch. and Trading Corp*., 793 F.2d 1276, 1279 (Fed. Cir. 1986) (citation omitted).

Although Applicant asserts that it services are "offered to sophisticated, institutional clients,"[23] Applicant acknowledges that "the consumers of Applicant's Services … may consist of entities more generally."[24] Applicant argues that Registrant's consumers are different: "the consumers of Registrant's Services would

[23] Applicant's Supplemental Br., 21 TTABVUE 9.

[24] Applicant's Br., 6 TTABVUE 17.

not be average consumers from the general public[; rather, they] would be highly specialized and trained medical professionals or educational institutions responsible for information technology infrastructures and/or data entry and monitoring."[25]

As discussed, Applicant's applications and the '651 Registration identify services that are not restricted by target industry, price, or in any other manner that might suggest higher than normal consumer sophistication. The purchasers of Applicant's services include anyone in the public interested in advice and information concerning commercial business management or a variety of financial services (e.g., account auditing, tax advisory services, etc.), and while the purchasers of Registrant's services are directed to "freelancers, start-ups, existing businesses and non-profit organizations," such purchasers cover a range of sophistication levels and are not limited to any specific industry. We can infer from the nature of Applicant's and Registrant's services that potential purchasers may include sophisticated as well as unsophisticated consumers. And we must base our decision "on the least sophisticated potential purchasers." *Stone Lion*, 746 F.3d at 1325. Based on the record, we find no elevated degree of care in purchasing the services at issue.

Accordingly, we find the fourth *Dupont* factor neutral.

D. The Strength or Weakness of the Cited Mark

In our final weighing of the factors, the "similarity of the marks" factor will support a conclusion that confusion is likely. We must, however, consider how

[25] *Id.*; *see also* Applicant's Reply Br., 21 TTABVUE 8 (Registrant "offers general business consulting services targeted at nonprofit startups in the medical innovation space.").

heavily. Usually, a finding of identical marks is said to weigh strongly or heavily in the final weighing. *See, e.g.*, *Naterra*, 92 F.4th at 1119. But the relevant factors sometimes interact with one another. A factor that may come into play and, when supported, impacts the weight given to the similarity of the marks, is the sixth *Dupont* factor: "[t]he number and nature of similar marks in use on similar goods [or services]." *Dupont*, 476 F.2d at 1361. The sixth *DuPont* factor allows an applicant in an ex parte appeal to contract the scope of protection of a cited mark by adducing evidence of conceptual and commercial weakness.[26] *Id.*

"[T]he strength of a mark is not a binary factor" and instead "varies along a spectrum from very strong to very weak." *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015) (internal citations omitted). "The weaker [the cited] mark, the closer an applicant's mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection." *Id*. at 1338.

In determining the strength of a cited mark in the course of an ex parte appeal, we consider its inherent or conceptual strength based on the nature of the mark itself. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) ("A mark's

[26] The fifth *DuPont* factor examines the extent to which the public perceives the mark as indicating a single source of origin, i.e., its fame or commercial strength. *DuPont*, 476 F.2d at 1361. There is no evidence of record relating to commercial strength under the fifth *DuPont* factor, but in an ex parte appeal, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, Ser. No. 86140341, 2016 TTAB LEXIS 470, at *26 (TTAB 2016). *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1207.01(d)(ix) (May 2025). The fifth *DuPont* factor, as is normally the case in ex parte proceedings, is treated as neutral. *See In re Thomas*, Ser. No. 78334625, 2006 TTAB LEXIS 135, at *18 n.11 (TTAB 2006).

strength is measured both by its conceptual strength . . . and its marketplace strength ….”). Conceptual or inherent strength is a measure of a mark’s distinctiveness. *Id.* Distinctiveness is “often classified in categories of generally increasing distinctiveness[:] … (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful.” *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992). “Marks that are descriptive or highly suggestive are entitled to a narrower scope of protection, i.e., are less likely to generate confusion over source identification, than their more fanciful counterparts.” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (quoting *Juice Generation*, 794 F.3d at 1339); *see also Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1373 (Fed. Cir. 2015).

Here, the Cited Mark issued on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). We must presume, therefore, that the Cited Mark is inherently distinctive for Registrant’s services. *See Sock It To Me*, 2020 TTAB LEXIS 201, at *30 (SOCK IT TO ME for socks “taken as a whole, is inherently distinctive, although its strength is somewhat limited by its first word, SOCK, which is generic for socks.”); *Tea Bd. of India v. Republic of Tea, Inc.*, Opp. No. 91118587, 2006 TTAB LEXIS 330, at *62 (TTAB 2006) (“A mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods.”). Nonetheless, we may consider whether an inherently distinctive mark,

or portion thereof, is "weak as a source indicator" in the course of a *DuPont* analysis. *Fat Boys Water Sports*, 2016 TTAB LEXIS 150, at *23. To that end, third-party registrations may be relevant, in the manner of dictionary definitions, "to prove that some segment of the [mark] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak." *Juice Generation*, 794 F.3d at 1339; *see also Spireon*, 71 F.4th at 1363; *Jack Wolfskin*, 797 F.3d at 1373-74; *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917 (CCPA 1976) (even if "there is no evidence of actual use" of "third party registrations," such registrations "may be given some weight to show the meaning of a mark in the same way that dictionaries are used").

Applicant challenges the inherent or conceptual strength of the Cited Mark by relying on evidence of third-party registrations. Applicant made of record copies of thirteen third-party registrations owned by twelve different owners of marks on the Principal or Supplemental Register containing the word DRIVEN (or its phonetic equivalent).[27] One of the registrations, Registration No. 4521866, is cancelled.[28] A cancelled or expired registration has no probative value other than to show that it once issued. *See In re Kysela Pere et Fils, Ltd.*, Ser. No. 77686637, 2011 TTAB LEXIS

[27] Applicant's Supplemental Br., 16 TTABVUE 3-9; *see also* Applicant's Br., 6 TTABVUE 20-24 (listing the third-party registrations). Applicant has not challenged the commercial strength of the Cited Mark by introducing evidence of third-party marketplace use of the mark for services similar to Registrant's services. The purpose of introducing evidence of third-party marketplace use is "to show that customers have become so conditioned by a plethora of such similar marks that customers 'have been educated to distinguish between different [such] marks on the bases of minute distinctions.'" *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1324 (Fed. Cir. 2018) (quoting *Palm Bay Imps.*, 396 F.3d at 1374).

[28] Applicant's Br., 6 TTABVUE 33-34.

70, at *7 (TTAB 2011). Another registration, Registration No. 6109916, issued solely under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f, without any evidence of use in commerce, and therefore has "very little persuasive value."[29] *In re Albert Trostel & Sons Co.*, Ser. No. 74186695, 1993 TTAB LEXIS 36, at *7 (TTAB 1993); *Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 TTAB LEXIS 228, at *30 (TTAB 2022) (refusing to consider third-party registrations issued under Sections 44(e) and 66(a) of the Trademark Act where no evidence of use in commerce and were registered for less than five years, because they "lack probative value").

Four of the remaining registrations are of little probative value because there is no evidence in the record to suggest that the services identified therein are similar to the identified services here, and they are not clearly related on their face.[30] *See Omaha Steaks Int'l*, 908 F.3d at 1325 (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus "on goods shown to be similar");

[29] Applicant's Br., 6 TTABVUE 27-28.

[30] Registration No. 5341190 on the Principal Register for the standard-character mark DRIVEN ACADEMICS (with "ACADEMICS" disclaimed) is for "business networking services for alumni; career planning services," in International Class 35, "college consulting services" and "philanthropic services concerning monetary donations," in International Class 36, and "educational services" and "admission consulting services" in International Class 41. Applicant's Br., 6 TTABVUE 35-36. Registration No. 5796220 on the Supplemental Register for the standard-character mark DATA-DRIVEN SCIENCE is for "employment agency services, namely, career planning, career placement, and career information, and employee lead generation for employers in the field of data science and artificial intelligence," in International Class 35 and "educational services," in International Class 41. *Id.* at 39-40. Registration No. 6826695 on the Principal Register for the standard-character mark DRYVEN is for "the bringing together, for the benefit of others, of clothing, tools, and equipment for home improvement, home remodeling, and construction, excluding the transport thereof, enabling customers to conveniently view and purchase those goods by means of on-line retail stores," in International Class 35. *Id.* at 43-44. Registration No. 7158776 on the Principal Register for the composite mark DBF DRIVEN BY FAITH (and design) is for "retail and on-line retail store services," in International Class 35. *Id.* at 49-50.

i.am.symbolic, 866 F.3d at 1328-29 (disregarding third-party registrations for other types of goods where the proffering party had neither proven nor explained that the goods were related to the goods in the cited registration); *Made in Nature*, 2022 TTAB LEXIS 228, at *29 (third-party registrations of marks for unrelated goods "have little or no probative value in showing the conceptual weakness of the terms" in Opposer's marks). The fact that these registrations cover services in International Class 35 alone is an insufficient basis to find them similar for purposes of demonstrating weakness of the Cited Mark. *See Omaha Steaks*, 908 F.3d at 1325 (products, such as "popcorn," "wine," "oriental foods," and "alcoholic beverages" "bear no relationship to meat or meat-based products" and therefore "are not 'similar' to meat products").

The remaining seven registrations (owned by six registrants) are:

- Registration No. 4382911 for the standard-character mark DRIVEN SOLUTIONS and Registration No. 4386984 for the composite mark 

(both with "SOLUTIONS" disclaimed), both owned by Driven Solutions, Inc., both on the Principal Register, and both for, inter alia, "marketing services; business management," in International Class 35.[31]

- Registration No. 4992291 on the Principal Register for the standard-character mark DRIVEN DATA (with "DATA" disclaimed) for "Branding services, namely, consulting, development, management and marketing of brands for businesses and/or individuals; Marketing consulting," in International Class 35.[32]

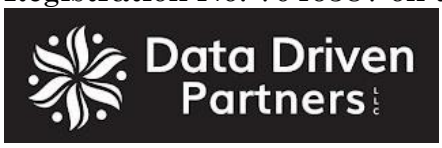
- Registration No. 6167766 on the Principal Register for the standard-character mark FUNNEL DRIVEN (with "FUNNEL" disclaimed) for, inter alia, "Advertising and marketing; Development of marketing strategies and

[31] Applicant's Br., 6 TTABVUE 29-32.

[32] *Id.* at 37-38.

concepts; Marketing consulting, namely, development of marketing campaigns for others; Providing consulting services in the field of facilitating the planning, buying, and selling of media; Providing marketing consulting in the field of social media; Providing business advice and information in the field of advertising and marketing; Business monitoring and consulting services, namely, tracking web sites and applications of others to provide strategy, insight, marketing, sales, operation, product design, particularly specializing in the use of analytic and statistic models for the understanding and predicting of consumers, businesses, and market trends and actions," in International Class 35.[33]

- Registration No. 7071308 on the Principal Register for the standard-character mark DRIIVEN for "Business administration services for processing sales made on the Internet; Publicity and sales promotion relating to goods and services available on-line," in International Class 35.[34]

- Registration No. 7046387 on the Principal Register for the composite mark 

(with "DATA DRIVEN PARTNERS LLC" disclaimed) for "compiling and analyzing statistics, data and other sources of information for business purposes," in International Class 35.[35]

- Registration No. 6891228 on the Supplemental Register for the standard-character mark VALUE DRIVEN APPROACH for "Assistance, advisory services and consultancy with regard to business management; Business management consulting; Business organization and operation consultancy," in International Class 35.[36]

Although we find these third-party registrations probative, Applicant's evidence is underwhelming. Each of these marks differs from the Cited Mark because it contains additional lettering, wording, and/or designs. The Cited Mark consists solely of the word DRIVEN. Six of the above-listed registrations are composite marks

[33] *Id.* at 41-42.

[34] *Id.* at 45-46.

[35] *Id.* at 47-48.

[36] *Id.* at 51-52.

wherein the term "DRIVEN" interacts with another term to create unique connotations (DRIVEN SOLUTIONS (twice), DRIVEN DATA, FUNNEL DRIVEN, DATA DRIVEN PARTNERS LLC, and VALUE DRIVEN APPROACH), and three of those registrations do not even begin with the word "DRIVEN" (FUNNEL DRIVEN, DATA DRIVEN PARTNERS LLC, and VALUE DRIVEN APPROACH). None of these marks are as close to the Cited Mark as Applicant's marks. *See, e.g.*, *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 TTAB LEXIS 464, at *32 (TTAB 2021) (third-party registration evidence discounted where they contained "additional elements that cause many of them to be less similar to Petitioner's mark than Respondent's marks are"). Only one registration is for DRIIVEN as a single word, and that registration includes an extra "I" in the word, unlike both Applicant's and Registrant's marks.

We do not see how this evidence shows a discernible degree of conceptual weakness of the Cited Mark for Registrant's services. Applicant identifies several cases where it claims the Board found a "modest" amount of third-party evidence sufficient to weaken a cited mark and argues that, like those cases, the third-party evidence here should be enough. However, in none of those cases did the Board rely on seven (or less) third-party registrations with no evidence of third-party use. In those cases, consistent with Federal Circuit precedent, the Board considered whether the third-party evidence as a whole demonstrated weakness of the cited marks.[37] *See, e.g.*, *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, Opp. No. 91223982, 2020

[37] Applicant's Supplemental Br., 16 TTABVUE 3-9.

TTAB LEXIS 269, at *51-57 (TTAB 2020) (finding plaintiff's BROOKLYN BREWERY and BROOKLYN marks inherently weak because they registered based on a claim of acquired distinctiveness under Trademark Act Section 2(f), and rejecting claim of commercial strength based on internet evidence showing six local Brooklyn-formative named establishments selling beer; "neither … an enhanced nor a diminished scope of protection" applied), *aff'd in part and vacated in part*, 17 F.4th 129 (Fed. Cir. 2021); *In re FabFitFun, Inc.*, Ser. No. 86847381, 2018 TTAB LEXIS 297, at *9-15 (TTAB 2018) (finding ten third-party uses of the component SMOKIN' HOT insufficient on their own to weaken the cited mark SMOKIN' HOT SHOW TIME but when considered in connection with the dictionary definition, the SMOKIN' HOT component is "somewhat weak"); *In re Hartz Hotel Servs., Inc.*, Ser. No. 76692673, 2012 TTAB LEXIS 75, at *6-12 (TTAB 2012) (finding that five third-party registrations and seventeen third-party uses were sufficient to prove that "marks comprising the term 'Grand Hotel' in connection with hotel services should be accorded a narrow scope of protection"); *Plus Prods. v. Natural Organics, Inc.*, 1979 TTAB LEXIS 85, at *18-23 (TTAB 1979) (at least fifteen registrations for PLUS-formative marks for vitamins reflect the Office's belief, trademark owners' belief, and plaintiff's belief that PLUS-formative marks can be registered side-by-side for vitamins without confusion, "provided there are minimal differences between the marks").[38]

[38] In support of this same proposition, Applicant again relies on non-precedential cases without clearly identifying them as such. *See* Applicant's Supplemental Br., 16 TTABVUE 7 (citing "*In re FiftyThree, Inc.*, Serial No. 86180291 (TTAB Apr. 12, 2017)" and "*In re Moxie Apparel Inc.*, Serial No. 90100833 (TTAB Sept. 28, 2022)"). In neither of those cases did the

Furthermore, we hasten to add that we would arrive at the same outcome even if the Cited Mark had been found to have some conceptual weakness. In that regard, our case law is clear that "even ... weak marks are entitled to protection from the use of a very similar mark for legally identical services." *Max Cap. Grp.*, 2010 TTAB LEXIS 1, at *12. Indeed, even if there was some amount of conceptual weakness of the word DRIVEN in connection with Class 35 services generally, Applicant's own arguments prove why such weakness would have little impact in these consolidated appeals. Applicant acknowledges that "where a shared term lacks distinctiveness, consumers are conditioned to distinguish between similar marks **based on small differences in wording, stylization, or presentation**."[39] Here, there are no "small differences in wording, stylization, or presentation" between Applicant's marks and the Cited Mark. The marks are identical.

In sum, we find Applicant's third-party registration evidence insufficient to demonstrate conceptual weakness of the Cited Mark for Registrant's services. We find that the Cited Mark is inherently distinctive for the relevant services and has not been shown to be conceptually weak. We therefore treat the sixth *DuPont* factor

---

Board rely on seven (or less) third-party registrations with no evidence of third-party use. *See In re Moxie Apparel Inc.*, Ser. No. 90100833, 2022 TTAB LEXIS 372, at *8-11 (TTAB 2022) (eight third-party registrations and fourteen third-party uses of "MOXIE and MOXIE formative marks (or its phonetic equivalent) for clothing and related footwear are probative of conceptual and commercial weakness of Registrant's MOXIE marks in the clothing and related footwear industry"); *In re FiftyThree, Inc.*, Ser. No. 86180291, 2017 TTAB LEXIS 132, at *10-15 (TTAB 2017) (nine third-party registrations and three third-party uses of PAPER-formative marks demonstrate that "a mark comprising, in whole or in part, the word 'Paper' in connection with [computer applications allowing for the substitution of digital data for writing or drawing on paper] should be given a restricted scope of protection").

[39] Applicant's Supplemental Br., 16 TTABVUE 10 (emphasis added).

as neutral in our likelihood of confusion analysis, and accord the Cited Mark "the normal scope of protection to which [an] inherently distinctive marks [is] entitled." *Info. Builders*, 2020 TTAB LEXIS 20, at *26.

E. Applicant's DRIVEN ADVISORS Registration

Applicant argues that the Examining Attorney's refusal to register Applicant's marks is inconsistent with the fact that Applicant has registered the mark DRIVEN ADVISORS (in standard characters and with "ADVISORS" disclaimed) for the same services as those services recited in the involved applications.[40] We consider Applicant's arguments about its prior registration under the thirteenth *DuPont* factor, which pertains to "any other established fact probative of the effect of use," *DuPont*, 476 F.2d at 1361, and "accommodates the need for flexibility in assessing each unique set of facts[.]" *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 TTAB LEXIS 381, at *19 (TTAB 2019).

Contrary to Applicant's argument, Applicant's ownership of a registration for DRIVEN ADVISORS does not give Applicant "the right to … register the word DRIVEN [alone] in connection with Applicant's Services."[41] This case does not present "the unique situation presented by the coexistence of applicant's existing registration with the cited registration for over five years, when applicant's applied-for mark is substantially similar to its existing registered mark, both for identical goods." *In re Strategic Partners, Inc.*, Ser. No. 77903451, 2012 TTAB LEXIS 80, at *9 (TTAB 2012).

[40] Applicant's Br., 6 TTABVUE 25; *see also id.* at 53-54 (attaching Registration No. 7499237; issued September 10, 2024); Applicant's Reply Br., 21 TTABVUE 5.

[41] Applicant's Br., 6 TTABVUE 25.

Rather, Applicant's existing registration is less than five years old and is not "substantially similar" to the applied-for marks.

Lastly, we note that the Board is not bound by the prior decisions of examining attorneys in allowing marks for registration. *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016) ("The [US]PTO is required to examine all trademark applications for compliance with each and every eligibility requirement . . . even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect."); *see also In re Blvd. Entm't Inc.*, 334 F.3d 1336, 1343 (Fed. Cir. 2003) ("The fact that, whether because of administrative error or otherwise, some marks have been registered even though they may be in violation of the governing statutory standard does not mean that the agency must forgo applying that standard in all other cases."). As is often noted by the Board and the courts, each case must be decided on its own merits. The determination of registrability of a mark in another case does not control the merits in the case now before us. *Nett Designs*, 236 F.3d at 1342 ("[T]he [US]PTO's allowance of such prior registrations does not bind the Board or this court."). Accordingly, Applicant's ownership of a registration for the mark DRIVEN ADVISORS does not compel the approval of its applied-for marks.

In view thereof, the thirteenth *DuPont* factor is neutral.

II. Conclusion – Balancing the *DuPont* Factors

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there is evidence and argument, "explain the results of that weighing," and address "the weight [we] assigned to the relevant factors." *Charger Ventures*, 64 F.4th

at 1384. "No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark." *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346 (Fed. Cir. 2010); *see also Naterra Int'l*, 92 F.4th at 1116-17 ("Only the *DuPont* factors of significance to the particular mark need be considered in the likelihood of confusion analysis.").

We have carefully considered all of the evidence and arguments. Applicant's marks and the Cited Mark are identical. The first *DuPont* factor therefore weighs heavily in favor of finding a likelihood of confusion. Applicant's services and Registrant's services are in-part legally identical and otherwise related, the trade channels for the legally identical services are presumed to be the same, and the record shows that Applicant's and Registrant's related services move in the same channels of trade. Accordingly, the second and third *DuPont* factors also weigh heavily in favor of a likelihood of confusion. The fourth, fifth, sixth, and thirteenth factors are neutral in our likelihood of confusion analysis. No *DuPont* factor weighs against a finding of likelihood of confusion. Accordingly, we conclude that confusion is likely between Applicant's marks for the identified services in Class 35 and the Cited Mark for the identified services in Class 35.

Decision: The Section 2(d) refusal to register is affirmed as to Application Serial Nos. 98113736, 98113783, and 98113816.