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Mailed: October 7, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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In re Dream Home Construction, LLC

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Serial No. 98273894
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James C. Yang of Dane IP Law PC,
for Dream Home Construction, LLC.

Ronald McMorrow, Trademark Examining Attorney, Law Office 118,
Michael Baird, Managing Attorney.

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Before Larkin, Lavache, and O'Connor
Administrative Trademark Judges.

Opinion by Lavache, Administrative Trademark Judge:

Dream Home Construction, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark DREAM HOME CONSTRUCTION (HOME CONSTRUCTION disclaimed) for “Custom construction of homes; Residential building construction; Construction of residential buildings; Consulting services in

Serial No. 98273894

the field of home construction; custom building renovation; renovations of residential buildings,” in International Class 37.¹

The Trademark Examining Attorney refused registration of Applicant’s mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground of likelihood of confusion, citing the following composite mark, which is registered on the Principal Register for “Housing services, namely, repair, improvement, and construction of residential real property,” in International Class 37:²



After the Examining Attorney made the refusal final, Applicant requested reconsideration, which the Examining Attorney denied. Applicant then filed this appeal, which has been fully briefed. For the reasons explained below, we **affirm** the refusal.

¹ Application Serial No. 98273894, filed November 16, 2023, based on a claimed bona fide intention to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

² Registration No. 6581622, issued on January 26, 2021. The registration includes a disclaimer of “HOME” apart from the mark as shown, and the following description of the mark: “The mark consists of the wording ‘DH DREAM HOME ONE DREAM OUR HOME’. The ‘H’ of ‘DH’ is superimposed over the ‘D’ and a roof is situated above to give the appearance of a house. To the right of ‘DH’ is ‘DREAM HOME’ in larger font and ‘ONE DREAM OUR HOME’ underneath in smaller font. To the right and left of ‘ONE DREAM OUR HOME’ is a horizontal line.”

I. Likelihood of Confusion

Trademark Act Section 2(d), in relevant part, prohibits registration of a mark that “so resembles a mark registered in the Patent and Trademark Office . . . as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion.” 15 U.S.C. § 1052(d). To determine whether confusion is likely, we analyze all probative evidence relevant to the factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”).³ See *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

In every Section 2(d) case, two key *DuPont* factors are the similarity or dissimilarity of the marks and the relatedness of the respective 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 [or services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). Here, we have considered each *DuPont* factor that is relevant and for which there is evidence and argument of record. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. See *Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1356 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1205 (Fed. Cir. 1993) (“[T]he various

³ Citations in this opinion adhere to the guidance in the TRADEMARK TRIAL & APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (June 2025). The TTABVUE citations in this opinion refer to the Board’s docket system. The number preceding the TTABVUE designation is the docket entry number and any numbers following indicate the page numbers within the docket entry. And the Trademark Status and Document Retrieval (TSDR) citations in this opinion refer to the electronic file database for the involved application.

evidentiary factors may play more or less weighty roles in any particular determination.”). Ultimately, however, “each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973).

A. Relatedness of the Services

We begin our analysis with the second *DuPont* factor, which concerns the similarity or dissimilarity and nature of the respective services. *DuPont*, 476 F.2d at 1361. In determining the relatedness of the services, we must consider the services as they are identified in Applicant’s application and the cited registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990)).

It is sufficient that the services are related in some manner, or that the conditions and activities surrounding the marketing of the services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1396 (Fed. Cir. 2012); *7-Eleven, Inc. v. Wechsler*, No. 91117739, 2007 TTAB LEXIS 28, at *18.

Further, registration may be refused as to an entire class of services if Applicant’s mark as used in connection with any of its identified services in that class is likely to cause confusion with Registrant’s mark for any of the services listed in the cited registration. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983)

(holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981) (indicating that likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods in the application).

Here, Applicant's services are "Custom construction of homes; Residential building construction; Construction of residential buildings; Consulting services in the field of home construction; custom building renovation; renovations of residential buildings," in International Class 37. Registrant's services are "housing services, namely, repair, improvement, and construction of residential real property," in International Class 37.

The Examining Attorney argues that the respective services are legally identical,⁴ which Applicant does not dispute in its briefs. We agree with the Examining Attorney, and find that almost all of Applicant's identified services are legally identical to Registrant's services. That is, Applicant's identified services of "custom construction of homes," "residential building construction," and "construction of residential buildings" are essentially synonymous with Registrant's identified "construction of residential real property" services.⁵ And Applicant's identified services of "custom

⁴ Examining Attorney's Brief, 6 TTABVUE 3.

⁵ "Real property" is "property consisting of land, **buildings**, crops, or other resources still attached to or within the land or improvements or **fixtures permanently attached to the land or a structure on it.**" MERRIAM-WEBSTER DICTIONARY, <https://merriam-webster.com/dictionary/property#legalDictionary> (accessed on September 25, 2025) (emphasis added). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed form or regular fixed editions. *Univ. of Notre Dame*

building renovation” and “renovations of residential buildings” encompass Registrant’s identified services of “repair” and “improvement” of “residential real property.”⁶ See, e.g., *In re Hughes Furniture Indus., Inc.*, No. 85627379, 2015 TTAB LEXIS 65, at *10 (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”).

Accordingly, the second *DuPont* factor weighs strongly in favor of a conclusion that confusion is likely.

B. Trade Channels and Classes of Consumers

Next, we consider the established, likely-to-continue channels of trade, the third *DuPont* factor. *DuPont*, 476 F.2d at 1361. We presume that, as to the legally identical services, the relevant trade channels and classes of purchasers are the same. See *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (finding Board entitled to presume that trade channels and classes of purchasers were the same where the respective goods were identical); *In re Am. Cruise Lines, Inc.*, No. 87940022, 2018 TTAB LEXIS 363, at *5; *In re Inn at St. John’s, LLC*, No. 87075988, 2018 TTAB LEXIS 170, at *6, *aff’d*, 777 Fed. Appx. 516 (Fed. Cir. 2019).

du Lac v. J.C. Gourmet Food Imps. Co., No. 91061847, 1982 TTAB LEXIS 146, at *7, *aff’d*, 703 F.2d 1372 (Fed. Cir. 1983); *In re Red Bull GmbH*, No. 75788830, 2006 TTAB LEXIS 136, at *7; TBMP § 1208.04.

⁶ To “renovate” is “to restore to a former better state (as by cleaning, repairing, or rebuilding).” MERRIAM-WEBSTER DICTIONARY, <https://merriam-webster.com/dictionary/renovation> (accessed on September 24, 2025).

We therefore find that the third *DuPont* factor also weighs in favor of a conclusion that confusion is likely.

C. Strength or Weakness of the Cited Mark

Before we compare the marks at issue, we consider, in the context of the sixth *DuPont* factor, Applicant's argument that "the DREAM HOME phrase is diluted and commercially weak and is only entitled to a narrow scope of protection."⁷ *See DuPont*, 476 F.2d at 1361. We do so because a determination of the strength or weakness of the cited mark helps inform us as to its scope of protection. *See In re Morinaga Nyugyo KK*, No. 86338392, 2016 TTAB LEXIS 448, at *17-18 ("[T]he strength of the cited mark is—as always—relevant to assessing the likelihood of confusion under the *du Pont* framework.").

When evaluating the strength or weakness of a mark, we look at the mark's inherent conceptual strength based on the nature of the term itself and its commercial strength in the marketplace. *See Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) ("There are two prongs of analysis for a mark's strength under the sixth factor: conceptual strength and commercial strength."); *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) (measuring both conceptual and marketplace strength); *Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 TTAB LEXIS 228, at *24.

⁷ Applicant's Appeal Brief, 4 TTABVUE 2.

1. Conceptual Strength or Weakness of the Cited Mark

Conceptual strength is a measure of a mark's distinctiveness and may be placed "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 in the latter three categories are considered inherently distinctive. *See Chippendales*, 622 F.3d at 1351.

The cited registration in this case includes a disclaimer of HOME, but the mark in its entirety issued on the Principal Register without a claim of acquired distinctiveness. Thus, the mark, as a whole, is presumed to be inherently distinctive as to the services listed in the cited registration. 15 U.S.C. § 1057(b); *Tea Bd. of India v. Republic of Tea, Inc.*, No. 9118587, 2006 TTAB LEXIS 330, at *62 ("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 [or services].").

However, the U.S. Court of Appeals for the Federal Circuit has held that if there is evidence that a mark, or an element of a mark, is commonly adopted by many different registrants, that may indicate that the mark or common element has some conceptual weakness as an indicator of a single source. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015) ("[E]vidence of third-party registrations is relevant to 'show the sense in which a mark is used in ordinary parlance,' . . . that is, some segment that is common to both parties' marks may have 'a normally understood and well-recognized

descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.”) (quoting *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015)).

In support of its argument that the cited mark is weak, Applicant points to six registrations for marks containing the phrase DREAM HOME,⁸ which were identified during prosecution of Applicant’s application.⁹ One of these six registrations is the cited registration, which by definition is not a “third-party” registration. The other five, all registered to third parties, are:

- DREAM HOME COMFORTABLE PRICE (HOME disclaimed) for “custom construction of homes,” in International Class 37;
- DREAM HOME SOURCE for “residential home design database services, namely, providing a computer, network-based or web-based database in the field of architectural designs; consultation services for others in the fields of architectural design and interior design, namely, creating home floor plans,” in International Class 42;
- YOUR DREAM HOME IS OUR DREAM JOB for “custom construction of homes; land development services, namely, planning and laying out of residential and/or commercial communities,” in International Class 37;
- HOME DREAM HOME (HOME disclaimed) for “building construction and real estate development services,” in International Class 37; and
- Your dream home... Our vision. (HOME BUILDERS, INC. disclaimed) for “building construction, remodeling and repair; house building and repair,” in International Class 37.

⁸ *Id.* at 2-3.

⁹ See June 25, 2024 Nonfinal Office Action at TSDR 5-7; August 9, 2024 Response to Nonfinal Office Action at TSDR 5-7.

The first registration listed above, for the mark DREAM HOME COMFORTABLE PRICE, is cancelled.¹⁰ Thus it has no probative value except to show that it once issued. *See Made in Nature*, 2022 TTAB LEXIS 228, at *31.

As to the second listed registration, for the mark DREAM HOME SOURCE, the Examining Attorney argues that, because the listed services are different from Registrant's services, the registration has little, if any, relevance to the question of whether DREAM HOME has "a normally understood and well-recognized descriptive or suggestive meaning" as applied to Registrant's services.¹¹ *Juice Generation*, 794 F.3d at 1339. However, because the services covered by this third-party registration involve architectural designs and home floor plans, they may be encountered by the same classes of consumers who are seeking home construction and renovation services. Therefore, while the services are not identical to those offered under the cited mark, they are similar enough for the third-party registration to have at least some relevance in assessing the strength, or weakness, of the phrase DREAM HOME in the cited registration. *See Apex Bank v. CC Serve Corp.*, __ F.4th __, 2025 U.S. App. LEXIS 24802, at *8 (Fed. Cir. Sept. 26, 2025) ("[T]he sixth *DuPont* factor does not require identical goods—only similar ones.").

¹⁰ Registration No. 5400429 was cancelled under Trademark Act Section 8, 15 U.S.C. § 1058, on August 23, 2024, for failure to file a declaration of use or excusable nonuse. *See In re Audemars Piguet Holding SA*, No. 90045780, 2025 TTAB LEXIS 1, at *60 n.103 (taking judicial notice of registration renewals reflected in USPTO records); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, No. 92051006, 2014 TTAB LEXIS 95, at *3 n.4 (taking judicial notice of changes in title and status of pleaded and proven registrations); *c.f.* TBMP § 704.03(b)(1)(A).

¹¹ *See* Examining Attorney's Brief, 6 TTABVUE 6.

Thus, the record provides for our consideration a total of four third-party registrations for marks incorporating the phrase DREAM HOME.¹² Applicant argues that these registrations show that DREAM HOME is “a common phrase . . . used in the home building industry,” which “suggests an idealized, personalized, or perfect home that the customer envisions.”¹³ Applicant has not provided any other evidence to support that contention, but, based on the ordinary meaning of the component terms, DREAM and HOME, the combined phrase DREAM HOME, as used in each of these third-party registered marks, could be perceived as referring to a person’s ideal house.

Each of the registered marks employs the phrase in a slightly different manner, however. One mark, YOUR DREAM HOME IS OUR DREAM JOB, equates the company’s ideal project with the customer’s ideal home. Another mark, which includes the phrase YOUR DREAM HOME . . . OUR VISION, conveys that the company will use its expertise to deliver the customer’s ideal home. The mark

¹² A copy of the registration for the mark YOUR DREAM HOME IS OUR DREAM JOB, was never properly introduced into the record. See *In re Jump Designs, LLC*, No. 76393986, 2006 TTAB LEXIS 209, at *6 (“To make a third-party registration of record, a copy of the registration, either a copy of the paper USPTO record, or a copy taken from the electronic records of the Office, should be submitted.”), *overruled on other grounds by In re Driven Innovations, Inc.*, No. 77073701, 2015 TTAB LEXIS 179, at *13. And, generally, the Board may not take judicial notice of registrations. See *In re House Beer, LLC*, No. 85684754, 2015 TTAB LEXIS 66, at *3 (“[T]he Board does not take judicial notice of the files of applications or registrations residing in the Office.”). However, the Examining Attorney did not object to the discussion of this registration and, in fact, addressed it in his appeal brief as if it was of record. Thus, we treat the registration as if it is of record. See *In re Olin Corp.*, No. 86651083, 2017 TTAB LEXIS 337, at *29 n.22 (noting that the Board does not take judicial notice of registrations, but considering registrations not made of record because the examining attorney did not object to them and, in fact, discussed them in her brief).

¹³ Applicant’s Appeal Brief, 4 TTABVUE 4.

DREAM HOME SOURCE, when considered in connection with services of creating home floor plans and providing database services featuring architectural designs, suggests a place where one can find their ideal home. Lastly, HOME DREAM HOME, appears to be a play on the expression “home sweet home.”

While each of these marks relies on the suggestive meaning that Applicant attributes to the phrase DREAM HOME, each mark overall is different in terms of commercial impression, and is, in turn, different from the cited mark. In any event, we cannot find, based on just these four registrations, that the phrase DREAM HOME is so widely used in connection with the relevant services that its inclusion in the cited mark renders the mark so conceptually weak that it is entitled to a narrower scope of protection. *Cf. Jack Wolfskin*, 797 F.3d at 1373-74 (involving “extensive evidence of third-party registrations”); *Juice Generation*, 794 F.3d at 1339 (same).¹⁴

2. Commercial Strength or Weakness of the Cited Mark

To assess commercial strength of the cited mark under the sixth *DuPont* factor, we consider the number and nature of similar marks in use on similar goods or services. *DuPont*, 476 F.2d at 1361; *see Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, No. 91217095, 2016 TTAB LEXIS 604, at *11. If the evidence establishes that the consuming public is exposed to widespread third-party use of similar marks for similar goods or services, it “is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” *Palm Bay Imps.*,

¹⁴ “By comparison, in *Juice Generation*, there were at least twenty-six relevant third party uses or registrations of record . . . and in *Jack Wolfskin*, there were at least fourteen.” *Morinaga Nyugyo*, 2016 TTAB LEXIS 448, at *26 n.8.

Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 1373 (Fed. Cir. 2005).

Here, Applicant has submitted a single piece of evidence of third-party marketplace use of the mark DREAM HOME SOURCE, a website excerpt which includes the mark and the wording “Customizable House Plans & Dream Home Designs.”¹⁵ While this evidence is relevant to our analysis, it is wholly inadequate to establish that the relevant consuming public has been exposed to widespread use of marks similar to the cited mark, as are the handful of third-party registrations discussed above. *C.f., e.g., Inn at St. John’s*, No. 2018 TTAB LEXIS 170, at *12 (finding no evidence of third-party use and four third-party registrations “of varying probative value” to be “a far cry from the large quantum of evidence . . . that was held to be significant” in *Jack Wolfskin* and *Juice Generation*); *Bell’s Brewery, Inc. v. Innovation Brewing*, No. 91215896, 2017 TTAB LEXIS 452, at *18-19 (finding 13 registrations incorporating one term and eight registrations using another term insufficient “to establish that the terms either have a descriptive significance or are in such widespread use that consumers have come to distinguish marks containing them based on minute differences”). Thus, we cannot find on this record that the cited mark’s commercial strength is diminished by third-party use.


¹⁵ November 4, 2024 Request for Reconsideration at TSDR 7-8. Applicant submitted this evidence in support of its argument that the registration for DREAM HOME SOURCE is relevant to the question of whether the phrase DREAM HOME is “weak.” *See id.* at 2-3. Nonetheless, it is evidence of third-party marketplace use of the phrase DREAM HOME and we consider it for that purpose as well.

3. Conclusion as to the Strength of the Cited Mark

We find that the cited mark is suggestive and is entitled to the normal scope of protection to which inherently distinctive marks are entitled. *See, e.g., Bell's Brewery*, 2017 TTAB LEXIS 452, at *20. The sixth *DuPont* factor is neutral.

D. Comparison of the Marks

We now turn to the first *DuPont* factor, which focuses on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. *See Palm Bay Imps.*, 396 F.3d at 1371 (quoting *DuPont*, 476 F.2d at 1361). Similarity as to any one of these elements may be sufficient to support a finding that the marks are confusingly similar. *See Krim-Ko Corp. v. Coca-Cola 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.”); *Inn at St. John's*, 2018 TTAB LEXIS 170, at *13. And where the parties’ services are legally identical, as almost all of them are here, the degree of similarity between the marks need not be as great to find that confusion as to source is likely. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373 (Fed. Cir. 2018); *In re Chica, Inc.*, No. 76627857, 2007 TTAB LEXIS 77, at *7-8; *In re J.M. Originals, Inc.*, No. 73530739, 1987 TTAB LEXIS 21, at *3.

Here, Applicant’s mark is DREAM HOME CONSTRUCTION (in standard characters) and the cited mark is . When assessing these marks, “[t]he 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.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 1324 (Fed. Cir. 2017) (quoting *Coach Servs.*, 668 F.3d at 1368). “The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks.” *In re Box Sols. Corp.*, No. 76267086, 2006 TTAB LEXIS 176, at *14.

Further, all elements of the respective marks must be considered. *See Viterra*, 671 F.3d at 1362 (“[M]arks must be viewed ‘in their entirety,’ and it is improper to dissect a mark . . ., including when a mark contains both words and a design.”); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (stating that “marks must be compared in their entirety”). That said, “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 consideration of the marks in their entirety.” *Nat’l Data*, 753 F.2d at 1058.

Here, the cited mark consists of a design element composed of a stylized “D” capped with a roofline element and containing a stylized “h,” along with the wording DREAM HOME appearing above the wording ONE DREAM OUR HOME. In the mark, DREAM HOME serves as the dominant element due to its size and prominent placement. *See, e.g., In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 TTAB LEXIS 108, at *6-7 (finding a term to be the dominant element of a mark because “it comprise[d] the largest literal portion of the mark in terms of size, position, and emphasis”); *Toro Co. v. ToroHead, Inc.*, No. 91114061, 2001 TTAB LEXIS 823, at *5-6 (finding TORO to be the dominant element of applicant’s mark, ToroMR (with bull design), where, *inter alia*, it was prominently featured and was the pronounceable

portion of the mark). Specifically, DREAM HOME is presented above the other words in a larger font size and comprises the largest portion of the mark.

We assign less weight to the mark's design element because, in view of its nature, it is unlikely to be verbalized and thus consumers are less likely to use it to recall the mark or request the services. *See Viterra*, 671 F.3d at 1362 ("In the case of a composite mark containing both words and a design, 'the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.'") (quoting *CBS, Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983)); *L.C. Licensing, Inc. v. Berman*, No. 91162330, 2008 TTAB LEXIS 756, at *9 ("[I]t is well settled that if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods."). The other wording in the mark, ONE DREAM OUR HOME, also takes a secondary role, as it appears in a much smaller font below DREAM HOME. *See, e.g., In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (Fed. Cir. 2003) (agreeing with the Board that wording appearing in smaller font at the bottom of the mark was less significant than other more prominent wording).

In Applicant's mark, the wording HOME CONSTRUCTION has been disclaimed, as it merely describes the nature of Applicant's services.¹⁶ Nonetheless, as Applicant acknowledges, the mark would likely be perceived as consisting of the phrase DREAM

¹⁶ *See* June 25, 2024 Nonfinal Office Action at TSDR 3 (disclaimer requirement); August 9, 2024 Response to Nonfinal Office Action at TSDR 1 (entry of disclaimer).

HOME, followed by the term CONSTRUCTION.¹⁷ Accordingly, we find that DREAM HOME serves as the mark's dominant portion, because it appears first in the mark and would likely be viewed as the source-indicating element. *See, e.g., In re Nat'l Data Corp.*, 753 F.2d 1056, 1060 (Fed. Cir. 1985) ("In a sense, the public can be said to rely more on the nondescriptive portion of each mark."); *In re QuickPayNet, Ltd.*, No. 85925162, 2015 TTAB LEXIS 130, at *10 (finding consumers would focus primarily on the first portion of each respective mark); *c.f. In re Accelerate s.a.l.*, No. 77522433, 2012 TTAB LEXIS 43, at *5 ("[W]e are able to quickly discern the dominant element [in the standard character mark COLOMBIANO COFFEE HOUSE] is the term COLOMBIANO. It appears first and is followed by the disclaimed and generic wording, COFFEE HOUSE. Thus, for purposes of noting any source-identifying qualities of applicant's proposed mark, consumers will likely focus on the term COLOMBIANO.").

Because Applicant's mark and the cited mark share an identical dominant element, we find that the marks are similar in appearance and sound. *See, e.g., In re i.am.symbolic, llc*, No. 85916778, 2018 TTAB LEXIS 281, at *25 (finding marks more similar than dissimilar where the marks shared the same dominant element, which was identical in sound and meaning); *Aquitaine Wine*, 2018 TTAB LEXIS 108, at *5

¹⁷ *See* Applicant's Appeal Brief, 4 TTABVUE 4 ("The proposed mark includes the term CONSTRUCTION after the phrase DREAM HOME."). Applicant later argued that "the commercial impression of the proposed mark may be characterized as HOME CONSTRUCTION being a DREAM" in view of the Examining Attorney's requirement to disclaim HOME CONSTRUCTION. Applicant's Reply Brief, 9 TTABVUE 3. However, we agree with Applicant's earlier position that the words DREAM HOME would be read as a separate phrase.

“The marks at issue are similar in sight and sound, since they share the term LAROQUE.”).

As to connotation and overall commercial impression, Applicant argues that its mark “DREAM HOME CONSTRUCTION” emphasizes that the company specializes in building or constructing custom homes that align with the customer’s ideal or aspirational concept of a ‘dream home.’¹⁸ Thus, Applicant asserts, “the commercial impression of the applicant’s mark is focused on fulfilling the customer’s vision of a dream home, making it customer-centric.”¹⁹ According to Applicant, this contrasts with the cited mark, which is “builder-centric” because it creates the “impression that the dream home is a reflection of the builder’s ideals which would match with the customer’s desires of what a dream home would be.”²⁰

We disagree with Applicant that this proffered subtle distinction, which is tenuous at best,²¹ is sufficient to distinguish the marks. In both marks, the dominant element is the phrase DREAM HOME, and both marks are applied to legally identical services involving the construction, repair, and improvement of housing. Thus, while each mark must be considered in its entirety, both marks are likely to create the same general connotation and commercial impression in the minds of consumers when considered in connection with the services, namely, the concept of an ideal home and

¹⁸ Applicant’s Appeal Brief, 4 TTABVUE 4.


¹⁹ *Id.* at 5 (emphasis removed).

²⁰ *Id.* (emphasis removed).

²¹ Simply put, there is no evidence to suggest, or reason to believe, that the mere addition of the term CONSTRUCTION to Applicant’s mark gives the mark a distinguishing “customer-centric” impression.

the suggestion that the provider of the services will deliver such a home. *See, e.g., In re Max Cap. Grp. Ltd.*, No. 77186166, 2010 TTAB LEXIS 1, at *14 (finding the shared term MAX in respective marks would have the same connotation where the services at issue were identical, despite other differences in the marks).

In reaching this conclusion, we do not discount the additional elements in Registrant's mark, but we disagree with Applicant that they obviate a likelihood of confusion. Rather, both the design element, consisting of a stylized house formed by the letters "D" and "h" (the first letters of the component words in DREAM HOME) and the phrase ONE DREAM OUR HOME, reflect and reinforce the mark's dominant element DREAM HOME. Thus, they do little to distinguish the overall commercial impression of the mark from that of Applicant's DREAM HOME CONSTRUCTION mark. *See In re Charger Ventures*, 64 F.4th 1375, 1382 (Fed. Cir. 2023) ("[A]n additional word or component may technically differentiate a mark but do little to alleviate confusion."); *China Healthways Inst., Inc. v. Wang*, 491 F.3d 1337, 1340 (Fed. Cir. 2007) ("The marks must be compared in their entirety, at least when the overall commercial impression is reasonably based on the entirety of the marks.").

In fact, in view of the marks' shared wording, consumers could reasonably assume that Applicant's services sold under its DREAM HOME CONSTRUCTION mark are from the same source as the services sold under the cited  mark with which they are acquainted or familiar, and that Applicant's mark is merely a variation of, or derivative of, the cited mark, or vice versa. *See, e.g., In re Comexa Ltda.*, No. 75396043, 2001 TTAB LEXIS 274 (applicant's use of term AMAZON and

parrot design for chili sauce and pepper sauce is likely to cause confusion with registrant's AMAZON mark for restaurant services); *SMS, Inc. v. Byn-Mar Inc.*, No. 91068062, 1985 TTAB LEXIS 32, at *4 (finding applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line of clothing").

This is especially so because Applicant seeks registration of its mark in standard character form and thus the mark may be presented in any font style or size, including the same font and size as the literal portions of the cited mark. *See Aquitaine Wine*, 2018 TTAB LEXIS 108, at *13 ("[T]he rights associated with a standard character mark reside in the wording per se and not in any particular font style, size, or color.").

In sum, given that the respective services are legally identical in part, we find that the shared connotation and overall commercial impression of the marks outweighs any minor differences between them. *See, e.g., In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (affirming the Board's finding that because of the shared dominant term DELTA, the marks DELTA and THE DELTA CAFE (and design) were similar in appearance, sound, and meaning, despite the differences in the marks); *Specialty Brands, Inc. v. Coffee Bean Distribs.*, 748 F.2d 669, 673, 676 (Fed. Cir. 1984) (concluding that a likelihood of confusion exists between SPICE ISLANDS and SPICE VALLEY because, inter alia, the marks created similar commercial impression and the parties' goods were identical); *Morinaga Nyugo*, 2016 TTAB LEXIS 448, at * 27-28 ("[W]hile the marks are not identical, they are similar enough

that their use on identical or closely related goods is likely to cause confusion.”); *see also Coors*, 343 F.3d at 1344 (“[S]imilarity is not a binary factor but is a matter of degree.”).

Accordingly, the first *DuPont* factor favors a conclusion that confusion is likely.

II. Conclusion

Having considered all of the arguments and evidence of record pertaining to the relevant *DuPont* factors, we find that the cited mark is suggestive and is entitled to the normal scope of protection to which inherently distinctive marks are entitled; that the marks in their entireties are similar in appearance and sound, and highly similar as to connotation and overall commercial impression, outweighing any minor visual or aural differences between them; that almost all of Applicant’s services are legally identical to Registrant’s services; and that therefore the relevant trade channels and classes of purchasers for the respective legally identical services are presumed to be the same. Thus, the relevant *DuPont* factors, on the whole, weigh in favor of a conclusion that confusion as to source is likely.

Decision: The refusal under Trademark Act Section 2(d) to register Applicant’s mark DREAM HOME CONSTRUCTION is **affirmed**.