THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: February 23, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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In re San Ignacio University Inc.

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Serial No. 98286205

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Sherry Flax of Saul Ewing LLP,
for San Ignacio University Inc.

Karl Wert, Trademark Examining Attorney, Law Office 120,
Joshua Toy, Managing Attorney.

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Before Greenbaum, Elgin, and Lavache,
Administrative Trademark Judges.

Opinion by Lavache, Administrative Trademark Judge:

Applicant San Ignacio University Inc. seeks registration on the Principal Register of the stylized mark below for:

> Educating at university or colleges; Educational services, namely, providing courses of instruction, workshops, seminars, conferences, and lectures in the fields of business, education, and hospitality; Educational services, namely, conducting distance learning instruction at the university level; Educational services, namely, providing online courses of instruction at the university and post-graduate level and distribution of course material in connection therewith; Providing a web site that features information on attending college

and university with an emphasis on newly enrolled students, in International Class 41.[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 standard character mark SIU, which is registered on the Principal Register for "Educational Services in the nature of courses and degree programs at the University level; organizing educational, cultural, sporting, and entertainment events," in International Class 41.[2]

After the Examining Attorney made the refusal final, Applicant requested reconsideration and filed an appeal. The application was remanded to the Examining Attorney for consideration of the request for reconsideration, which the Examining Attorney denied. The appeal then resumed and was fully briefed.[3] For the reasons explained below, we **affirm** the refusal.

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[1] Application Serial No. 98286205, filed November 27, 2023, based on Applicant's allegation of use in commerce under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), claiming August, 17, 2015 as both the date of first use anywhere and the date of first use in commerce. The application includes a disclaimer of "UNIVERSITY" and a translation statement indicating that "[t]he English translation of 'SAN IGNACIO' in the mark is 'Saint Ignatius.'" The description of the mark states that "[t]he mark consists of upper case letters 'SIU' in blue, green, and yellow, respectively, and the terms SAN IGNACIO UNIVERSITY in blue upper case letters to the right." The colors blue, green, and yellow are claimed as a feature of the mark.

[2] Registration No. 3821063, issued on July 20, 2010; renewed.

[3] Applicant's reply brief appears to be identical to its main appeal brief. *Compare* 6 TTABVUE, *with* 9 TTABVUE. A reply brief is a voluntary submission, allowing an applicant to respond to arguments made in the examining attorney's brief; it should not consist of a

I. Evidentiary Objection

Before turning to our analysis, we address the Examining Attorney's objection to evidence that Applicant references and discusses in its brief, namely, internet materials that were never properly introduced into the record.[4] The Examining Attorney previously objected to, and did not consider, this evidence when it was included in Applicant's response to a nonfinal Office action, advising Applicant that it was improperly submitted because it consisted of webpage screenshots with no indication of the date they were accessed or downloaded.[5] The Examining Attorney asks us to disregard this evidence.[6]

The record should be complete prior to the filing of the appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); *In re HSB Solomon Assocs.,* No. 77136242, 2012 TTAB LEXIS 79, at *9; TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1207.01 (2025). To properly introduce internet evidence into the record, a party must provide (1) an image file or printout of the downloaded webpage, (2) the date the evidence was downloaded or accessed, and (3) the complete URL address of

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mere duplicate of the applicant's main brief. *Cf. ITC Ent. Grp. v. Nintendo of Am.*, No. 92023557, 1998 TTAB LEXIS 13, at *1-3 (indicating that filing duplicative submissions is a waste of time and resources, and is a burden on the Board).

The TTABVUE and Trademark Status and Document Retrieval (TSDR) citations in this opinion refer respectively to entries in the Board's electronic docket and the electronic application file. For TTABVUE citations, the number preceding the TTABVUE designation is the docket entry number and any numbers following indicate the relevant page numbers within the docket entry

[4] Examining Attorney's Brief, 8 TTABVUE 2.

[5] *See* November 12, 2024 Final Office Action at TSDR 6-7.

[6] Examining Attorney's Brief, 8 TTABVUE 2.

the webpage. *See In re I-Coat Co., LLC*, No. 86802467, 2018 TTAB LEXIS 171, at *7-9; *see also* TBMP § 1208.03; TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 710.01(b) (2025). The Board will not consider internet evidence that does not comply with these requirements, except where the examining attorney does not object. *See I-Coat Co.*, 2018 TTAB LEXIS 171, at *9.

Here, the access dates for the website screenshots were not indicated in the screenshots themselves or elsewhere in the submission when Applicant originally filed it.[7] The Examining Attorney properly objected to this evidence and advised Applicant how to correct the deficiency.[8] Applicant failed to provide the required information, despite having the opportunity to do so in subsequent submissions. We therefore sustain the Examining Attorney's objection and have not considered this evidence.

II. 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*"). *See In re Majestic Distilling Co.,* 315 F.3d 1311, 1315 (Fed. Cir. 2003).

[7] *See* September 27, 2024 Response to Nonfinal Office Action at TSDR 6-10.

[8] *See* November 12, 2024 Final Office Action at TSDR 6-7.

In every Section 2(d) case, two key *DuPont* factors are the similarity or dissimilarity of the marks and respective 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 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. Comparison of the Services

We begin our analysis with the second *DuPont* factor, which concerns the similarity or dissimilarity and nature of the respective services, i.e., the relatedness of the services. *DuPont*, 476 F.2d at 1361. In assessing relatedness, 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)).

Further, registration may be refused as to an entire class of services if an applicant's mark as used in connection with any of its identified services in that class is likely to cause confusion with the 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 [or services] in the application).

Again, Applicant's services are identified as:

> Educating at university or colleges; Educational services, namely, providing courses of instruction, workshops, seminars, conferences, and lectures in the fields of business, education, and hospitality; Educational services, namely, conducting distance learning instruction at the university level; Educational services, namely, providing online courses of instruction at the university and post-graduate level and distribution of course material in connection therewith; Providing a web site that features information on attending college and university with an emphasis on newly enrolled students, in International Class 41.

And Registrant's services are "Educational Services in the nature of courses and degree programs at the University level; organizing educational, cultural, sporting, and entertainment events," in International Class 41.

We agree with the Examining Attorney that Applicant's educational services encompass or otherwise broadly overlap with Registrant's educational services,[9] which Applicant does not dispute in its brief. But for simplicity, and because

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[9] Examining Attorney's Brief, 8 TTABVUE 9.

confusion may be found as to an entire class based on a single service within that class, we focus on Applicant's "educational services, namely, providing online courses of instruction at the university and post-graduate level and distribution of course material in connection therewith." These services are encompassed by Registrant's broadly identified "educational services in the nature of courses and degree programs at the University level," and thus the respective services are legally identical.[10] *See, e.g.*, *In re Hughes Furniture Indus.,* 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 in favor of a conclusion that confusion is likely.

B. Trade Channels and Classes of Consumers

Next, we consider the similarity or dissimilarity of 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)

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[10] A "university" is "an institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees," "specifically **:** one made up of an undergraduate division which confers bachelors degrees and a graduate division which comprises a graduate school and professional schools each of which may confer master's degrees and doctorates." MERRIAM-WEBSTER DICTIONARY, https://merriam-webster.com/dictionary/university (accessed on February 23, 2026) (emphasis removed). 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 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.

(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).

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

C. 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. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772,* 396 F.3d 1369, 1371 (Fed. Cir. 2005) (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 they 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 and the cited mark is SIU (in standard characters).

While the respective marks appear together above, this placement does not reflect the actual conditions under which consumers are likely to encounter the marks in the marketplace. Thus, 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 entireties,' 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 entireties"). 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 entireties." *Nat'l Data*, 753 F.2d at 1058.

Here, we agree with the Examining Attorney that SIU serves as the dominant element in Applicant's mark, both because of its prominent placement as the first element in the mark, and because of its larger size and higher degree of stylization relative to the other wording in the mark, SAN IGNACIO UNIVERSITY. *See, e.g.*, *Palm Bay Imps.*, 396

F.3d at 1371 (finding VEUVE was a prominent feature of the relevant mark because it was the first word in the mark); *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 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"); *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).

Applicant argues, however, that its mark is "entirely distinguishable" from the cited mark, SIU, because its mark "includes . . . distinctive stylization, and a color claim."[11] But, because the cited mark, SIU, is registered in standard character form, it may be displayed in any font, size, style, or color, including the font, size, style, and colors in which the SIU portion of Applicant's mark appears. *Viterra*, 671 F.3d at 1368 (finding the Board's holding "that a standard character mark is not limited to any particular font, size, style, or color, it is entirely consistent with our case law, the relevant regulations, and the TMEP"). Thus, the cited mark is legally identical to the dominant literal element in Applicant's mark. *See i.am.symbolic*, 866 F.3d at 1324 ("[Appellant] does not, and cannot, dispute that the mark, I AM in standard character form, and the registrants' marks, I AM in standard character, typed, or stylized form, are pronounced the same way and, at a minimum, legally identical."); *Squirtco*, 697

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[11] Applicant's Appeal Brief, 6 TTABVUE 8.

F.2d at 1040 ("[By presenting its mark merely in [the equivalent of standard characters], a difference cannot legally be asserted by that party.").

And, often, where the entirety of one mark is the dominant element of another mark, the likelihood of confusion increases. *See, e.g.*, *Hunter Indus., Inc. v. Toro Co.*, No. 91203612, 2014 TTAB LEXIS 105, at *33 ("Likelihood of confusion often has been found where the entirety of one mark is incorporated within another."); *see also Stone Lion*, 746 F.3d at 1320-22 (affirming Board's finding that the marks at issue were similar where the applicant's mark STONE LION CAPITAL incorporated the entirety of the registered marks LION CAPITAL and LION); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 876 (Fed. Cir. 1992) (finding CENTURY 21 and CENTURY LIFE OF AMERICA confusingly similar, noting that "upon encountering each mark, consumers must first notice this identical lead word"); *Double Coin Holdings Ltd. v. Tru Dev.*, No. 92063808, 2019 TTAB LEXIS 347, at *20-23 (finding "the parties' marks are similar in their entireties" after noting that respondent's "junior mark, ROAD WARRIOR contains [petitioner's] entire mark WARRIOR").

We find that to be the case here. Indeed, because the cited mark is legally identical to the dominant literal element Applicant's mark, we find that the marks look and sound similar. *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 ("The marks at issue are similar in sight and sound, since they share the term LAROQUE.").

In making this finding, we acknowledge that the additional wording SAN IGNACIO UNIVERSITY in Applicant's mark creates a potential point of distinction between the two marks, but we disagree that it obviates a likelihood of confusion. *See, e.g.*, *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."). Doubtless, many consumers who view Applicant's mark would infer that SIU in the mark is an initialism for the wording SAN IGNACIO UNIVERSITY. However, there is nothing to deter those same consumers from concluding that SIU alone in the cited mark also stands for SAN IGNACIO UNIVERSITY. In other words, because there is no other differentiating wording in the cited mark to create a different commercial impression or connotation as to SIU, consumers encountering legally identical services under the respective marks could reasonably assume that Applicant's mark is merely a variation of, or derivative of, the cited mark, or vice versa, and both marks thus identify a common source. *See, e.g.*, *In re Dare Foods Inc.*, No. 88758625, 2022 TTAB LEXIS 92, at *13 ("[C]onsumers encountering these marks [RAINCOAST DIP and RAINCOAST trading] could mistakenly believe the former is a variation on the registered mark used to identify a particular line of snack food dips, but nonetheless emanating from a common source."); *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, No. 91197659, 2013 TTAB LEXIS 314, at *32 ("Purchasers of opposer's GOTT and JOEL GOTT wines are likely to assume that applicants goods,

sold under the mark GOTT LIGHT and design, are merely a line extension of goods emanating from opposer."); *In re Comexa Ltda.*, No. 75396043, 2001 TTAB LEXIS 274, at *12 (finding 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.").

Thus, while each mark must be considered in its entirety, both marks are likely to create similar general connotations and commercial impressions in the minds of consumers when considered in connection with the parties' legally identical services. *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 impressions and the parties' goods were identical); *In re Morinaga Nyugo KK*, No. 86338392, 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.") *In re Max Cap. Grp.*, 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); *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.

D. Purchasing Conditions and Sophistication of Purchasers

Under the fourth *DuPont* factor, we consider "[t]he conditions under which and buyers to whom sales are made, i.e., 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361. Applicant has not provided any evidence of consumer sophistication as to the relevant services here, but contends that "[t]he degree of care and thought involved in choosing a college is undoubtedly higher than that required for most purchases."[12]

We agree that, based on their nature alone, educational services at the college/university level generally are unlikely to be purchased on impulse, but instead with careful deliberation by informed consumers. *In re Info. Builders Inc.*, No. 87753964, 2020 TTAB LEXIS 20, at *4 ("[I]n light of the inherent nature of the goods and services involved, some degree of purchasing care may be exercised by Applicant's potential or actual consumers."). But we have no evidence that Applicant's services of "providing online courses of instruction at the university and post-graduate level" would be purchased with the same level of care as other forms of university education services, or that all purchasers or users of these services would be well-informed or

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[12] *Id.* at 10 (quoting *Fla. Int'l Univ. Bd. of Trs. v. Fla. Nat'l Univ., Inc.*, 830 F.3d 1242, 1256 (11th Cir. 2016)).

sophisticated. And we have no reason to find that the least sophisticated consumers of these services would exercise anything more than ordinary care in selecting or using these services. *See, e.g.*, *In re Samsung Display Co.*, No. 90502617, 2024 TTAB LEXIS 258, at *25-25 (finding, in the absence of contrary evidence, that the least sophisticated purchasers of applicant's goods would not exercise anything more than ordinary care). Further, even sophisticated purchasers are not immune from source confusion, especially where, as here, the relevant services are legally identical and are being offered under highly similar marks. *See Shell Oil Co.*, 992 F.2d at 1208 (citing *Weiss Assocs., Inc. v. HRL Assocs., Inc.*, 902 F.2d 1546, 1548 (Fed. Cir. 1990) (affirming the Board's reasoning that even sophisticated purchasers may be confused by similar marks)).

On this record, we find that, at best, the fourth *DuPont* factor weighs slightly against a conclusion that confusion is likely.

E. Actual Confusion

The seventh and eighth *DuPont* factors relate, respectively, to the nature and extent of any actual confusion and the extent of the opportunity for actual confusion. *See DuPont*, 476 F.2d at 1361. Here, Applicant argues that it "has used its mark in interstate commerce since at least as early as August 17, 2015, without any communication from Registrant and no evidence whatsoever of actual consumer confusion."[13] According to Applicant, "[t]he coexistence of the marks for more than

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[13] *Id.* at 9.

ten years establishes that consumers are not likely to be confused between the sources of the services."[14]

However, Applicant has not provided a declaration, or any other evidence, in support of this argument. We therefore consider it mere attorney argument with little persuasive value. *See Cai*, 901 F.3d at 1371 ("Attorney argument is no substitute for evidence." (citation omitted)). In any event, "the relevant test is **likelihood** of confusion, not actual confusion." *In re Detroit Athletic Co.*, 903 F.3d 1297, 1309 (Fed. Cir. 2018) (emphasis in italics in original). Thus, in the context of an ex parte proceeding, "[l]ikelihood of confusion . . . can be established even in the face of evidence suggesting that the consuming public was not actually confused." *Id.* Further, as the Board has previously explained,

> [t]he fact that an applicant in an ex parte case is unaware of any instances of actual confusion is generally entitled to little probative weight in the likelihood of confusion analysis, inasmuch as the Board in such cases generally has no way to know whether the registrant likewise is unaware of any instances of actual confusion, nor is it usually possible to determine that there has been any significant opportunity for actual confusion to have occurred.

In re Opus One, Inc., No. 75722593, 2001 TTAB LEXIS 707, at *19-20.

We therefore treat the seventh and eighth *DuPont* factors as neutral. *See id.* at *22-25.

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[14] *Id.*

III. Conclusion

Having considered all of the arguments and evidence of record pertaining to the relevant *DuPont* factors,[15] we find that, despite the additional wording in Applicant's mark, the marks in their entireties are highly similar in appearance, sound, connotation, and overall commercial impression; that Applicant's services are legally identical to Registrant's services; and that the respective services travel in overlapping trade channels and are offered to the same classes of consumers. These *DuPont* factors weigh strongly in favor of a conclusion that confusion is likely, while the factors relating to actual confusion are neutral. Thus, even taking into account the potential sophistication of the consumers of the services, we conclude that confusion as to source is likely.

Decision: The refusal under Trademark Act Section 2(d) to register Applicant's mark SIU SAN IGNACIO UNIVERSITY is **affirmed**.

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[15] Applicant also argued that the cited mark "is weak and entitled to little protection." *Id.* at 8 (capitalization modified). This argument typically implicates the sixth *DuPont* factor. *DuPont*, 476 F.2d at 1361. However, the only evidence that Applicant points to in support of this argument are the internet materials that, as discussed at the beginning of this opinion, were not properly made of record. During prosecution, Applicant did submit a copy of a third-party registration for the mark SIUniversity (in stylized form) for "education services in the nature of classes, seminars and training programs for surgeons and their staffs in the field of spinal joint degeneration and advancements in the field of spinal implant surgery," in International Class 41. *See* May 6, 2025 Request for Reconsideration at TSDR 4 (Registration No. 4611233, issued on September 23, 2014; renewed). However, Applicant submitted the third-party registration to argue that the Office had not found a likelihood of confusion between the mark in the third-party registration and the registered mark cited here, *see* Applicant's Appeal Brief, 6 TTABVUE 10, not to show that the cited mark is somehow weak or entitled to less protection. In the absence of any evidence relevant to the sixth *DuPont* factor, the factor is not material to our analysis. *See In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at *11 n.26 ("Because there is no argument or record evidence directed to these factors, we have not considered them in our analysis of the likelihood of confusion.").