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Precedent of the TTAB

Mailed: May 20, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re GSM Services, Inc.

Serial Nos. 98318207, 98318223
(Consolidated)

Blake E. Vande Garde, of Avek IP, LLC for GSM Services, Inc.

Davis Creef, Trademark Examining Attorney, Law Office 125,
Robin Mittler, Managing Attorney.

Before Larkin, Thurmon and Elgin, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

GSM Services, Inc. ("Applicant") seeks registration on the Principal Register of the mark GSM HEATING AND COOLING SINCE 1927, in standard characters with "HEATING AND COOLING SINCE 1927" disclaimed, and the word-and-design mark shown below (with the same wording disclaimed), both for "Advisory services relating to the installation of heating and cooling apparatus; Air conditioning apparatus cleaning services; Air duct cleaning services; Home energy assessment services for the purpose of determining home improvements needed to improve energy use and efficiency; HVAC contractor services; HVAC duct cleaning services;

Installation of heating and cooling apparatus; Installation of insulating materials; Installation of insulating materials in buildings and structures; Installation of building insulation; Repair or maintenance of power generators; Installation of HVAC systems; Maintenance and repair of electricity generators," in International Class 37.

[1]

The Trademark Examining Attorney issued a final refusal of registration in both applications under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding a likelihood of confusion, based on a Registration of the mark GSM ROOFING, in

[1] Application Serial No. 98318207 (the word mark) and Application Serial No. 98318223 (the word-and-design mark) were filed December 17, 2023, based on allegations of a bona fide intention to use the marks in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

The mark in the '223 Application is described as follows: "The mark consists of a stylized diamond shaped shield with a teal outline and red interior. Within the shield are the stylized words 'SINCE 1927' in white, below which are the stylized letters 'GSM' in shades of gray with a teal hexagon to the right. Below 'GSM' is a teal banner containing the stylized words 'HEATING & COOLING', with 'HEATING' and 'COOLING' appearing in black and the '&' appearing in white and contained by a red circle. To the left of the shield is the stylized design of a white, gray, and brown dog outlined in black with an outer gray outline, with its eyes appearing in blue, black, and white. The dog is wearing a red shirt, blue pants and hat, and black shoes and has one hand showing a 'thumbs up' sign with its right hand. In its other hand, the dog is holding a yellow-handled gray screwdriver." The colors red, white, brown, grey, blue, black, teal and yellow are claimed as a feature of the mark in the '223 Application.

standard characters, with "ROOFING" disclaimed, for "Roofing services," in International Class 37.[2]

We consolidate the appeals sua sponte and decide them in a single opinion because they involve common issues of law and fact with similar records. *See In re Anderson*, Nos. 76511652 and 76514799, 2012 TTAB LEXIS 42, at *9 (Board sua sponte consolidated two appeals). All record references are to Serial No. 98183207, unless otherwise noted.[3] The appeals are briefed and ready for final decision. We affirm the refusals to register.

I. Section 2(d) – Applicable Law

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*"), *cited in B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence and argument. *See, e.g.*, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1378-79 (Fed. Cir. 2019). "Whether a likelihood of confusion exists between an applicant's mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors." *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1318 (Fed. Cir. 2018).

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[2] Registration No. 3782367, issued April 27, 2010, and has been renewed.

[3] Citations to the prosecution file are to entries in the USPTO's Trademark Status & Document Retrieval ("TSDR") system in .pdf format. Citations to the appeal record are to TTABVUE, the Board's online docketing system.

"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). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp.*, 637 F.3d 1344, 1356 (Fed. Cir. 2011); *Shell Oil*, 992 F.2d at 1206 ("the various evidentiary factors may play more or less weighty roles in any particular determination"). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See 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)); *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

II. Likelihood of Confusion – Analysis

Applicant and the Trademark Examining Attorney focused on the first two *DuPont* factors, with some additional argument submitted under factors three, four, five, seven, eight and twelve. We address these factors below.

A. Similarity of the Marks

To evaluate the similarity of the marks under the first *DuPont* factor, we consider the marks in their entireties as to appearance, sound, connotation and commercial impression. *See, e.g.*, *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison*

Fondee En 1772, 396 F.3d 1369, 1371 (citing *DuPont*, 476 F.2d at 1361). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's LLC*, No. 87075988, 2018 TTAB LEXIS 170, *13 (quoting *In re Davia*, No. 85497617, 2014 TTAB LEXIS 214, at *4), *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 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." *Coach Servs. Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally "retains a general rather than a specific impression of marks." *In re i.am.symbolic, llc*, No. 85916778, 2018 TTAB LEXIS 281, *11.

The cited mark is GSM ROOFING. This mark is used in connection with roofing services, so the word "roofing" is descriptive of, if not generic for, the services. This word was disclaimed, which confirms the nondistinctive nature of this portion of the cited mark. The term GSM is the dominant part of the cited mark, partly because it is the first term in the mark and partly because the other term (roofing) has no source-identifying significance when used in a mark for roofing services. *In re Detroit Athletic Co.*, 903 F.3d 1296, 1303 (Fed. Cir. 2018) (finding "the identity of the marks' two initial words is particularly significant because consumers typically notice those

words first"); *Palm Bay Imps.*, 396 F.3d at 1372-73; *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, 1988 TTAB LEXIS 60, at *8 ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered"). We will compare the cited mark to each of the applied-for marks separately below.

1. Applicant's Word Mark (the '207 Application)

The applied-for word mark GSM HEATING AND COOLING SINCE 1927 is similar to the cited mark. Applicant intends to use this mark in connection with heating and cooling services. The disclaimed phrase "heating and cooling since 1927," therefore, is descriptive of Applicant's intended services and thus is not a distinctive element of the applied-for mark. Just as the term "roofing" is not distinctive for the roofing services identified in the cited Registration, Applicant's reference to "heating and cooling" in its mark also directly names Applicant's services. The term GSM is the sole distinctive element in this applied-for mark. It is, therefore, the dominant element.

The marks are similar in appearance, despite the fact that each mark uses different descriptive words following the shared term GSM. Consumers will notice, recall and rely on the distinctive GSM element of both marks. This type of similarity will lead consumers to confuse the two marks due to the fact that the same term (GSM) is the first and dominant element in both marks.

Given consumers' tendency to shorten marks, we find these marks are also similar in sound. *In re Bay State Brewing Co.*, No. 85826258, 2016 TTAB LEXIS 46, at *9 ("[W]e also keep in mind the penchant of consumers to shorten marks."). Because these marks have a single distinctive element followed by descriptive text, it is likely

that many consumers will drop the descriptive parts of the marks when verbalizing the marks. That leaves only the shared GSM elements, which will sound identical.

It appears the GSM element of the applied-for mark is an acronym for Gastonia Sheet Metal, a tradename used by Applicant, but we cannot consider this possible meaning because there is no reference to it in the drawing of the mark.[4] There is no evidence showing any particular meaning of the GSM element in the cited mark.

We must assume that the GSM element of the applied-for mark will have no established and understood meaning for consumers of the identified services. For these consumers, the GSM elements of the applied-for marks and the cited mark will have the same meaning. *In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at *20-21 (finding no evidence to support a different meaning of the applied-for mark with different goods).

The commercial impressions created by the marks also are similar. Both marks feature the element GSM followed by descriptive text. The applied-for mark connotes a heating and cooling business using GSM as the source-identifying element of its mark, while the cited mark connotes a roofing business using GSM as its source-identifying element of its mark. These are similar commercial impressions, differing only in the nature of the specific services described in each mark.

Finally, there is a risk that consumers familiar with the cited mark will see this applied-for mark as a business extension. Such consumers would know that GSM is a source-identifier for a roofing business. Seeing the same GSM identifier with a

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[4] 6 TTABVUE 13 (stating that Applicant was known "previously as Gastonia Sheet Metal").

heating and cooling business would lead some consumers to mistakenly believe the owner of the cited Registration has expanded from roofing into heating and cooling work. The similar structure of the marks and the reliance in each on a single distinctive element make this type of confusion likely. *See, e.g., Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 2013 TTAB LEXIS 314, at *32 ("Purchasers of opposer's GOTT and JOEL GOTT wines are likely to assume that applicant's goods, sold under the mark GOTT LIGHT and design, are merely a line extension of goods emanating from opposer.").

On balance, and taking into account the marks in their entireties, we find the applied-for mark GSM HEATING AND COOLING SINCE 1927 is similar to the cited mark GSM ROOFING. The first *DuPont* factor supports the Section 2(d) refusal.

2. Applicant's Word-and-Design Mark

Applicant's second mark, shown below, has more differences when compared to the cited GSM ROOFING mark.

The visual elements of this applied-for mark include important distinctions from the cited mark. The cartoon dog with a screwdriver is a distinctive element of this

mark and one that consumers are likely to recall.[5] The colors and stylization of the text in this mark are not points of distinction because the cited mark is not limited to any particular fonts, styles or colors. Trademark Rule 2.52(a), 37 CFR 2.52(a); *see also In re Aquitaine Wine USA, LLC*, 2018 TTAB LEXIS 108, *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 other words, the cited GSM ROOFING mark may be presented in the same fonts and colors used in Applicant's word + design mark. The cartoon dog, on the other hand, is an important visual difference. On balance, we find this applied-for mark is not visually similar to the cited mark. The GSM element remains an important shared visual element in this applied-for mark and the cited mark, but the visual differences are somewhat striking, and overall, render the two marks less visually similar. *In re White Rock Distilleries, Inc.*, 2009 TTAB LEXIS 601, at *4 ("As to appearance, we find that the prominent design feature and the term TERZA in the registered mark serve to distinguish the registered mark visually from applicant's mark. The term TERZA clearly dominates over the term VOLTA in the registered mark as TERZA appears in large bold letters above VOLTA.")

This applied-for mark, however, is very similar in sound to the cited mark. As we noted above, consumers have a tendency to shorten longer marks, particularly with

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[5] It is not clear whether the GSM element or the cartoon dog element of this applied-for mark are visually dominant. We make no finding in that regard, as both of these elements are distinctive and likely to be remembered by consumers. The cartoon dog is prominent and appears to be a wholly arbitrary feature of the mark.

respect to verbiage that has no source-identifying significance. We find this practice is likely more common with marks like those at issue here, which both begin with a distinctive literal element followed or surrounded by non-source-identifying wording. Consumers may recall the cartoon dog portion of this applied-for mark, but they are not likely to use that cartoon image to ask for Applicant's services. Consumers asking about Applicant's services, or the services provided under the cited mark, are likely to simply ask for "GSM." Very few, if any, consumers are likely to ask for Applicant's goods by describing the cartoon dog feature of this applied-for mark.

The meaning and commercial impression created by this applied-for mark are similar to those created by Applicant's word mark. The design elements, particularly the cartoon dog, are important visual elements of this applied-for mark. But the only real contribution these visual elements have on the meaning and commercial impression of this applied-for mark is to create a more playful or whimsical visual impression than that created by the word mark alone. This is a point of distinction, because the cited mark contains no similar features. But we find the literal elements of the marks will create a similar meaning and commercial impression to that created by the cited mark.

On balance, and considering the marks in their entireties, we find Applicant's word-and-design mark is also similar to the cited mark. There is less similarity between this applied-for mark and the cited mark than we found for Applicant's word mark, but there is enough similarity here to support the Section 2(d) refusal as to the word-and-design mark, too.

B. Similarity or Relatedness of the Services

We evaluate the second *DuPont* factor based on the services identified in the Applications and the cited Registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion as to an entire class of services in the application if relatedness is established between any of the services identified in that class and the cited Registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981); *see also Double Coin Holdings Ltd. v. Tru Dev.*, No. 92063808, 2019 TTAB LEXIS 347, *18; *In re Aquamar, Inc.*, No. 85861533, 2015 TTAB LEXIS 178, *9 n.5. In addition, the services need only be sufficiently related that a relevant consumer would be likely to assume, upon encountering services marketed under the marks at issue, that the services originate from, are sponsored or authorized by, or are otherwise connected to the same source. *See Black & Decker Corp. v. Emerson Elec. Co.*, No. 91158891, 2007 TTAB LEXIS 50, *25-26.

The cited Registration identifies "Roofing services," in International Class 37. Both Applications identify heating and cooling services in International Class 37, including advisory, cleaning and installation services for HVAC systems. The services are different. Roofing services are distinct from HVAC services, a point Applicant makes forcefully in its briefs.[6]

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[6] 6 TTABVUE 11-12.

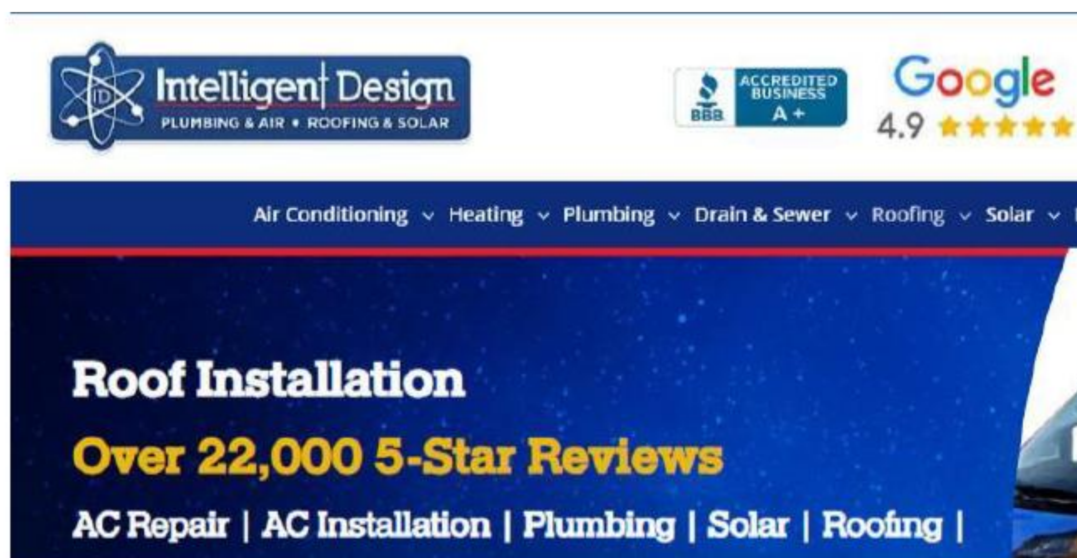
While it is important to note that the identified services are different, that does not end the analysis. We are interested in whether there is some connection between the services in the mind of the consuming public. *Shen Mfg. Co., Inc. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1244 (Fed. Cir. 2004) ("[G]oods that are neither used together nor related to one another in kind may still 'be related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis.'") (quoting *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000)). To answer this question, we look for evidence in the record showing that these two types of services (roofing and HVAC services) are often provided under a single trademark. The more often consumers see other trademarks used with both types of services, the more consumers will become conditioned to expect to find such services sold under a single mark. In this case that means we look for evidence that third parties provide both roofing services and HVAC services under a single mark.

The Trademark Examining Attorney submitted this type of evidence, including:

- OHA Home Service provides both HVAC and roofing services under a single mark. An illustration of this third party's branding is shown below, where a banner lists some services the business provides. These include "HVAC," "AC" and "Roofing." Additional materials provided from this business' website confirm that it provides both HVAC services and roofing services under its OHA mark.

[7]

- Intelligent Design also provides both AC and roofing services under its mark, as the image below shows.



[8]

- Southland Home Services provides both HVAC and roofing services under its mark.[9]

- Crowther Roofing & Cooling provides, not surprisingly, both roofing and HVAC services under its mark.[10]

[7] Final Office Action dated February 19, 2025, at 10-29.

[8] *Id.* at 30-58. This business provides air duct cleaning services, one of the specific services identified in the Applications. *Id.* at 41-50.

[9] *Id.* at 109-12.

[10] *Id.* at 115-16.

- Complete Home Solutions provides HVAC and roofing services under its mark.[11]
- Big Mountain Heating & Air provides HVAC and roofing services under its mark.[12]
- CFS Roofing provides roofing and HVAC services under its mark.[13]

These are representative examples. The Trademark Examining Attorney submitted other examples of third parties providing both HVAC and roofing services under a single mark.[14] In addition, there is evidence in the record that some of the businesses listed above, plus at least five others, provide both roofing services (identified in the cited Registration) and either "Home energy assessment services for the purpose of determining home improvements needed to improve energy use and efficiency" or "Installation of insulating materials," (both identified in the Applications) under a single mark.[15]

The evidence of record shows that the services identified in the Applications and in the cited Registration are commonly offered under a single mark, showing they are related. The evidence comes from all over the country, with businesses from Arizona, Florida, Virginia and Pennsylvania, just to list a few. Consumers of these services will be accustomed to such practices, and that increases the likelihood of confusion. The second *DuPont* factor supports the refusal.

[11] *Id.* at 134-41.

[12] *Id.* at 173-93.

[13] *Id.* at 196-211.

[14] *Id.* at 212-36, 315-35.

[15] *Id.* at 237-335.

C. Trade Channels and Customer Care – The Third and Fourth *DuPont* Factors

The third *DuPont* factor asks whether the trade channels overlap or are similar. This consideration is important because when services travel through the same trade channels, consumers will see the services together in those channels, thus increasing consumers' exposure to both marks. The fourth *DuPont* factor considers the likely care exercised by relevant consumers. *DuPont*, 476 F.2d at 1361 (considering "[t]he conditions under which … sales are made, i.e. 'impulse' vs. careful, sophisticated purchasing").

Most of the third-party evidence we discussed above (i.e., under the second *DuPont* factor) came from internet sites promoting both sets of services. This evidence not only shows that these services are often sold under the same mark, but also that these services are marketed and sold through the same channels to the same consumers. The trade channels, therefore, overlap and the third *DuPont* factor supports the refusal. Applicant argues the trade channels are different, but cites only to a website purportedly operated by the owner of the cited mark.[16] The fact that this party may currently offer only roofing services tells us little about whether the trade channels overlap. There is ample evidence of record showing that these services are commonly promoted via internet sites of local businesses. These sites contain means for consumers to contact the business to discuss or schedule the potential services. All of

[16] 6 TTABVUE 12.

the third-party business evidence reflects use of this same trade channel for promoting and rendering the services.

Applicant also argues that the goods are expensive and that consumers of these goods are sophisticated and careful.[17] This argument fails for two reasons. First and foremost, the services identified in the Applications and the cited Registration are not limited to particular price points. We accept Applicant's assertion that HVAC systems are costly and that it can be costly to replace a roof. But these are not the only services covered by the Applications and the cited Registration. "Roofing services" includes any type of services related to roofing. A roof cleaning or inspection, for example, may be relatively inexpensive, but would be within the scope of the services identified in the cited Registration. Similarly, the services identified in the Applications include inspections and other services that are much less involved than replacement of an entire HVAC system. So, while some consumers buying some of the services may be careful, it is also likely that other consumers buying other identified services may not be so careful.

The second reason this argument fails is for lack of evidence. The evidence of record does not show pricing information, nor does it provide an exhaustive list of actual services that fall within the identifications. Arguments presented without supporting evidence are entitled to little weight in our analysis. *Martahus v. Video Duplication Servs. Inc.*, 3 F.3d 417, 420 (Fed. Cir. 1993) ("[M]ere attorney arguments unsubstantiated by record evidence are suspect at best.").

[17] *Id.*

Finally, we are required to base our decision "on the least sophisticated potential purchasers." *Stone Lion Capital Partners,* 746 F.3d at 1325. We find that the "least sophisticated potential purchasers" of the services at issue in these appeals are likely to exercise ordinary care in making purchasing decisions regarding some of the services. Such ordinary care does not alter the likelihood of confusion. The fourth *DuPont* factor is neutral.

D. Other *DuPont* Factors

Applicant presents brief arguments under *DuPont* factors five, seven, eight and twelve. No evidence is cited in support of these arguments and we can find no evidence in the record to shed light on these factors. Applicant argues that the cited mark is not famous and is used regionally.[18] We agree the record does not show that the cited mark is famous, which makes *DuPont* factor five neutral, as is common in ex parte appeals. *In re Mr. Recipe*, 2016 TTAB LEXIS 80, *4-5. The region in which the cited mark is used is irrelevant to our analysis because Applicant seeks unrestricted nationwide registrations in both applications.

Applicant argues, without evidence, that it has coexisted for "over 20 years" with the cited mark.[19] If we had evidence showing that these two marks coexisted in the same geographic region and served the same types of consumers within that region, we could evaluate whether there was meaningful coexistence without confusion. *In re Guild Mortg.¸* 912 F.3d at 1380-81 (suggesting that "evidence of concurrent use of

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[18] 6 TTABVUE 13.

[19] *Id.*

the two marks for a particularly long period of time—over 40 years—in which the two businesses operated in the same geographic market—southern California—without any evidence of actual confusion" may be probative under the eighth *DuPont* factor). There is, however, no evidence in the record that would allow such a determination. *DuPont* factors seven and eight are neutral.

Finally, Applicant argues that any confusion would be de minimis. We see no evidence or logical basis for this argument. With similar marks and related services, we see nothing that would tend to limit the amount of consumer confusion that could occur other than potential geographic separation. That, however, is not an issue in these appeals because the cited Registration and the Applications are not geographically limited. The twelfth *DuPont* factor is neutral.

E. Conclusion: Summarizing the Factors

We have reviewed and evaluated all the evidence of record and all the arguments presented. Only the first three *DuPont* factors are probative in this appeal, and all three support the Section 2(d) refusal. The marks are similar and the services are related. The trade channels overlap. We evaluated the fourth *DuPont* factor, but find it neutral. The other factors addressed by Applicant are also neutral. The record supports the refusal. Confusion is likely.

Decision: The Section 2(d) refusals are affirmed in both applications.