This Opinion is Not a
Precedent of the TTAB

Hearing: February 11, 2026 Mailed: February 24, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ideal Capital Group Holdings, LLC

Serial No. 98352828
Serial No. 98353045
Serial No. 98355188
(Consolidated)

Sarjun S. Bal of Kahn, Soares & Conway, LLP for Ideal Capital Group Holdings, LLC.

Akin Adejunmobi, Trademark Examining Attorney, Law Office 105,
Jennifer L. Williston, Managing Attorney.

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

Opinion by Larkin, Administrative Trademark Judge:

Ideal Capital Group Holdings, LLC ("Applicant") seeks registration on the Principal Register of the standard-character marks IDEAL CAPITAL GROUP

(GROUP disclaimed)[1] and IDEAL PRIVATE CLIENT (CLIENT disclaimed),[2] and the stylized IDEAL CAPITAL GROUP mark shown below,

[3]

all for services identified as "Real estate investment consultancy; Real estate investment services; Financial investment in the field of Real Estate" in International Class 36.

The Trademark Examining Attorney assigned to Applicant's three applications has refused registration of Applicant's marks on two grounds: (1) under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that each of Applicant's marks so resembles the standard-character marks IDEAL FUTURES, registered on the Principal Register for "Investment management services, financial retirement planning, financial planning, financial investment planning and estate planning

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[1] Application Serial No. 98352828 was filed on January 11, 2024 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claimed first use of the mark and first use of the mark in commerce at least as early as January 1, 2018.

[2] Application Serial No. 98353045 was filed on January 11, 2024 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claimed first use of the mark and first use of the mark in commerce at least as early as January 1, 2018.

[3] Application Serial No. 98355188 was filed on January 12, 2024 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claimed first use of the mark and first use of the mark in commerce at least as early as January 1, 2018. Applicant describes its mark as follows: "The mark consists of the word 'IDEAL' in dark blue stylized lettering with the letter 'E' being replaced by a design of three bars. The top bar is in dark blue, the middle bar is in blue, and the bottom bar is in light blue. The top and bottom bars are both longer than the middle bar and in between each of the bars is white space. Below the word 'IDEAL' is the wording 'CAPITAL GROUP' in light blue lettering. All the foregoing appears on a white background." The colors blue, dark blue, light blue, and white are claimed as a feature of the mark.

services" in International Class 36,[4] and IDEAL SALE, registered on the Principal Register for "Real estate investment services" in International Class 36,[5] as to be likely, when used in connection with the services identified in Applicant's three applications, to cause confusion; and (2) under Sections (2)(e)(1) and 6(a) of the Trademark Act, 15 U.S.C. §§ 1052(e)(1) and 1056(a), on the ground that the words CAPITAL GROUP in two of Applicant's marks and the words PRIVATE CLIENT in Applicant's third mark are merely descriptive of the identified services, and must be disclaimed.

Applicant appealed when the Examining Attorney made the refusals final. As discussed below, the three appeals were subsequently consolidated, and are fully briefed,[6] and counsel for Applicant and the Examining Attorney appeared at an oral

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[4] Registration No. 6284538 issued on March 2, 2021. The registrant has disclaimed the exclusive right to use FUTURES apart from the mark as shown.

[5] Registration No. 7088065 issued on June 20, 2023. The registrant has disclaimed the exclusive right to use SALE apart from the mark as shown.

[6] Citations in this opinion to the briefs and other materials in the case dockets refer to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant's substantially similar appeal briefs appear at 4 TTABVUE in each appeal, and its reply briefs appear at 13 TTABVUE in each appeal. Except where otherwise indicated, we will cite Applicant's appeal brief in the appeal in Serial No. 98352828. The Examining Attorney's briefs are identical in the three consolidated cases and appear at 12 TTABVUE in each appeal.

Applicant's three reply briefs are each considerably longer than ten pages and thus violate Trademark Rule 2.142(b)(2), 37 C.F.R. § 2.142(b)(2), which provides that "[w]ithout prior leave of the Board . . . [a] reply brief . . . shall not exceed ten pages in length in its entirety," because Applicant did not obtain prior leave of the Board to file overlong reply briefs. Section 1203.01 of the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") (June 2025) warns that "[i]f an applicant files . . . a reply brief that exceeds the ten-page limit without prior leave of the Board, the brief will not be considered." We have not considered Applicant's three reply briefs, and we so advised Applicant's counsel at the outset of the oral hearing. We invited him to address any points made in the reply briefs during his argument.

hearing before the panel on February 11, 2026. We affirm the Section 2(d) likelihood of confusion refusals to register, and do not reach the refusals based on the disclaimer requirements.[7]

I. Prosecution and Procedural Histories, and Records on Appeal[8]

Applicant's three applications were assigned to the same Examining Attorney, and were examined in parallel.[9] We summarize below their prosecution histories, and their procedural histories on appeal, to provide background to our decisions in the appeals.

A. Prosecution Histories

1. Serial Nos. 98352828 and 98355188

Applicant filed these two applications to register the standard-character and stylized IDEAL CAPITAL GROUP marks based on the same specimen of use, which we reproduce below:

[7] At the oral hearing, Applicant's counsel offered to enter the requested disclaimers, but we interpret his offer to be contingent on reversal of the Section 2(d) refusals to register inasmuch as accepting the disclaimers without also reversing the Section 2(d) refusals would not result in a reversal of those refusals.

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

[9] The records in Serial Nos. 98352828 and 98355188 involving the IDEAL CAPITAL GROUP marks are substantially identical. The record in Serial No. 98353045 involving the standard-character IDEAL PRIVATE CLIENT mark differs slightly from the records in the other cases due to the different suffix elements of Applicant's mark.

[10]

The Examining Attorney issued initial non-final Office Actions in both cases. In Serial No. 98352828, the Examining Attorney refused registration based on the cited registrations of the IDEAL FUTURES and IDEAL SALES marks, required Applicant to disclaim the exclusive right to use CAPITAL GROUP apart from the mark as shown, and required Applicant to submit an appropriate specimen of use.[11] The Examining Attorney made of record USPTO electronic records regarding the cited registrations;[12] third-party webpages that the Examining Attorney claimed showed the relatedness of the involved services;[13] dictionary definitions of the words "capital" and "group;"[14] and USPTO electronic records regarding third-party registrations of marks in which the words CAPITAL GROUP have been disclaimed.[15]

In Serial No. 98355188, the Examining Attorney refused registration based on the cited registrations of the IDEAL FUTURES and IDEAL SALES marks, required Applicant to disclaim the exclusive right to use CAPITAL GROUP apart from the

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[10] Applicant stated in Application Serial No. 98352828 that the "[s]pecimen is a picture of the logo of the Company" apparently taken from Applicant's website at idealcapgroup.com. January 11, 2024 Application at TSDR 2. Applicant states in Application Serial No. 98355188 that the specimen was taken from its website. January 12, 2024 Application at TSDR 2.

[11] August 13, 2024 Office Action at TSDR 1-7 (Ser. No. 98352828).

[12] *Id.* at TSDR 8-11.

[13] *Id.* at TSDR 12-24.

[14] *Id.* at TSDR 25-50 (COLLINS DICTIONARY).

[15] *Id.* at TSDR 51-68.

mark as shown, and required Applicant to clarify whether it claimed color as a feature of the mark.[16] The Examining Attorney made of record the same evidence as in the initial Office Action in Serial No. 98352828.[17]

Applicant responded to the non-final Office Actions in both cases, argued against the refusals and requirements, and offered disclaimers of GROUP apart from the marks as shown. Applicant made no evidence of record in its responses.[18]

The Examining Attorney then issued Office Actions in both cases making final the refusals to register based on Section 2(d) and the requirement of a disclaimer of CAPITAL GROUP. In Serial No. 98352828, the Examining Attorney made of record additional third-party webpages that he claimed showed the relatedness of the involved services,[19] a dictionary definition of the phrase "capital investment,"[20] and USPTO electronic records regarding Applicant's Application Serial No. 98353068 to register IDEAL CAPITAL for "Real estate investment consultancy; Real estate investment services; Financial investment in the field of Real Estate," in which Applicant disclaimed the exclusive right to use CAPITAL apart from the mark as

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[16] August 13, 2024 Office Action at TSDR 2-7 (Ser. No. 98355188).

[17] *Id.* at TSDR 8-68.

[18] November 13, 2024 Response to Office Action at TSDR 6-18 (Ser. No. 98352828); November 13, 2024 Response to Office Action at TSDR 5-17 (Ser. No. 98355188). In Serial No. 98352828, Applicant submitted a declaration of its counsel purporting to "specify[ ] that the URL of the original webpage specimen is https://idealcapgroup.com/, and it was accessed personally by me on January 12, 2024 and November 13, 2024." November 13, 2024 Response to Office Action at TSDR 19 (Ser. No. 98352828). No such declaration was submitted in the response in Serial No. 98355188.

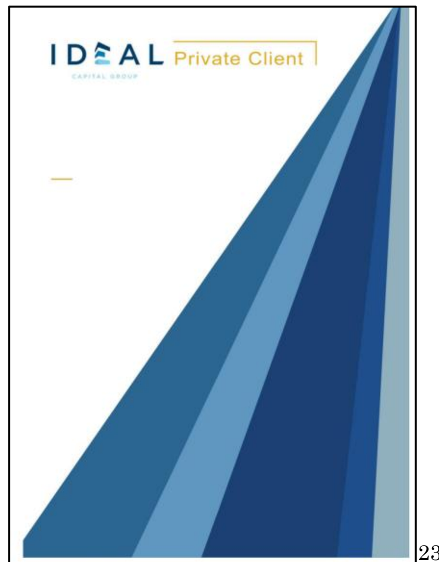
[19] December 12, 2024 Final Office Action at TSDR 11-75 (Ser. No. 98352828).

[20] *Id.* at TSDR 77-81 (MERRIAM-WEBSTER DICTIONARY).

shown.[21] In Serial No. 98355188, the Examining Attorney's Final Office Action made of record the same evidence submitted in his Final Office Action in Serial No. 98352828.[22]

2. Serial No. 98353045

Applicant filed its application to register IDEAL PRIVATE CLIENT in standard characters based on the specimen of use reproduced below:



[23]

The Examining Attorney initially refused registration based on the cited registrations of the IDEAL FUTURES and IDEAL SALES marks, and required Applicant to disclaim the exclusive right to use PRIVATE CLIENT apart from the mark as shown and to submit an appropriate specimen of use.[24] The Examining Attorney made of record USPTO electronic records regarding the cited

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[21] *Id.* at TSDR 82.

[22] December 12, 2024 Final Office Action at TSDR 9-80 (Ser. No. 98355188).

[23] January 11, 2024 Application at TSDR 8 (Ser. No. 98353045).

[24] August 13, 2024 Office Action at TSDR 1-7.

registrations,[25] third-party webpages that the Examining Attorney claimed showed the relatedness of the involved services,[26] and third-party webpages displaying the terms "private client" and "private clients."[27]

Applicant responded to the Office Action, argued against the refusals and requirements, and offered a disclaimer of CLIENT apart from the mark as shown. Applicant made no evidence of record in its responses, but submitted a declaration of its counsel purporting to "specify[ ] that the URL of the original webpage specimen is Private Client | Ideal Capital Group/, and it was accessed personally by me on January 12, 2024 and November 13, 2024."[28]

The Examining Attorney then issued an Office Action making final the refusals to register and the other requirements.[29] The Examining Attorney made of record additional third-party webpages that he claimed showed the relatedness of the involved services.[30]

B. Procedural History of Appeals

Applicant appealed the three final refusals to register, and filed its appeal briefs in each case. The Examining Attorney then moved to consolidate the three appeals, 6 TTABVUE 1 (Ser. Nos. 98352828, 98353045, and 98355188), and the Board granted

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[25] *Id.* at TSDR 8-11.

[26] *Id.* at TSDR 12-24.

[27] *Id.* at TSDR 25-51.

[28] November 13, 2024 Response to Office Action at TSDR 18.

[29] December 12, 2024 Final Office Action at TSDR 1-10.

[30] *Id.* at TSDR 11-78.

the motion, designating the appeal in Serial No. 98352828 as the "parent" case. 7 TTABVUE 1 (Ser. Nos. 98352828, 98353045, and 98355188).

The Examining Attorney then requested a suspension of the consolidated cases and a remand of the applications to allow him to address the claimed insufficiency of the specimens of record in two of the cases, 8 TTABVUE 1-2 (Ser. Nos. 98352828, 98353045, and 98355188), and the Board granted the request. 9 TTABVUE 1 (Ser. Nos. 98352828, 98353045, and 98355188).

On remand, Applicant provided properly verified specimens regarding the marks in Serial Nos. 98352828 and 98353045, obviating those requirements. 10 TTABVUE 1-2 (Ser. Nos. 98352828 and 98353045). The consolidated appeals were then resumed, 11 TTABVUE, the Examining Attorney filed his identical briefs in the three cases, and Applicant filed its non-conforming reply briefs in the three cases. Following the February 11, 2026 oral hearing, the consolidated cases are now ready for decision.

II. Analysis of Likelihood of Confusion Refusals

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

DuPont factor for which there is evidence and argument. *See*, *e.g.*, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

"Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because the fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." *DC Comics v. Cellular Nerd LLC*, No. 91246950, 2022 WL 17832492, at *10 (TTAB 2022) (internal quotations and quotation marks omitted).

Applicant argues in each case that

> the Examining Attorney's refusal was improper because (1) Applicant's mark, as a stylized design mark using "IDEAL" as an acronym, creates a distinct commercial impression; (2) the services offered under the respective marks target different market segments, operate through different channels of trade, and serve different consumer bases; (3) the term "IDEAL" is weak and diluted in the relevant industry; and (4) the sophisticated nature of Applicant's customers makes confusion unlikely.

4 TTABVUE 3. These arguments invoke the key first two *DuPont* factors, as well as the third factor, the "similarity or dissimilarity of established, likely-to-continue trade channels," *DuPont*, 476 F.2d at 1361, the fourth factor, the "conditions under which and buyers to whom sales are made, i.e. 'impulse' vs. careful, sophisticated purchasing," *id.*, and the sixth factor, the "number and nature of similar marks in use on similar goods." *Id.* Elsewhere in its appeal briefs, Applicant also mentions the fifth factor, the "fame of the prior mark (sales, advertising, length of use)," *id.*, 4 TTABVUE 17, alludes to the eighth factor, the "length of time during and conditions under which there has been concurrent use without evidence of actual confusion,"

DuPont, 476 F.2d at 1361, 4 TTABVUE 18,[31] and purports to discuss some of the remaining factors. *Id.* at 18-19.[32]

In our analysis under Section 2(d), we will focus on the standard-character mark IDEAL SALE for "Real estate investment services" shown in cited Registration No. 7088065 (the "'065 Registration"), which we find to be the cited mark that is most similar to Applicant's marks and which is used in connection with services that are identical to certain services identified in Applicant's three applications. If we find a

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[31] With respect to the eighth *DuPont* factor, Applicant does not cite *DuPont* itself, but rather an Eighth Circuit decision, *Hubbard Feeds, Inc. v. Animal Feed Supplement, Inc.*, 182 F.3d 598, 603 (8th Cir. 1999). 4 TTABVUE 18. Applicant's appeal briefs are replete with citations of decisions of regional circuit courts of appeals and some federal district courts. We are, of course, required to apply Federal Circuit law, not the law of regional circuit courts. *See generally* TBMP Section 101.03 (discussing the decisional law that applies in Board cases).

[32] Applicant also argues in each appeal that "geographic distinctions further diminish the likelihood of confusion." 4 TTABVUE 19. Applicant claims that confusion is unlikely because "Applicant primarily operates in the Western United States, focusing its real estate investment advisory services on markets such as California, Arizona, and Nevada," while "the cited marks — IDEAL FUTURES and IDEAL SALE — originate from entirely different geographic regions, namely Illinois and Florida, respectively, and focus on local markets, clientele, and service offerings." *Id.* According to Applicant, "[g]eographic distance matters, particularly in service industries that are often localized or regional in character," and "[t]he absence of overlapping customer exposure due to these geographic differences further reduces the likelihood that consumers would encounter both services or assume a connection between them." *Id.* at 19-20. Applicant's reliance on such "geographic distance" is misplaced because Applicant

> seeks a geographically unrestricted registration under which it might expand throughout the United States. Under these facts, it is not proper . . . to limit our consideration to the likelihood of confusion in the areas presently occupied by the parties. Section 7(b) of the Trademark Act . . . creates a presumption that the registrant has the exclusive right to use its mark throughout the United States. Therefore, the geographical distance between the present locations of the respective businesses of the two parties has little relevance in this case.

Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 1568-69 (Fed. Cir. 1983) (citation omitted). "Geographic distance" is relevant here only with respect to the eighth *DuPont* factor, which we discuss below.

likelihood of confusion as to that mark and the services for which it is registered, we need not find a likelihood of confusion as to the other cited mark and the services for which it is registered. *In re Max Cap. Grp. Ltd.*, No. 77186166, 2010 WL 22358, at *2 (TTAB 2010).

A. Similarity or Dissimilarity of the Services, Channels of Trade, and Classes of Consumers[33]

We begin with the second *DuPont* factor, which "considers '[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration . . . ." *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018). "This factor considers whether 'the consuming public may perceive [the services] as related enough to cause confusion about the source or origin of the . . . services.'" *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002)). "In analyzing the . . . services, the Board considers '[t]he similarity or dissimilarity and nature of the . . . services as described in an application or registration.'" *In re OSF Healthcare Sys.*, No. 88706809, 2023 WL 6140427, at *4 (TTAB 2023) (quoting *In re Embiid*, No. 88202890, 2021 WL 2285576, at *10 (TTAB 2021)).

The relatedness of goods or services may be established based on various evidence, including (1) the language of the involved identifications of goods or services, which may show, on the face of the identifications, that the goods or services are literally or

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[33] The identifications of services on which our analysis under the second, third, and fourth factors turns are identical in Applicant's three applications, and our analysis of the fifth, sixth, and eighth factors involves the same issues in each appeal. Accordingly, our discussion of these factors will apply to all three appeals.

legally identical, or are otherwise intrinsically related, and (2) evidence of third-party uses or registrations, which may show that the identified goods or services are commonly offered by the same entity under the same mark, or are otherwise related. *Id.*

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

The services identified in Applicant's three applications are "Real estate investment consultancy; Real estate investment services; Financial investment in the field of Real Estate." The services identified in the cited '065 Registration are "Real estate investment services." The "real estate investment services" identified in the applications and in the '065 Registration are identical.[34] The second *DuPont* factor strongly supports a conclusion that confusion is likely with respect to each of the marks shown in Applicant's three applications. *OSF Healthcare*, 2023 WL 6140427, at *9.

The third *DuPont* factor considers the "similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 476 F.2d at 1361. Because the involved

[34] The Examining Attorney also cites Internet evidence to show that the same entities commonly provide the various identified services under the same mark. Because we have found the involved "real estate investment services" to be identical based on the language of the respective identifications, we need not consider the Examining Attorney's other evidence of relatedness.

services are identical, and the respective identifications do not contain any restrictions regarding channels of trade or classes of consumers, "we must presume that the channels of trade and classes of purchasers are the same as to those . . . identical services." *OSF Healthcare*, 2023 WL 6140427, at *9 (citation omitted). The third *DuPont* factor also strongly supports a conclusion that confusion is likely with respect to each of the marks shown in Applicant's three applications. *Id.*

B. Similarity or Dissimilarity of the Marks[35]

Under the first *DuPont* factor, "we consider the 'similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.'" *In re Ye Mystic Krewe of Gasparilla*, No. 90522364, 2025 WL 2953731, at *4 (TTAB 2025) (quoting *DuPont*, 476 F.2d at 1361). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *Sage Therapeutics, Inc. v. Sageforth Psych. Servs., LLC*, No. 91270181, 2024 WL 1638376, at *5 (TTAB 2024) (quoting *In re Inn at St. John's LLC*, No. 87075988, 2018 WL 2734893, at *5 (TTAB 2018) (citation omitted), *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).

[35] Because Applicant's three applications show different marks, we will compare each mark to the cited IDEAL SALE mark in separate subsections of this section of the opinion after first determining the dominant portions of the involved marks. Most of the arguments made by Applicant and the Examining Attorney under the first *DuPont* factor are same in each appeal. We will not repeat those arguments to the extent possible, but will instead cross-reference and summarize them where appropriate.

"The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *Sage Therapeutics*, 2024 WL 1638376, at *5 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012)). "The focus is on the recollection of the average purchaser, who normally 'retains a general rather than a specific impression of marks.'" *Id.* (quoting *In re i.am.symbolic, llc*, No. 85916778, 2018 WL 3993582, at *4 (TTAB 2018) (citations omitted)). The average purchaser here is an investor in real estate.

Where, as here, "the services are identical, the degree of similarity between the marks necessary to support a determination that confusion is likely declines." *In re Jimenez*, No. 97551823, 2025 WL 3126703, at *4 (TTAB 2025) (citing *Bridgestone Ams. Tire Operations, LLC v. Fed. Corp.*, 673 F.3d 1330, 1337 (Fed. Cir. 2012)).

Marks must be considered in their entireties, but "in articulating reasons for reaching a conclusion on the issue of confusion, 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." *Detroit Athletic Co.*, 903 F.3d at 1305 (quoting *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)). Before comparing the involved marks in their entireties, we will determine whether more or less weight should be given to any portions of Applicant's three marks and the cited mark.

We begin with Applicant's standard-character marks IDEAL CAPITAL GROUP and IDEAL PRIVATE CLIENT. Applicant suggests in the appeals in Serial Nos. 98352828 and 98355188 that the words CAPITAL GROUP and PRIVATE CLIENT should be given equal weight with the lead word IDEAL because CAPITAL GROUP and PRIVATE CLIENT are "important phrase[s]," 4 TTABVUE 10 (Ser. No. 98352828); 4 TTABVUE 11 (Ser. No. 98355188), and "meaningful composite[s]" that "convey[ ] a distinct corporate and institutional identity." 4 TTABVUE 12 (Ser. No. 98352828); 4 TTABVUE 13 (Ser. No. 98355188). At the oral hearing, Applicant's counsel cited the Federal Circuit's decision in *In re Hearst Corp.*, 982 F.2d 493 (Fed. Cir. 1992), which was not cited in Applicant's appeal briefs, in arguing that in Applicant's marks, the phrases CAPITAL GROUP and PRIVATE CLIENT are as significant as the word IDEAL, and transform the meaning of Applicant's three marks when they are considered in their entireties.

The Examining Attorney argues that consumers are likely to "perceive the term IDEAL as the dominant feature of all five marks because it is the first and only term in each of the marks that is distinctive," 12 TTABVUE 4, and rejects Applicant's arguments regarding the significance of CAPITAL GROUP and PRIVATE CLIENT because the "descriptive nature of the wording renders its impact on purchasers less significant than the word 'IDEAL'." *Id.* He concludes that "in the case of IDEAL CAPITAL GROUP, consumers will simply understand that applicant is an investment group that raises capital for real estate investments," and that "in the case of IDEAL PRIVATE CLIENT, consumers will simply understand that the

intended users of applicant's investment services are private clients," *id.*, because "these additional words are too descriptive in nature to have the level of impact on the commercial impression that applicant alludes to." *Id.* at 4-5. He reiterated these arguments at the oral hearing.

We find that the word IDEAL is the dominant portion of Applicant's standard-character marks IDEAL CAPITAL GROUP and IDEAL PRIVATE CLIENT. The word IDEAL is the first word in the marks and "consumers are more likely to notice and remember the first elements of a trademark . . . ." *Sage Therapeutics*, 2024 WL 1638376, at *6 (finding SAGE to be the dominant portion of the marks SAGE CENTRAL and SAGEFORTH) (citations omitted). Applicant has disclaimed the words GROUP and CLIENT and the record shows that in the context of the involved services, the phrases CAPITAL GROUP[36] and PRIVATE CLIENT[37] have no source-identifying significance.[38] In addition, Applicant's specimens of use of its standard-

[36] August 13, 2024 Office Action at TSDR 26, 42 (dictionary definitions showing that "capital" means a "large sum of money . . . which you invest to make more money" and "group" means "a number of persons . . . classified together because of common characteristics, community of interests, etc." (COLLINS DICTIONARY)), 51-68 (third-party registrations of marks for various investment services, including real estate investment services, in which the phrase CAPITAL GROUP has been disclaimed) (Ser. Nos. 98352828 and 98355188).

[37] August 13, 2024 Office Action at TSDR 25 (webpage stating that "private clients typically refer to individuals and families looking to invest their wealth" while "institutional clients encompass companies or organizations that pool funds to achieve specific goals on behalf of owners and potentially other stakeholders" (analystprep.com)), 30 (webpage defining "private clients" as "[i]ndividual private investors as opposed to institutions as customers of a stock broker or fund manager" (THE FINANCE TALKING ONLINE FINANCIAL GLOSSARY (financetalking.com)), 31-51 (webpages discussing "private client services" provided by Charles Schwab, J.P. Morgan, and Zacks) (Ser. No. 98353045).

[38] Our finding that IDEAL is the dominant portion of Applicant's standard-character marks is entirely consistent with the Federal Circuit's *Hearst Corp.* decision cited by Applicant's counsel at the oral hearing. In that case, the Federal Circuit reversed the Board's decision affirming a refusal to register VARGA GIRL for calendars over a registration of VARGAS for

character marks shown above display the marks in a manner that emphasizes the word IDEAL as the identifier of the source of the services, and deemphasizes the non-source identifying suffix phrases CAPITAL GROUP and PRIVATE CLIENT.

With respect to Applicant's stylized IDEAL CAPITAL GROUP mark, which we reproduce again below,

"because of the position, size and bolding of the term [IDEAL], this single term dominates the commercial impression of Applicant's mark." *In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 WL 1620989, at *3 (TTAB 2018).

Finally, with respect to the cited IDEAL SALE mark, the word IDEAL is the first portion of the mark and the registrant has disclaimed the exclusive right to use SALE apart from the mark as shown. We find that the word IDEAL is the dominant portion of the cited mark.

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the same goods. The Board had found that VARGA was the dominant element of the applicant's mark, but the Federal Circuit held that the Board had given inadequate weight to the word GIRL because "the appearance, sound, sight, and commercial impression of VARGA GIRL derive significant contribution from the component 'girl'." *Hearst Corp.*, 982 F.2d at 494. Nothing in the Federal Circuit's decision indicates that the word GIRL had been disclaimed by the applicant, or that it otherwise had any descriptive or other non-source identifying significance in the context of the involved goods. Here, by contrast, the record shows that the suffix phrases CAPITAL GROUP and PRIVATE CLIENT have no source-identifying significance in the context of "real estate investment services," and "the appearance, sound, sight, and commercial impression of" Applicant's marks do not "derive significant contribution from the component[s]" CAPITAL GROUP and PRIVATE CLIENT. *Id.*

We turn now to the required comparisons of the marks in their entireties, giving greater weight in those comparisons to the word IDEAL than to the other elements of the respective marks.

1. Serial No. 98352828

The compared marks in the appeal in Serial No. 98352828 are IDEAL CAPITAL GROUP and IDEAL SALE, both in standard characters. Both marks contain the identical word IDEAL as their lead and dominant element.

Applicant argues that its mark "adds the important phrase 'CAPITAL GROUP,' and uniquely uses 'IDEAL' as an acronym (Income, Depreciation, Equity, Appreciation, Leverage), reinforcing a proprietary investment philosophy that sets it apart." 4 TTABVUE 10-11.[39] Applicant further argues that

> [t]he combination of Applicant's distinctive stylization, acronym meaning, and the additional phrase "CAPITAL GROUP" further differentiates it from the cited marks, both visually and conceptually. Accordingly, the USPTO's analysis must look beyond the superficial presence of the shared word "IDEAL" and assess whether the totality of the marks — including their visual presentation, embedded meaning, suffixes, and commercial context — creates a distinct and separate commercial impression. Here, it clearly does. Consumers encountering IDEAL CAPITAL GROUP's standard characters mark would not reasonably believe it comes from the same source as IDEAL FUTURES or IDEAL SALE, which lack any comparable layered meaning.

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[39] Applicant's arguments for dissimilarity in each appeal are made against the backdrop of what Applicant claims is the coexistence on the Register of multiple IDEAL-formative marks in "the same general industry space without evidence of marketplace confusion, precisely because consumers rely on the additional distinguishing words, suffixes, stylization, and commercial context to tell them apart." 4 TTABVUE 10. Third-party marks should be discussed under the sixth *DuPont* factor, not under the first factor. *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1363 (Fed. Cir. 2023). We address Applicant's arguments regarding third-party marks below in our discussion of the sixth *DuPont* factor.

. . .

> Applicant's mark goes well beyond merely appending a generic or descriptive phrase. It introduces the meaningful composite "CAPITAL GROUP," which conveys a distinct corporate and institutional identity. Additionally, Applicant has submitted evidence showing that "IDEAL" in its mark operates not merely as a common adjective but as an acronym representing its unique investment philosophy — Income, Depreciation, Equity, Appreciation, Leverage — further strengthening its distinctiveness.

Id. at 11-12.

The Examining Attorney responds that Applicant's mark and the cited marks "contain the identical first word IDEAL," 12 TTABVUE 3, that "[t]he only differences between the literal components of the marks is that applicant's marks contain the additional descriptive wording 'CAPITAL GROUP' . . . and the registrants' marks contain the additional descriptive wording 'FUTURES' and 'SALE,'" *id.*,[40] and that "these differences do not significantly affect the likelihood of confusion analysis" because "[c]onsumers are generally more inclined to focus on and remember the first word, prefix, or syllable in a mark." *Id.* (citation omitted).

According to the Examining Attorney, "[i]t is reasonable . . . to conclude that consumers will look more to the identical first terms, the only distinctive terms in each of the compared marks, IDEAL, as identifiers of the commercial source of the services," and Applicant's "assertion that the wording 'CAPITAL GROUP' . . . significantly changes the commercial impression of the mark is unpersuasive as the

[40] As noted above, the Examining Attorney submitted identical briefs in the three appeals following their consolidation, and addressed all three of Applicant's marks and both of the cited marks.

descriptive nature of the wording renders its impact on purchasers less significant than the word 'IDEAL.'" *Id.* The Examining Attorney concludes that "in the case of IDEAL CAPITAL GROUP, consumers will simply understand that applicant is an investment group that raises capital for real estate investments . . . ." *Id.*

With respect to the alleged status of IDEAL as an acronym, the Examining Attorney argues that "the mark itself does not include the acronym meaning, nor was evidence provided to show that IDEAL is commonly understood as an acronym in relation to applicant's services" and that "there are not even full stops present in between each letter of the mark to stimulate the thought of IDEAL being an acronym." *Id.* at 5.

We agree with the Examining Attorney that there is nothing on the face of the mark to suggest that the word IDEAL is an acronym for "Income, Depreciation, Equity, Appreciation, Leverage," 4 TTABVUE 12, rather than the English adjective meaning "exactly right for a particular purpose, person, or situation,"[41] and the first word in Applicant's trade name "Ideal Capital Group Holdings, LLC," because in each of Applicant's three marks, IDEAL "is not depicted with periods or anything that would indicate that" IDEAL abbreviates something. *Max Cap. Grp.*, 2010 WL 22358, at *5. Applicant claims that the acronym significance of the word IDEAL "is explained on Applicant's website," 4 TTABVUE 7, but there is no evidence that Applicant

[41] MERRIAM-WEBSTER DICTIONARY (merriam-webster.com, last accessed on February 17, 2026). The Board may take judicial notice of dictionary definitions, including definitions from online dictionaries that exist in printed format or have fixed regular editions. *See, e.g.*, *In re Nursecon, LLC*, No. 88052194, 2024 WL 5265079, at *10 n.64 (TTAB 2024) (citation omitted).

promotes the understanding of IDEAL as an acronym because with the limited exception of Applicant's specimens, Applicant's website and other materials are not in the record, and the argument of its counsel "is no substitute for evidence." *Ye Mystic Krewe of Gasparilla*, 2025 WL 2953731, at *6 n.15 (quoting *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371 (Fed. Cir. 2018) (internal quotation omitted)).

The marks IDEAL CAPITAL GROUP and IDEAL SALE "are visually similar, as both begin with the word" IDEAL. *Sage Therapeutics*, 2024 WL 1638376, at *6. "The second elements of the marks are different, and some consumers may notice and recall the difference," but "the marks share the same structure, starting with the dominant [IDEAL] element and then add a second [element] to create a[n] [IDEAL-] formative mark. This structure results in marks that look like variations on a[n] [IDEAL] theme." *Id.* "The common [IDEAL] element of the marks anchors them in a way to the same theme and creates a risk that consumers will mistakenly assume connections between the services provided under the marks." *Id.* "This type of similarity increases the likelihood of confusion." *Id.* We find that IDEAL CAPITAL GROUP and IDEAL SALE are similar in appearance.

With respect to sound, as noted above, "ideal" is a known word in English and thus has an established pronunciation and, as a result, "the first and dominant . . . element of each mark will sound identical. The marks as a whole sound partially different, but the shared . . . element will have the same impact when spoken or heard as it does when seen." *Id.* "The risk here is that consumers will believe that [Applicant and the registrant] are connected because of their shared use of the word [IDEAL],

featured so prominently in their marks used for [identical] services." *Id.* We find that IDEAL CAPITAL GROUP and IDEAL SALE are similar in sound.

Finally, with respect to meaning, as discussed above, there is nothing on the face of the mark or in record evidence to show that the word IDEAL has one meaning as an acronym when used in Applicant's mark, and "a separate and different meaning" when used in the cited mark in connection with identical services. *Embiid*, 2021 WL 2285576, at *9. We find that the word IDEAL has the same mildly laudatory meaning in both marks when used in connection with identical services, and the marks as a whole, when considered in connection with the involved services, both conjure up the idea of "exactly right" real estate investment services.

The IDEAL CAPITAL GROUP and IDEAL SALE marks are similar in all means of comparison, and the first *DuPont* factor supports a conclusion that confusion is likely with respect to these marks.

2. Serial No. 98353045

The compared marks in the appeal in Serial No. 98353045 are IDEAL PRIVATE CLIENT and IDEAL SALE, both in standard characters. Both of these marks also contain the identical word IDEAL as their lead and dominant element.

Applicant and the Examining Attorney make essentially the same substantive arguments in this appeal as they make in the appeal in Serial No. 98352828. 4 TTABVUE 9-12, 12 TTABVUE 3-6. Our analysis of the similarity of the marks in this appeal closely tracks our analysis of the similarity of the marks in that case.

There is again no evidence on the face of Applicant's IDEAL PRIVATE CLIENT mark or in the file history of the application that in Applicant's mark, the word IDEAL is an acronym or has any meaning other than its ordinary meaning in English.

With respect to appearance, IDEAL PRIVATE CLIENT and IDEAL SALE also "are visually similar, as both begin with the word" IDEAL. *Sage Therapeutics*, 2024 WL 1638376, at *6. The second elements of the marks are again different, and "some consumers may notice and recall the difference," but "the marks share the same structure, starting with the dominant [IDEAL] element and then add a second [element] to create a[n] [IDEAL-] formative mark." *Id.* This structure again results in marks that look like variations on an IDEAL theme when used in connection with identical services. *Id.* The common IDEAL element of the marks again "anchors them in a way to the same theme and creates a risk that consumers will mistakenly assume connections between the services provided under the marks." *Id.* We find that IDEAL PRIVATE CLIENT and IDEAL SALE are similar in appearance.

With respect to sound, the known word "IDEAL" will be pronounced the same way in both marks, and while the marks as a whole may sound partially different due to their different suffixes, the dominant word IDEAL has a significant impact on the sound of the marks when they are verbalized. Once again, consumers are likely to believe that Applicant and the registrant "are connected because of their shared use of the word ['ideal'], featured so prominently in their marks used for [identical] services." *Sage Therapeutics*, 2024 WL 1638376, at *6.

As to meaning, we find again that the word IDEAL will have the same mildly laudatory meaning in both marks, and that in Applicant's mark, the suffix words PRIVATE CLIENT will indicate that Applicant's "exactly right" real estate investment services are directed to individual, not institutional, investors.

The IDEAL PRIVATE CLIENT and IDEAL SALE marks are similar in all means of comparison, and the first *DuPont* factor supports a conclusion that confusion is likely with respect to these marks.

3. Serial No. 98355188

The mark in Application Serial No. 98355188 is the stylized version of Applicant's IDEAL CAPITAL GROUP mark reproduced again below:

This mark also shares the word IDEAL with the cited mark IDEAL SALE.

Applicant and the Examining Attorney make essentially the same substantive arguments in this appeal as they make in the appeal in Serial No. 98352828, 4 TTABVUE 9-12, 12 TTABVUE 3-6, but in this appeal, they both also address what Applicant calls the "distinctive stylization" of its mark, 4 TTABVUE 11, which Applicant claims consists of "a stylized design containing distinctive visual elements, including a stylized rendering of the word 'IDEAL' with color features and graphic components."[42] *Id.* Applicant contrasts this stylization with the appearance of both of

[42] As noted above, the colors blue, dark blue, light blue, and white are claimed as a feature of the mark.

the cited marks, which Applicant argues are "registered as standard character marks, covering only plain word usage without any stylization, logo, or visual presentation." *Id.* at 12. According to Applicant, the "law is clear that special form marks can create significantly different commercial impressions from standard character marks, even when the wording overlaps." *Id.* (citing TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") Section 1207.01(c)(iii)).

The Examining Attorney responds that "the stylization and design elements of [Applicant's] mark does [sic] not obviate the likelihood of confusion because both registrants' marks are in standard characters and can appear with a similar design and stylization," 12 TTABVUE 5 (citations omitted), and that "an applicant cannot, by presenting its mark in special form, avoid likelihood of confusion with a mark that is registered in standard characters because the registered mark presumably could be used in the same manner of display." *Id.* (citations omitted). The Examining Attorney concludes that

> given the lesser impact design elements and stylization generally have on the commercial impression of a mark, along with the minimal stylization or design elements found in applicant's mark, it is clear that the design or stylization in applicant's mark does not significantly change the commercial impression of the mark to help avoid confusion.

Id.

We agree with the Examining Attorney that the stylization of Applicant's mark does not make confusion unlikely. The cited IDEAL SALE mark is registered in standard characters and "could be used in any typeface, color, or size, including the same stylization actually used or intended to be used by [Applicant], or one that

minimizes the differences or emphasizes the similarities between the marks." *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, No. 91194148, 2015 WL 5316485, at *8 (TTAB 2015) (citing *Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1353 (Fed. Cir. 2011) (the "registrant is entitled to depictions of the standard character mark regardless of font style, size, or color, not merely 'reasonable manners' of depicting its standard character mark.")). Accordingly, we must assume that the cited IDEAL SALE mark could be displayed in the same font style, size, and colors in which the word IDEAL appears in Applicant's mark, which identical display would "minimize[ ] the differences or emphasize[ ] the similarities between the marks." *Id.* Particularly in that visualized display, but also when the cited mark IDEAL SALE appears in block letters, the marks are similar in appearance due to the common presence of the word IDEAL, and the far less prominent display of the non-source identifying words CAPITAL GROUP in Applicant's mark.

The marks are also similar in sound because of the common presence of the word IDEAL, especially given the display of the words in Applicant's mark, which emphasizes IDEAL over CAPITAL GROUP and encourages consumers to verbalize Applicant's mark simply as "Ideal" by engaging in the "'penchant of consumers to shorten marks.'" *Iron Balls Int'l Ltd. v. Bull Creek Brewing, LLC,* No. 92079099, 2024 WL 2844425, at *25 (TTAB 2024) (quoting *In re Bay State Brewing Co.*, No. 85826258, 2016 WL 1045677, at *3 (TTAB 2016) (citing *In Abcor Dev. Corp.*, 588 F.2d 811, 815 (CCPA 1978) (Rich, J., concurring) ("the users of language have a universal habit of shortening full names from haste or laziness or just economy of words.")).

Finally, with respect to meaning, the stylization of the letter "E" in the word IDEAL in Applicant mark does nothing to show that the word as a whole would be understood to be an acronym, or to have any meaning other than as a mildly laudatory term touting Applicant's services and the first word in Applicant's trade name. We find that the marks as a whole both conjure up the idea of "exactly right" real estate investment services.

The stylized IDEAL CAPITAL GROUP mark and the IDEAL SALE mark are similar in all means of comparison, and the first *DuPont* factor supports a conclusion that confusion is likely with respect to these marks.

C. The Fourth *DuPont* Factor

The fourth *DuPont* factor considers the "conditions under which and buyers to whom sales are made, i. e. 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361. According to Applicant, "[t]he applicable legal standard evaluates the 'degree of care likely to be exercised by purchasers' under the standard of the 'reasonably prudent consumer.'" 4 TTABVUE 16 (quoting *Brookfield Commc'ns, Inc. v. West Coast Entm't Corp.*, 174 F.3d 1036, 1059 (9th Cir. 1999) (citation omitted)).

Applicant misidentifies the applicable legal standard. As explained above, we must apply the law of the Federal Circuit, not the law of regional circuit courts, and the applicable standard under Federal Circuit law is that of the "least sophisticated potential purchasers" of the services identified in the application. *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1325 (Fed. Cir. 2014). The Federal Circuit has made clear that we must determine the degree of care likely to be

exercised by the "least sophisticated potential purchasers" of the involved "real estate investment services" based on the language of the identification of services in the application, not based on the possible sophistication of Applicant's actual current consumers, *id.* at 1323-24, "because the services recited in the application determine the scope of the post-grant benefit of registration." *Id.* at 1324.

Without citing any record evidence, Applicant argues in each appeal that "[c]onsumers of Applicant's services — high-net-worth individuals and institutional investors — exercise a high degree of care in selecting financial and investment partners," 4 TTABVUE 16, and that its "clientele are expected to exercise considerable caution, conduct due diligence, and have industry knowledge — sharply reducing the possibility that they would mistake IDEAL CAPITAL GROUP for IDEAL FUTURES or IDEAL SALE." *Id.* at 16-17.

Although "the [real estate investment] services recited in the application also encompass sophisticated investors," *Stone Lion*, 746 F.3d at 1325, they are not limited on the face of the identification to what Applicant calls "high-net-worth individuals and institutional investors," 4 TTABVUE 16, and they must be deemed to encompass ordinary investors. *Stone Lion*, 746 F.3d at 1325 (holding that "the Board properly considered **all** potential investors for the recited [investment advisory, management of investment funds, and fund investment] services, including ordinary consumers seeking to invest in services with no minimum investment requirement") (emphasis in bold here in italics in *Stone Lion*). Ordinary consumers "will exercise care when making financial decisions," but "are not immune from source confusion where

similar marks are used in connection with [identical] services." *Id*. (citation omitted). The fourth *DuPont* factor is neutral in our analysis of the likelihood of confusion in all three appeals.

D. The Fifth *DuPont* Factor

The fifth *DuPont* factor considers the "fame of the prior mark (sales, advertising, length of use)." *DuPont*, 476 F.2d at 1361. Applicant argues in each appeal that

> Here, the record contains no evidence whatsoever that the cited marks — such as IDEAL FUTURES or IDEAL SALE — possess any degree of fame or marketplace renown. There is no evidence of widespread advertising, no evidence of unsolicited media attention, no evidence of significant sales or market share, no evidence of general consumer recognition, and no surveys or other consumer perception data demonstrating fame. Indeed, Applicant is unaware of any material use or reputation for these marks beyond their registration entries.
>
> Without the elevated protective shield granted to truly famous marks, the cited registrations — all of which contain the common and diluted term "IDEAL" — are entitled to only ordinary, narrow protection, consistent with their actual marketplace footprint.

4 TTABVUE 17.

Applicant's argument is meritless. "Because of the nature of the evidence required to establish the fame of a registered mark, the Board does not expect Trademark Examining Attorneys to submit evidence as to the fame of the cited mark in an *ex parte* proceeding, and they do not usually do so." *In re Mr. Recipe, LLC*, No. 86040643, 2016 WL 1380730, at *2 (TTAB 2016) (citation omitted). "Rather, in an *ex parte* appeal the 'fame of the mark' factor is normally treated as neutral because the

record generally includes no evidence as to fame." *Id.* We will treat the fifth *DuPont* factor as neutral in all three appeals.

E. The Sixth *DuPont* Factor

Because the IDEAL SALE mark shown in the cited '065 Registration "is registered on the Principal Register, with no claim of acquired distinctiveness under Section 2(f), we presume it is inherently distinctive, i.e., that it is at worst suggestive of the [services]." *Heil Co. v. Tripleye GmbH*, No. 91277359, 2024 WL 4925901, at *18 (TTAB 2024) (citing 15 U.S.C. § 1057(b)). The sixth *DuPont* factor considers the "number and nature of similar marks in use with similar goods," *DuPont*, 476 F.2d at 1361, and the "existence of third-party registrations on similar goods [or services] can bear on a mark's conceptual strength," *Spireon*, 71 F.4th at 1363 (citing *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015)), because "third-party registrations containing an element that is common to both . . . marks can show that that element has 'a normally understood and well-recognized descriptive or suggestive meaning.'" *Id.* (quoting *Jack Wolfskin Ausrustung Fur Draussen GmbH v. New Millenium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015)).

Applicant argues in each appeal that "the widespread coexistence of similar 'IDEAL' marks within the financial and real estate sectors demonstrates that the shared term is a weak and diluted element, entitled to only narrow protection" and that "[n]umerous third-party uses and registrations containing 'IDEAL' reflect the reality that consumers are accustomed to encountering similar terms in this crowded

field without assuming common source or affiliation." 4 TTABVUE 17-18. Applicant claims that "there are at least 17 live 'IDEAL' marks currently operating in the real estate and financial sectors, including IDEAL HOMES, IDEAL LENDING, IDEAL TITLE, IDEAL OFFER, IDEAL SALE, IDEAL LIVING, IDEAL AGENT, IDEAL SPACES, IDEAL RATE, IDEAL WEALTH GROWER, and others." *Id.* at 10.

The Examining Attorney responds in each appeal that "applicant has not provided evidence to support this claim" and that "to make third-party registrations part of the record, an applicant must submit copies of the registrations, or the complete electronic equivalent from the USPTO's automated systems, prior to appeal." 12 TTABVUE 8 (citations omitted). The Examining Attorney states that "the registrations applicant has alluded to will not be considered and applicant's argument of dilution is unpersuasive." *Id.* The Examining Attorney repeated his objection to the third-party registrations at the oral hearing.

Applicant did not make any of the referenced third-party registrations of record during prosecution of any of its three applications, and the "Board does not take judicial notice of registrations and a list of registrations does not make those registrations of record." *In re Peace Love World Live, LLC*, No. 86705287, 2018 WL 3570240, at *6 n.17 (TTAB 2018) (citation omitted). At the oral hearing, Applicant's counsel acknowledged that the third-party registrations were not in the record, and stated that Applicant was relying solely on the coexistence of the two cited registrations inter se. Even assuming that the cited registrations could be considered "third-party registrations," *cf. Made in Nature, LLC v. Pharmavite LLC*, No.

91223352, 2022 WL 2188890, at *15 (TTAB 2022) (the opposer's own registrations "are not 'third-party registrations'" under the sixth *DuPont* factor), the coexistence of the two cited registrations is "a far cry from the large quantum of evidence of third-party use and third-party registrations that was held to be significant" in *Jack Wolfskin* and *Juice Generation*. *Inn at St. John's*, 2018 WL 2734893, at *4.

Whether adequate proof of the conceptual weakness of the cited IDEAL SALE mark "was in fact available but simply was not gathered and proffered by [Applicant] is not a subject on which we can, should or do speculate. Rather, we must take the record as [Applicant] made it." *T.A.B. Sys. v. Pactel Teletrac*, 77 F.3d 1372, 1378 (Fed. Cir. 1996). The record as Applicant made it does not show the conceptual weakness of the cited IDEAL SALE mark, and the sixth *DuPont* factor is neutral in our analysis of the likelihood of confusion in all three appeals. We will accord the cited IDEAL SALE mark "the normal scope of protection to which inherently distinctive marks are entitled." *Iron Balls*, 2024 WL 2844425, at *15 (citation omitted).

F. The Eighth *DuPont* Factor

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

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

In *Guild Mortg.*, the applicant provided evidence of those "actual market conditions" in the form of a declaration from a corporate executive establishing facts regarding the applicant's use of its mark, as well as evidence regarding the use of the cited registered mark. *Guild Mortg.*, 2020 WL 1639916, at *8-9. The record here is devoid of such evidence. Instead, Applicant's counsel simply argues that

> [h]ere, the parties' services have coexisted in the real estate and financial services marketplace without any known incidents of consumer confusion. This absence is particularly meaningful because it demonstrates that even where consumers encounter multiple "IDEAL" marks in the same broad industry, they are readily able to distinguish between providers based on additional brand elements, visual presentation, and service context.
>
> While evidence of actual confusion is not a prerequisite to finding likelihood of confusion, the complete absence of such evidence over time supports the conclusion that the relevant consumers are not confused. Therefore, this factor weighs strongly in favor of registration.

4 TTABVUE 18.

Applicant's argument is not evidence of peaceful coexistence, but it is also belied by Applicant's argument elsewhere in its appeal briefs that it and the cited registrant

are separated geographically and that "[t]he absence of overlapping customer exposure due to these geographic differences further reduces the likelihood that consumers would encounter both services or assume a connection between them." *Id.* at 19-20. Accepting Applicant's argument regarding "geographic differences" at face value for purposes of the eighth *DuPont* factor only, there has not been "a significant opportunity for actual confusion to have occurred." *Keystone Consol. Indus., Inc. v. Franklin Inv. Corp.*, No. 92066927, 2024 WL 3771168, at *24 (TTAB 2024). The eighth *DuPont* factor is neutral in our analysis of the likelihood of confusion in all three appeals.

G. Other *DuPont* Factors

Under the argument heading "**8-13: Remaining Factors**," 4 TTABVUE 18 (emphasis supplied by Applicant), Applicant argues in each appeal that "[t]here is no evidence of marketplace interaction, bad faith, or expansion plans that would increase the potential for confusion," and that the "extent of potential confusion is minimal, especially given the specific market segments, consumer care levels, and branding distinctions outlined above." *Id.* at 19. These arguments appear to allude to the tenth *DuPont* factor, the "market interface between applicant and the owner of a prior mark," *DuPont*, 476 F.2d at 1361, the twelfth factor, the "extent of potential confusion, i. e., whether *de minimis* or substantial," *id.*, and possibly the thirteenth factor, "[a]ny other established fact probative of the effect of use." *Id.* Applicant offers no evidence or developed arguments directed to these factors, and we "need not consider these factors." *Heil Co.*, 2024 WL 4925901, at *37.

H. Summary

The key first and second *DuPont* factors, and the third factor, support a conclusion that confusion is likely in all three appeals, and the other applicable *DuPont* factors are neutral in all three appeals. The services identified in each of Applicant's applications and in the cited '065 Registration are identical, and the channels of trade and classes of consumers for those services are thus identical as well, and the fact that the services are identical reduces the degree of similarity between the marks necessary for confusion to be likely. Each of Applicant's three marks is sufficiently similar to the cited IDEAL SALE mark for confusion to be likely. We conclude that consumers with a general recollection of the cited IDEAL SALE mark for real estate investment services who separately encounter Applicant's standard-character and stylized IDEAL CAPITAL GROUP marks and Applicant's IDEAL PRIVATE CLIENT mark for the identical real estate investment services are likely to conclude mistakenly that the services have a common source.

Decision: The Section 2(d) likelihood of confusion refusals to register are affirmed in each of the three consolidated appeals.[43]

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[43] Because we have affirmed the Section 2(d) refusals in each appeal, we need not and do not reach the refusals in each appeal based on the disclaimer requirements. *See*, *e.g.*, *In re Sheet Pile, LLC*, No. 97010763, 2024 WL 1175785, at *6 (TTAB 2024).